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Louis B. Sohn and the Law of the Sea

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LOUIS B. SOHN AND THE LAW OF THE SEA

JOHN E. NOYES*

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I. INTRODUCTION

Louis B. Sohn significantly influenced the modern law of the sea, as he did other areas of international law. Though a positivist immersed in the human history and process of developing the law, Louis was also a visionary who saw international law as a noble endeavor that could improve or even transform the world. Part I of this essay describes Louis's various roles and character. Part II briefly sets out his vision and his sense of the interconnectedness between the law of the sea and other areas of international law. Part III analyzes how Louis saw the international lawmaking process, with which he sought to implement his vision.

II. LOUIS B. SOHN'S ROLES AND CHARACTER

Professor Louis B. Sohn (1914-2006) was one of the preeminent international law scholars of the twentieth century. His work helped create the fields of United Nations law, international environmental law, and human rights law. In 2009, the 400th anniversary of Grotius's *De Mare Liberum*, we can't say Louis Sohn created the field of the law of the sea, whose roots are indeed ancient. But Louis helped us understand,

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and helped shape, the modern law of the sea. He recognized the multiple conflicting uses and limited resources of the oceans today, and examined how international law, international courts, and other international organizations could address these issues.

Louis filled many roles in addition to that of scholar. He devoted a tremendous amount of time and energy to his students at Harvard Law School (1946-1981; Bemis Professor, 1961-1981) and the University of Georgia School of Law (Woodruff Professor, 1981-1991), before finishing his career as Distinguished Research Professor at The George Washington University Law School. He led nongovernmental organizations, serving as Chair of the American Bar Association's Section of International Law (1992-1993), President of the American Society of International Law (1988-1990), and for many years Vice President of the American Branch of the International Law Association. He worked as a U.S. government lawyer, a co-rapporteur of the *Restatement (Third) of the Foreign Relations Law of the United States*, an advocate before the International Court of Justice, an informal advisor to governments and international organizations, and an international negotiator (notably at the Third United Nations Conference on the Law of the Sea (UNLCOS III)). All of his contributions reflected his passion and his vision about how international law could shape a more peaceful and a more just world.

A list of Louis Sohn's accomplishments cannot capture his character. I like Dan Magraw's summary: "Famously described as 'the Brain who walks like a Man[.]' . . . Louis's vision, knowledge, flexibility, energy, persistence, humility, extraordinary attention to detail, and dedication to the rule of law were legendary around the world."¹ His influence on his students and professional associates was profound. During UNCLOS III, Louis's knowledge, experience, and tenacity made him an invaluable resource for the U.S. delegation in particular, and for the Conference as a whole. The dispute settlement provisions in the Law of the Sea Convention were in large measure due to his efforts.²

I never took a class from Louis, nor did I know him during UNCLOS III. But he certainly influenced me. I came to the law of the

1. Daniel Barstow Magraw, *Louis B. Sohn, Architect of the Modern International Legal System*, 48 HARV. INT'L L.J. 1, 2 (2007).

2. Elliot Richardson, *Dispute Settlement Under the Convention on the Law of the Sea: A Flexible and Comprehensive Extension of the Rule of the Law to Ocean Space*, in CONTEMPORARY ISSUES IN INTERNATIONAL LAW: ESSAYS IN HONOR OF LOUIS B. SOHN 149 (Thomas Buergenthal ed., 1984); Andreas J. Jacovides, Comment, *Peaceful Settlement of Dispute in Ocean Conflicts: Does UNCLOS III Point the Way?*, 46 LAW & CONTEMP. PROBS., Spring 1983, at 201.

sea after the end of UNCLOS III, when law of the sea experts were working to revise the Part XI seabed mining regime, so as to encourage the United States and other industrialized states to ratify or accede to the 1982 Law of the Sea Convention.³ I learned from Louis's example about how to couple historical developments with efforts to address current problems. At one of the first law of the sea conferences I attended, for example, Louis presented a detailed, historically grounded, and creative proposal integrating a revision of Part XI into the Convention regime.⁴ Louis's passion for learning was impressive. I often recall his admonition to inject at least one new nugget—one new insight or previously unearthed research discovery—into each presentation. Louis's intellectual curiosity and his desire to learn were insatiable.

I found Louis's encouragement of my early forays into the law of the sea truly remarkable. After all, I was a neophyte in the field, and we shared no preexisting personal or professional connections. He gently corrected my phrasings in some ABA law of the sea reports I had worked on,⁵ and generously shared his time to talk with me as I prepared one of my earliest talks about dispute settlement and the law of the sea. Such conversations eventually led to our collaboration, late in Louis's life, on *Cases and Materials on the Law of the Sea*.⁶ During work on that book, I came to appreciate anew Louis's deep knowledge about the law of the sea, and his passion to share his knowledge and vision.

III. WORLD PEACE, THE LAW OF THE SEA, AND AN INTEGRATED VISION OF INTERNATIONAL LAW

What was Louis's vision? What values motivated his work? An early expression of Louis Sohn's idealism—his belief that international

3. United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter LOS Convention].

4. Louis B. Sohn, *Procedural Options for Amending Part XI of the United Nations Convention on the Law of the Sea*, in CENTER FOR OCEANS LAW AND POLICY FIFTEENTH ANNUAL SEMINAR: ISSUES IN AMENDING PART XI OF THE LOS CONVENTION 71 (M.H. Nordquist ed., 1991).

5. A.B.A. Section of Int'l Law & Practice, *Report to the House of Delegates, UN Convention on the Law of the Sea*, 29 INT'L LAW. 252 (1995), reprinted in THE UNITED NATIONS AT 50: PROPOSALS FOR IMPROVING ITS EFFECTIVENESS 161 (John E. Noyes ed., 1997); A.B.A. Section of Int'l Law & Practice, *Report to the House of Delegates, UN Convention on the Law of the Sea*, 24 INT'L LAW. 868 (1990).

6. LOUIS B. SOHN & JOHN E. NOYES, *CASES AND MATERIALS ON THE LAW OF THE SEA* (2004). A second edition is scheduled to be published by Brill. Also, a second edition of Louis's *Law of the Sea in a Nutshell*, the first edition of which he coauthored in 1984 with Kristen Gustafson [Juras], was recently published. LOUIS B. SOHN, KRISTEN JURAS, JOHN E. NOYES & ERIK FRANCKX, *LAW OF THE SEA IN A NUTSHELL* (2d ed. 2010).

law and international legal institutions with enforcement powers addressing common problems can help maintain international peace and security—undergirds his coauthored book *World Peace Through World Law*.⁷ The start of that volume's redraft of the United Nations Charter leaves untouched the Charter's essential purposes and principles: to maintain international peace and security, including through collective security measures; to bring about the peaceful settlement of disputes; to develop friendly relations among states, based on respect for the equal rights and self-determination of peoples; to cooperate in solving international problems and encouraging respect for human rights and fundamental freedoms.⁸ These were the values that inspired Louis.

For Louis, the law of the sea did not constitute a distinct discipline, divorced from other areas of international law or from the core values that should underlie world order. One could, as he told me on several occasions, find virtually every aspect of international law in the law of the sea. We certainly see the law of the sea intersecting with many other areas of international law in the 1982 Law of the Sea Convention. Its treatment of marine pollution and the marine environment, for example, reflected a progressive view of international environmental law. Louis contributed to the 1972 Stockholm Conference on the Human Environment and wrote a classic article about the Stockholm Declaration.⁹ That Declaration influenced UNCLOS III delegates and helped to shape the environmental provisions of the Convention.¹⁰

The law of the sea, in Louis's eyes, also took account of important civil and economic human rights. Louis, who had left Poland in the 1930s in the face of the Nazi threat, worked on human rights issues even before the U.N. Charter was adopted, as well as during post-Charter codification efforts.¹¹ He spoke and wrote about how states must

7. GRENVILLE CLARK & LOUIS B. SOHN, *WORLD PEACE THROUGH WORLD LAW* (1958) (2d ed. 1960) (3d ed. 1966).

8. *See id.* at 5-6; U.N. Charter art. 1.

9. Louis B. Sohn, *The Stockholm Declaration on the Human Environment*, 14 HARV. INT'L L.J. 423 (1973).

10. *See generally* 1 THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA OFFICIAL RECORDS 120-21, U.N. Sales No. E.75.V.3 (1973-1974); 2 THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA OFFICIAL RECORDS 311-35, U.N. Sales No. E.75.V.4 (1975) (containing numerous references to the Stockholm Conference and to the United Nations Environment Programme, which was established in 1972 as one outcome of the Conference).

11. *See* Louis B. Sohn, *How American International Lawyers Prepared for the San Francisco Bill of Rights*, 89 AM. J. INT'L L. 540, 546-47 (1995); Jo M. Pasqualucci, *Louis Sohn: Grandfather of International Human Rights Law in the United States*, 20 HUM. RTS. Q. 924 (1998).

respect human rights in their maritime practice. He addressed, for example, the property rights of vessel owners, the prohibition on the slave trade, and the rights of individuals aboard stateless vessels.¹²

The law of the sea links to other fundamental aspects of international law as well. The 1982 Law of the Sea Convention, in its “peaceful purposes” clause, incorporates limits on the use of force found in the U.N. Charter.¹³ Louis wrote about how the Convention, other treaties, and customary international law respect and mediate the security concerns of coastal states and flag states.¹⁴ The Convention’s dispute settlement provisions also implement and refine the general Charter obligation concerning the peaceful resolution of disputes.¹⁵

Far from regarding the law of the sea as addressing discrete maritime issues, Louis recognized that the field was integrally linked to international environmental law, human rights, the U.N. Charter, the law related to national security, and the peaceful resolution of disputes. For Louis, all these parts of international law should further the goal of a more peaceful and just world. How are we to approach that goal? The law of the sea—like these other parts of international law—was something to be built. The next section of this essay explores Louis’s views about the nature of the positive law that could construct the law of the sea.

IV. LOUIS SOHN AND THE MAKING OF THE MODERN LAW OF THE SEA

Louis Sohn believed that legal rules—rules that furthered the goal of a more perfect world order—had to be created primarily through a process to which states consented. Although Louis was a positivist, he was impatient with traditional views about how states made law. He believed that international institutions should play a major role in developing law and regulating conduct.

Louis saw multilateral treaties, such as the Law of the Sea

12. Louis B. Sohn, *International Law of the Sea and Human Rights Issues*, in *THE LAW OF THE SEA: WHAT LIES AHEAD?* 51 (Thomas A. Clingan, Jr. ed., 1988); Louis B. Sohn, *Peacetime Use of Force on the High Seas*, in *THE LAW OF NAVAL OPERATIONS* (64 *INTERNATIONAL LAW STUDIES*) 38, 39-59 (Horace B. Robertson, Jr. ed., 1991).

13. LOS Convention, *supra* note 3, art. 88, at 301. See Bernard H. Oxman, *The Regime of Warships Under the United Nations Convention on the Law of the Sea*, 24 *VA. J. INT'L L.* 809, 829-32 (1984).

14. See Louis B. Sohn, *International Navigation: Interests Related to National Security*, in *INTERNATIONAL NAVIGATION: ROCKS AND SHOALS AHEAD?* 307 (Jon M. Van Dyke, Lewis M. Alexander & Joseph R. Morgan eds., 1988).

15. U.N. Charter arts. 2(3), 33; see LOS Convention, *supra* note 3, arts. 186-191, 279-299, Annexes V-VIII.

Convention, as essential to the formation of international law. Other lawmaking mechanisms were too clumsy and uncertain. Multilateral treaties, in historical context, replaced “a host of bilateral arrangements that were both inefficient and costly.”¹⁶ Furthermore, any significant reliance on diplomatic state practice, to which earlier international lawyers traditionally resorted for evidence about the content of rules of customary international law, was impossible in the modern world. International lawyers no longer

focus[] on what the various foreign ministries have been doing, singly or through bilateral diplomatic correspondence [They] no longer rely on a crisis producing an outpouring of statements from which a principle of international law might be deduced. They no longer wait for one of those great cases like the *North Atlantic Coast Fisheries Case* in 1910, where twelve volumes of hitherto hidden documents were presented to a tribunal of the Permanent Court of Arbitration, on the basis of which the tribunal was able to announce some important decisions concerning the existence of several rules of customary international law. We can no longer rely on a scholar disappearing in the archives of a particular State and after many years of research producing a set of volumes on the international law practice of that State. . . . Even if there still are scholars willing to do that, it is quite clear that one’s lifetime is not long enough to even scratch the surface of the treasure troves hidden in the multiplying archives of many nations.¹⁷

A multilateral treaty such as the Law of the Sea Convention could of course serve as treaty law. But in Louis’s opinion, multilateral treaty-making conferences could also lead to binding customary international law. Modern multilateral treaties merged the functions of codification and precise expression of existing law, on the one hand, with the development of new principles of law, on the other, in ways that were often hard to separate. In Louis’s view, the consensus of states at multilateral treaty-making conferences could provide the basis for “instant” customary international law:

[O]nce a consensus is reached at an international conference, a rule of customary international law can emerge without having to wait for the signature of the convention. Once a convention is signed by a vast majority of the international community, its stature as customary international law is thereby strengthened, as such signatures are a clear

16. Louis B. Sohn, *The Law of the Sea: Customary International Law Developments*, 34 AM. U. L. REV. 271, 274 (1985) (referring to 1874 treaty establishing the Universal Postal Union) [hereinafter Sohn, *Customary*].

17. *Id.* at 273-74.

evidence of an *opinio juris* that the convention contains generally acceptable principles.

International law does not impose any formal restrictions on the means by which States may express their common will. If in the last decades of the twentieth century they should decide that consensus at a conference plus a signature by a vast majority of the participants creates a general norm of international law, this new method of creating new principles and rules of international law would thereby become a legitimate method of law creation. There is no rule of international law preventing all States assembled in conference to agree that a particular set of rules represents a satisfactory product of "mutual accommodation, reasonableness and co-operation." In addition, States may be willing to accept these rules as binding on them from the very moment of their adoption.¹⁸

Writing less than two years after UNCLOS III ended, Louis drew on these views to boldly conclude that "most of the provisions of the [Law of the Sea] Convention [had] become customary international law."¹⁹ UNCLOS III was a good venue for the "legislative" process he described, in that state delegates were centrally involved in negotiating and developing the Convention. The delegates did not, for example, rely on prior drafts prepared by the International Law Commission, as had delegates to the 1958 Geneva law of the sea conventions. UNCLOS III's consensus-based decision-making process facilitated state agreement on legal rules.²⁰

The July 1994 Part XI Implementation Agreement,²¹ negotiated to modify the Law of the Sea Convention's deep seabed mining regime,

18. *Id.* at 278-79 (quoting Fisheries Jurisdiction (U.K. v. Ice.), 1974 I.C.J. 3, 23 (July 25)). See also Louis B. Sohn, *The 1982 Convention and Its Effect on the Development of Customary International Law*, in CENTER FOR OCEANS LAW AND POLICY THIRTEENTH ANNUAL SEMINAR: CONTEMPORARY ISSUES IN UNITED STATES LAW OF THE SEA POLICY 28 (M.H. Nordquist ed., 1991); Louis B. Sohn, *Conference Remarks*, in *id.* at 32.

19. Sohn, *Customary*, *supra* note 16, at 280. Although the United States had not signed the Convention, Louis believed that President Reagan's 1983 U.S. Ocean Policy Statement, Mar. 10, 1983, 83 DEP'T ST. BULL. No. 2075, June 1983, at 70, "showed that the United States has gone quite far in accepting all the provisions of the Law of the Sea Convention, except those relating to deep seabed mining." Sohn, *Customary*, *supra* note 16, at 279. Louis would, in positivist fashion, allow the "persistent objector" to opt out from a generally accepted rule. *Id.* at 280. See also Louis B. Sohn, "Generally Accepted" International Rules, 61 WASH. L. REV. 1073 (1986).

20. See ALAN BOYLE & CHRISTINE CHINKIN, *THE MAKING OF INTERNATIONAL LAW* 148 (2007). See also Louis B. Sohn, *Voting Procedures in United Nations Conferences for the Codification of International Law*, 69 AM. J. INT'L L. 310 (1975).

21. Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, July 28, 1994, 1836 U.N.T.S. 3 [hereinafter Part XI Implementation Agreement].

further illustrated how modern international law could be made. In Louis's view, this Agreement, which was to be interpreted and applied together with the Convention as a single instrument, reflected a modern process of lawmaking that relied on an overwhelming consensus in the international community. He attributed this lawmaking process "primarily to the tremendous increase in the last fifty years in the role being played by international institutions and multipartite diplomacy."²²

[T]oday, there is a new dynamic mechanism, allowing the international community to create new law directly by all nations gathering around a conference table, and by patient negotiations, quiet consultations and long public debate to agree on what the law should be. It is a more democratic process than that of national parliaments, as no decision can be dictated by a numerical majority to a minority; nor can an obstinate minority forever block the will of a preponderant majority.²³

In Louis's view, the negotiations leading to the Part XI Agreement represented

an almost-unanimous consensus, including the preponderant majority of each group represented in the consultations. An agreement reached in such a way truly represents the opinion of mankind, and was likely to be approved by the General Assembly in a unanimous vote. This was not an instant legislative act, but a final result of a long, deliberative process, taking all interests equitably into account, and by persistence and ingenuity finding a solution for each apparently intractable problem. While no state could dictate the adoption of all its wishes, enough of them were accepted to make the final result acceptable to all. Every state had an important stake in the final result, and the final agreement was truly everybody's common intellectual product.

This is the very best way of making international law, and the Law of the Sea Convention as implemented by the new Agreement is an excellent example of the vitality and viability of this new lawmaking process.²⁴

Louis also highlighted the fact that the 1994 Agreement required diverse groups of states to approve it before it entered into force; and he noted

22. Louis B. Sohn, *International Law Implications of the 1994 Agreement*, 88 AM. J. INT'L L. 696, 700 (1994).

23. *Id.* at 701.

24. *Id.* Louis added: "At the same time, it might be useful to point out that the procedures used in preparing this Agreement and providing for its entry into force, its relation to the Convention and its provisional application have been applied in the last fifty years in a variety of circumstances, without being challenged as illegal." *Id.*

that, once in force, the Council of the International Seabed Authority could act only by consensus or through other mechanisms requiring broad support.²⁵ Overall, the “new lawmaking process” was essential to the widespread acceptance of the Agreement’s rules.

Some of Louis’s views were controversial. For example, traditional positivists, looking for evidence of state practice plus *opinio juris* to indicate acceptance of particular rules, disagreed with Louis that treaty-making conferences could lead to instant customary international law. Other scholars sounded cautionary notes, even though they believed that modern lawmaking forums could provide increased transparency and legitimacy for international law and contribute significantly to the creation of universal international law.²⁶ Professor Jonathan Charney agreed that multilateral forums might “play a central role in the creation and shaping of contemporary international law.”²⁷ However, Charney emphasized that the forums themselves do not have independent legislative authority.²⁸ Rather, if certain features were present—if the participants at the forum represented all interest groups, were aware they were debating a legal norm, gave it widespread support, and objected only to subsidiary issues²⁹—then “the rapid and unquestionable entry into force of normative rules” developed in the forum would be possible, “if the support expressed in the forum was confirmed.”³⁰ Confirmation in practice would help ensure the efficacy of the new norms. Charney also questioned whether particular new rules in the Law of the Sea Convention would necessarily become customary international law. The Convention, which reflected “real state interests,” was less likely to represent new customary international law than an agreement addressing “generalized interests and aspirations of the international community;” a rule that resulted from negotiated trade-offs concerning other issues, as did most Law of the Sea Convention rules, was “less appropriate for

25. *Id.* See Part XI Implementation Agreement, *supra* note 21, art. 6 & Annex, § 3. The 1994 Agreement contained several other procedural features facilitating its acceptance and application. For example, the Agreement applied provisionally before it entered into force. *Id.* art. 7. Provisional application insured that the modified Part XI institutional provisions were operating immediately upon the entry into force of the Law of the Sea Convention in November 1994, and that no changes in the deep seabed-mining regime were necessary when the Agreement itself entered into force in July 1996. The Part XI Agreement also included several simplified options to facilitate its acceptance by states that had previously accepted the Law of the Sea Convention. *Id.* art. 4(3).

26. See Jonathan I. Charney, *Universal International Law*, 87 AM. J. INT’L L. 529 (1993).

27. *Id.* at 543.

28. *Id.* at 547.

29. *Id.* at 544-45.

30. *Id.* at 547.

merger into customary law than a rule that resulted from a more atomized negotiation;” a rule linked by political trade-offs to other Convention rules would less likely “be considered as a customary rule separated from the fabric of the agreement;” and a Convention rule requiring “highly technical methods of implementation” might be inappropriate for customary international law.³¹ In short, Louis embraced international treaty-making conferences as lawmaking mechanisms and concluded that most provisions of the Law of the Sea Convention were customary international law, but his views provoked controversy. Louis’s positions did not conform to the traditional positivist picture of how international law is made, and even some who acknowledge that multilateral forums may contribute vitally to the development of international law have expressed caution about Louis’s bolder conclusions.

Louis regarded international organizations as essential to the law of the sea lawmaking process. The Law of the Sea Convention serves in many respects as a framework agreement. A framework agreement requires implementation. In modern international law, a variety of mechanisms—conferences of the parties, or amendments (sometimes adopted through a legislative majority or supermajority process), or supplemental implementing agreements—may serve this purpose. Louis spoke approvingly of Law of the Sea Convention mechanisms providing lawmaking or implementation roles for international organizations: “[I]n many respects this LOS Convention is just the beginning [for it] starts a process of international legislation and might require, in many respects, additional action later by various bodies—IMCO, FAO, environment bodies, regional organizations, etc.”³² Louis stressed the “dynamic” nature of the Convention’s obligation that coastal states adopt and enforce, at a minimum, “generally accepted” international anti-pollution rules and standards.³³ “[T]he various special conventions on the protection of the environment, . . . the more general provisions of the Law of the Sea Convention, and . . . the special rule bringing all other conventions, rules, and standards, whether past or future, under the wide

31. Jonathan I. Charney, *International Agreements and the Development of Customary International Law*, 61 WASH. L. REV. 971, 983, 986 (1986).

32. Louis B. Sohn, *Comments*, in LAW OF THE SEA: CONFERENCE OUTCOMES AND PROBLEMS OF IMPLEMENTATION 259, 264 (Edward Miles & John King Gamble, Jr. eds., 1977) [hereinafter CONFERENCE OUTCOMES].

33. Louis B. Sohn, *Implications of the Law of the Sea Convention Regarding the Protection and Preservation of the Marine Environment*, in THE DEVELOPING ORDER OF THE OCEANS 103, 108-09 (Robert B. Krueger & Stefan A. Riesenfeld eds., 1985) [hereinafter Sohn, *Marine Environment*]. See, e.g., LOS Convention, *supra* note 3, art. 211(2).

umbrella of the Law of the Sea Convention” combined to result in a general, “universal[ly]” accepted “code of rules and standards for the protection and preservation of the environment.”³⁴

For Louis, international courts and tribunals served particularly important institutional functions. They helped fulfill the U.N. Charter mandate of peaceful resolution of disputes. The Law of the Sea Convention’s innovative provisions concerning compulsory recourse to binding third-party dispute settlement could help resolve disputes. The dispute settlement bodies could, in addition, provide authoritative interpretations of the Convention, clarifying the inevitable ambiguities that resulted from negotiating compromises.³⁵ Furthermore, Louis argued that natural and juridical persons should, in certain circumstances, have access to international tribunals to enforce their rights and clarify their obligations under international law.³⁶ For Louis, the Convention’s dispute settlement provisions were short of ideal. For example, individuals should have had increased access to tribunals.³⁷ And although Louis touted the “flexibility” of the Convention’s complex provisions—provisions that gave states a choice among numerous third-party forums, with arbitration as the default forum, and that created a separate set of options for deep seabed mining disputes—his own preference would have been for a less “cumbersome” and “more efficient” process.³⁸ Yet Louis recognized that complex compromises were the inevitable price to be paid for consensus on formal dispute settlement at a multilateral conference such as UNCLOS III, and he devoted himself to achieving consensus on a viable third-party dispute settlement system. Louis contributed vitally to achieving agreement, late in UNCLOS III, on the “hard-core” issue of how to treat maritime

34. Sohn, *Marine Environment*, *supra* note 33, at 106, 109.

35. See Louis B. Sohn, *Peaceful Settlement of International Disputes in Ocean Conflicts: Does UNCLOS III Point the Way?*, 46 *LAW & CONTEMP. PROBS.*, Spring 1983, at 195.

36. Louis B. Sohn, *Problems of Dispute Settlement*, in *CONFERENCE OUTCOMES*, *supra* note 32, at 223, 230-31.

37. See Louis B. Sohn, *Managing the Law of the Sea: Ambassador Pardo's Forgotten Second Idea*, 36 *COLUM. J. TRANSNAT'L L.* 285 (1998) [hereinafter Sohn, *Pardo's Second Idea*].

38. Sohn, *Comments*, in *CONFERENCE OUTCOMES*, *supra* note 32, at 265 (questioning the advisability of the Law of the Sea Convention’s provisions for “special arbitration” involving technical experts); see Louis B. Sohn, *Settlement of Disputes Relating to the Interpretation and Application of Treaties*, 150 *RECUEIL DES COURS* 195, 285 (1976) (Neth.) (although the essential objective of providing “an authoritative, binding, precedent setting method of common interpretation by an international body having the necessary prestige and trust” could be “best achieved by providing a sole channel for [the] . . . interpretation of the [Law of the Sea] Convention, such a solution would conflict with the [political] need to provide maximum flexibility”).

boundary delimitation disputes, involving an innovative use of compulsory conciliation.³⁹

Although Louis worked with the international political and legal system, he retained a vision of the ideal. How *should* we manage the law of the sea? In one of his last articles, *Managing the Law of the Sea: Ambassador Pardo's Forgotten Second Idea*,⁴⁰ Louis explored that fundamental question, highlighting the value of establishing new international organizations with broad regulatory and enforcement powers. Ambassador Pardo's "first idea," as students of the law of the sea know well, was the notion that the seabed and subsoil beyond national jurisdiction constituted the common heritage of humankind.⁴¹ That idea was enshrined in Part XI of the Law of the Sea Convention.⁴² Pardo's "second idea," however, was a Draft Ocean Space Treaty,⁴³ providing for International Ocean Space Institutions to manage and develop ocean space as a whole, and to maintain law and order there. These Institutions would accord greater decision-making weight to major coastal states than to minor coastal states, and greater weight to coastal states generally than to non-coastal states. Among the Institutions would be an International Maritime Court with broad jurisdiction over the Institutions and over natural and juridical persons, as well as over states, concerning disputes relating to the oceans; those violating a decision of the Court would be sanctioned.

In Louis's view, we cannot satisfactorily address the complex problems facing the oceans merely by recognizing, as the Law of the Sea Convention often does, limited functions of various "competent

39. See Informal Conf. Doc. NG7/20/Rev.1 (Aug. 25, 1978), in 9 THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA: DOCUMENTS 412 (Renate Platzöder ed., 1986) (survey of possible approaches to settlement of sea boundary disputes); Informal Conf. Doc. NG7/27 (Mar. 27, 1979), in *id.* at 438 (working paper prepared by Louis B. Sohn regarding maritime boundary disputes); Informal Conf. Doc. NG7/37 (Apr. 12, 1979), in *id.* at 457 (working paper prepared by Louis B. Sohn regarding maritime boundary disputes). For the outcome of the compromises concerning maritime boundary delimitation disputes, see LOS Convention, *supra* note 3, art. 298(1).

40. Sohn, *Pardo's Second Idea*, *supra* note 37.

41. *Id.* at 287.

42. LOS Convention, *supra* note 3, art. 136.

43. *Draft ocean space treaty* (Gov't of Malta, Working Paper, U.N. Doc. A/AC.138/53 (1971)), reprinted in *Report of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor Beyond the Limits of National Jurisdiction*, U.N. GAOR, 26th Sess., Supp. No. 21, at 105-93, U.N. Doc. A/8421 (1971), and in STAFF OF SENATE COMM. ON INTERIOR AND INSULAR AFFAIRS, REPORT ON THE UNITED NATIONS SEABED COMMITTEE, THE OUTER CONTINENTAL SHELF AND MARINE MINERAL DEVELOPMENT 168 (Comm. Print 1971), available at

<http://daccessdds.un.org/doc/UNDOC/GEN/N71/165/72/PDF/N7116572.pdf?OpenElement>.

international organizations.”⁴⁴ Nor can we properly manage these problems by relying on the limited mandate of the International Seabed Authority under the Law of the Sea Convention/Part XI Implementation Agreement regime, or by requesting the U.N. Secretariat to carry out advisory and assistance functions related to the law of the sea.⁴⁵ The Law of the Sea Convention, even with its roles for international organizations and third-party tribunals, did not provide the optimum solution. What was needed, according to Louis, was that “Pardo’s wise suggestion ... be fulfilled.”⁴⁶ He hoped that “in the not-too-distant future an umbrella institution will be established with sufficient powers to supervise and coordinate the work of a plethora of specialized international agencies and other institutions, and to regulate, supervise and manage ocean activities to the extent required to preserve the oceans for future generations.”⁴⁷

This is idealism, indeed, but given the problems now plaguing the oceans—massive pollution, dying coral reefs, collapsing fish stocks, shrinking Arctic ice, and piracy to name just a few topics that have captured the headlines recently—some bold thinking about new legal solutions may be in order. Louis’s idealism, revealed in his article about Ambassador Pardo’s “forgotten second idea,” was always coupled with concrete proposals about the law and institutions that could implement his vision. Louis’s review of Pardo’s second idea thus provided a roadmap for how we could—if we can muster the will and the sense—get from our present situation to this new regime of Ocean Space Institutions.⁴⁸

V. CONCLUSION

Louis Sohn’s efforts helped develop the modern law of the sea. At UNCLOS III, in particular, his tenacity, his knowledge, and his negotiating skill led to innovative and broadly applicable provisions for compulsory recourse to third-party dispute settlement in the Law of the Sea Convention. His broad vision and his specific proposals continue to

44. For a list, see Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, “*Competent or relevant international organizations*” under the *United Nations Convention on the Law of the Sea*, in LAW SEA BULL. No. 31, at 79 (1996).

45. Sohn, *Pardo’s Second Idea*, *supra* note 37.

46. *Id.* at 304.

47. *Id.*

48. *See id.* at 303-04 (noting the metamorphosis of the Conference on Security and Cooperation in Europe operating under the Helsinki Final Act, and the transformation of the General Agreement on Tariffs and Trade to the World Trade Organization).

challenge us to devise better solutions for the problems affecting the oceans.

Louis's insights about modern international lawmaking and international institutions drew on his experience with the law of the sea, his work with many other areas of international law, and his vast knowledge of the history of international law. These insights, though still controversial, have continuing relevance in debates over the sources and legitimacy of international law.