BEFORE AND AFTER*

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In 1945 the United States, without too much reflection, deliberately destroyed the crumbling dam supported by tradition and by customary law which had restrained the expansion of coastal state jurisdiction in the marine environment. The Truman proclamations ushered in a new era of instability and rapid change—or, if you prefer, of progressive development—in the law of the sea, characterized by multiplying and expansive claims of coastal state jurisdiction and by an ever increasing number and complexity of norms regulating human activities in the marine environment.

From one point of view, the 1958 and 1960 Geneva Conferences can be seen as the last serious international effort to limit change in the law of the sea. The Conferences were successful in codifying some of the definitions and concepts and much of the "mechanics" of traditional law of the sea, but they failed in their major purpose of setting clear and relatively narrow limits to national jurisdiction in the marine environment. The archipelagic claims of Indonesia and of the Philippines, the claims of the CEP States,[1] and those of states supporting a twelve-mile territorial sea were rebuffed but not withdrawn.

By the mid-1960's, it was clear that coastal state claims to a wider territorial sea, wider fishery limits, and wider continental shelves were rapidly increasing, led, in part, by states—such as Iceland, Denmark, and Norway—with an irreproachable tradition of respect for international law. This was also the period during which the seabed of the North Sea was divided among the riparian states. The United States itself succumbed, in 1966, to pressures for wider fishery limits. At the same time, the sensitivity of coastal states with respect to foreign activities—such as transit of military vessels, fishing, and others—in areas claimed to be within, or adjacent to, their national jurisdiction was also increasing. Some incidents involved the Soviet Union, which became convinced that its initial post-war policy of encouraging newly independent states to fix their own limits to jurisdiction in the seas had been misunderstood and that it was necessary to reach early international agreement on a clearly defined twelve-nautical-mile territorial sea.

Accordingly, in 1967, the Soviet Union suggested to the United States that a conference on the law of the sea be convened and that both countries enter the conference with an agreed position on the limits of the territorial sea. After negoti-

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1. CEP states are Chili, Ecuador, and Peru.

ations, tentative agreement was reached on three points: the right of every coastal state to establish the breadth of its territorial sea up to a limit of twelve nautical miles; the right of all ships to unhampered passage through straits used for international navigation; and the right of all coastal states unilaterally to adopt nondiscriminatory fishery conservation measures in areas of the high seas adjacent to the territorial sea. The conference, as planned by the Soviet Union and the United States, would have led to piecemeal change—the so-called manageable package approach on issues of primary concern to both superpowers.

However, the planned conference was overtaken by a new development. While the United States and Soviet Union were negotiating and consulting their respective allies, the Government of Malta submitted an agenda item to the United Nations General Assembly suggesting that the seabed and its resources beyond the limits of national jurisdiction be declared a common heritage of mankind and that negotiations be initiated to implement this concept through the establishment of an appropriate international machinery to manage and develop the resources of the area for the benefit of mankind as a whole.

What had happened was quite simple. Malta, a small, newly independent island state in a virtually closed sea, had been following with increasing concern the enclosure movement in the seas which threatened to suffocate her in the Mediterranean. Malta had become convinced that, because of a number of factors, including the increasing value of ocean space, a total division of ocean space among coastal states was ultimately unavoidable unless the international community replaced the principle of freedom of the high seas, which rested on obsolescent assumptions, with another universally accepted principle more appropriate to a time when ocean space was becoming increasingly used and exploited in all its dimensions.

Thus was evolved the principle of ocean space as part of the common heritage of mankind. This principle, in the Maltese view, had five major implications: first, the common heritage can be used but not owned; second, use of the common heritage requires a balanced system of management; third, the concept of common heritage implies an active sharing of benefits; fourth, the concept implies reservation for peaceful purposes; and finally, common heritage promises reservation for future generations.

There remained the question of procedure. Malta was not sufficiently influential to approach other countries with any prospect of success, nor was it likely that the United Nations General Assembly would agree to discuss replacing so basic a principle as freedom of the high seas. President Johnson's inspiring words at the commissioning of the research vessel *Oceanographer* and the initiative in 1966 of Ambassador James Roosevelt calling for a United Nations study of the mineral resources of the seabed suggested an acceptable way of minimizing political risks and of obtaining the attention of the international community.

Accordingly, in its initial presentation to the United Nations, the Maltese Government suggested that the concept of common heritage be applied only to the seabed beyond *"present"* national jurisdiction. As had been foreseen, however, discussion of the Maltese proposals inevitably came to involve other aspects of the law

of the sea. Thus, it became possible, after the adoption of the Declaration of Principles Governing the Seabed and the Ocean Floor and the Subsoil thereof, beyond the Limits of National Jurisdiction[2] by the United Nations General Assembly, to suggest the extension of the concept of common heritage to ocean space as a whole beyond national jurisdiction. Perhaps the 1971 Malta preliminary draft treaty reflected in an overly simplistic way this comprehensive approach to the principle of common heritage of mankind.

I shall not comment at all on the long, frustrating, extremely complex, and sometimes heated negotiations in the Seabed Committee and, subsequently, at the Law of the Sea Conference, which concluded its monumental work in the Spring of 1982 with the adoption of a historical Convention.[3]

For the first time in world history, a heterogeneous and bitterly divided world community has attempted to establish what some have called "a constitution for the oceans," that is, a comprehensive conventional framework for man's activities in the marine environment, instead of leaving the development of law of the sea to the practice of states and to the traditional process of claim and counterclaim supplemented by treaties with a limited subject matter.

The new Convention on the Law of the Sea marks a fundamental change in the structure of the law of the sea, first because of its comprehensive approach to ocean matters, and second because it reflects to a large extent the contemporary need for resource management and regulation of activities in wide areas of the marine environment which is the inevitable consequence of our ever more intensified and diversified use of ocean space.

The important innovations in the new Convention are almost too numerous to enumerate. They include:

1. the concept of transit passage through straits used for international navigation;
2. the concept of archipelagic baselines and archipelagic waters;
3. the concept of the exclusive economic zone;
4. fundamental change in the definition of the legal continental shelf;
5. explicit recognition of the freedom of scientific research and of the freedom to construct artificial islands and other installations as additional freedoms of the high seas;
6. the duty of international cooperation in the development and transfer of marine science and technology; and
7. the concept of a comprehensive environmental law of the sea based on the obligation of all states to protect and preserve the marine environment.

These provisions, among many others, some technical and some substantive, are complemented by two far-reaching innovations which, if effectively implemented, could mark a revolution not only in the law of the sea but in international

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2. Declaration of Principles Governing the Seabed and the Ocean Floor, and the Subsoil thereof, beyond the Limits of National Jurisdiction, G.A. Res. 2749, 25 GAOR (1933d plen. mtg.) at 19 [hereinafter cited as Declaration].

3. Convention on the Law of the Sea, *opened for signature* Dec. 10, 1982, U.N. Doc. A/CONF. 62/122 (1982), [hereinafter cited as Convention], *reprinted in* 21 I.L.M. 1261 (1982).

relations. One of these innovations is the dispute settlement system, which is the most comprehensive and, at the same time, the most flexible and "binding" system devised up to now by the international community; the second is international agreement that the seabed and its mineral resources beyond the limits of national jurisdiction have a special legal status as the common heritage of mankind. The establishment of an international organization to implement this principle is a precedent of incalculable importance for the future.

Inevitably, however, a 200-page document dealing with many highly controversial political matters cannot be expected to be without shortcomings, and these are certainly not lacking. The important question, however, is not whether the Convention has shortcomings but whether these are such as to more than counterbalance the positive aspects of the Convention.

The Convention may be evaluated from a variety of sectoral or national points of view, which may lead to different results according to the sector or nation concerned. From a world order point of view, the major concern is whether the Convention serves the functions that a comprehensive law of the sea should serve. These were defined some twelve years ago by former Ambassador Stevenson in an address to the Philadelphia Bar Association as: (a) accommodation of interests; (b) prevention of conflict; (c) predictability; and (d) the promotion of common or community objectives. My brief comments will be based upon these criteria rather than upon speculation over whether the interests of different states or groups of states are served by the Convention.

There can be no doubt that the Convention bears throughout the mark of accommodation of interests, for without such accommodation it would have been impossible to elaborate a text which undoubtedly will be signed by the great majority of states.[4] The question, however, is not whether the Convention reflects accommodation of interests and political compromise—the so-called "package deal" so long and tenaciously pursued at the Conference—but whether these accommodations of interests are substantive or only carefully drafted formulations designed to mask continued disagreement on basic issues. In the latter case, of course, no real accommodation of interests has occurred and conflict is not avoided but merely postponed. It is impossible to generalize in this connection.

In some cases, as with respect to the limits of the territorial sea, the provisions of the Convention undoubtedly reflect substantive agreement on the part of the overwhelming majority of the international community. In other far more numerous instances, however, there are strong grounds for believing that representatives at the Conference, having ascertained the difficulty of reaching agreement on the substance of an issue, thereafter mainly searched for a formula sufficiently vague or ambiguous to permit all significant states concerned to claim that their policy objectives had been more or less satisfactorily achieved.

4. It could be argued that accommodation in some cases may have been carried too far. Thus certain important provisions—such as article 7(2) and the last sentence in article 47(8)—have been inserted in the Convention merely to accommodate the interests of a single state. *See* Convention, *supra* note 3, arts. 7(2), 47(8).

Thus, Article 76 on the definition of the so-called continental shelf—a term which now bears little relationship to its original meaning—enables states which argued for a clearly defined maximum limit to claim that such a limit has been incorporated in the Convention. At the same time, those states which argued for an expansive, flexible definition of the shelf are reasonably satisfied since they are aware that baselines are established at the discretion of the coastal state within the broad guidelines of Article 7, that the wording of Article 76 is sufficiently flexible to accommodate most coastal state claims, and that the proposed Commission on the Limits of the Continental Shelf has only advisory powers. Article 74 on the delimitation of the Exclusive Economic Zone between states with opposite or adjacent coasts is another example of a formula designed to satisfy the requirements of states with diametrically opposed views. A further example is the phrase "exclusively for peaceful purposes" which recurs with a certain frequency in the Convention. The meaning of the phrase is not defined, but the words convey the vague, but useful, impression that somehow the ongoing intensive militarization of ocean space is being reversed. At the same time, the conscience of those states that would wish strictly to limit the military uses of ocean space is soothed, while those states which consider extensive military use of the seas a regrettable necessity are not significantly incommoded. Several additional examples of vague or ambiguous formulae could be cited.

Vagueness, ambiguity, and sometimes silence on major questions do not further the achievement of two of the additional objectives—prevention of conflict and predictability—mentioned by Ambassador Stevenson. Article 19 of the Convention purports to give objective definition to the principle of innocent passage of foreign vessels in the territorial sea. Passage of a foreign ship is considered prejudicial to the peace, good order, or security of a coastal state, and hence not innocent, if the ship engages in any of a dozen or so enumerated activities including "any . . . activity not having a direct bearing on passage,"[5] but Article 19 does *not* state that a foreign ship *not* engaging in the enumerated activities has the right of innocent passage. Hence the right of innocent passage is exercised now, as in the past, subject to the discretion of the coastal state concerned. Part III of the Convention establishes the right of transit passage through straits used for international navigation between one part of the high seas or exclusive economic zone and another part of the high seas or exclusive economic zone, but the term "straits used for international navigation" is not defined. The British Channel and the Straits of Gibraltar, transited by hundreds of ships daily, are, no doubt, clearly straits used for international navigation, but the legal status of many less frequently transited straits could be less clear.[6] It is surprising that the drafters of the Convention did not take the opportunity to clarify the legal status of many straits by adding an annex to the Convention enumerating those straits which are considered to be straits used for international navigation. In addition, it would have been useful to

5. Convention, *supra* note 3, art. 19.

6. Indeed even the legal status of heavily transited straits may be contested; thus "the Governments of the Republic of Indonesia and of Malaysia agreed that the Straits of Malacca and Singapore are not international straits, while fully recognizing their use for international shipping . . . ." Joint Statement of the Governments of Indonesia, Malaysia and Singapore, November 16, 1971, in G. KNIGHT, LAW OF THE SEA: CASES, DOCUMENTS AND READINGS 81 (1980).

include in the Convention an article to the effect that disputes on whether a particular strait is or is not used for international navigation are subject to compulsory and binding dispute settlement.

Silence has been another technique used to avoid mention of controversial problems. Thus, there is no mention in the Convention of any of the numerous outstanding legal issues concerning the Arctic and Antarctic.[7] Far more importantly, the Convention ignores the many issues relating to security uses of the marine environment. May the coastal state, for instance, make the passage of warships through its territorial sea subject to previous notification or authorization? The matter was discussed at the 1958 Geneva Conference, when a draft article explicitly conferring upon coastal states the right to authorize passage for foreign warships through territorial waters failed to receive a two-thirds majority, but the issue was not openly addressed at the present conference. Had it been addressed there is little doubt in my mind that a consent regime would have been established in this connection. In view of the present tense international climate it is highly unfortunate that the Convention can provide no guidance whatsoever on some, at least, of the many outstanding security issues in the marine environment.[8]

The last of the functions of a law of the sea treaty mentioned by Ambassador Stevenson was promotion of common or community objectives, such as the protection of the marine environment. Committee III of the Conference, under the able chairmanship of Ambassador Yankov, has certainly established in Part XII of the Convention a comprehensive framework for the protection of the marine environment. Nevertheless, even in this portion of the text, which is in many respects unique, there are several serious deficiencies, including lack of any reference whatsoever to the controversial question of disposal of radioactive wastes. This is a question that was singled out for special mention in the 1958 Geneva Convention on the High Seas,[9] and it is a matter of more than ordinary contemporary importance at a time when the use of nuclear energy for peaceful purposes is spreading throughout the world and when the seabed is being seriously considered as a possible permanent waste disposal site by an increasing number of countries.[10]

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7. Among these issues is the legal status of frozen seas under the "sector principle" in polar regions. The outstanding legal issues concerning Antarctic waters and their resources are numerous, starting from whether signatories of the Antarctica Treaty in agreements concluded between themselves may bind nonparties to such agreements.

8. Many such questions are unresolved and could give rise to serious incidents. For instance, the legality of the following uses of the marine environment is controversial:

(a) establishment of security zones beyond the territorial sea;

(b) exclusion of foreign shipping from large areas of the high seas which have been unilaterally reserved for security purposes; and

(c) emplacement of anti-submarine warfare devices on the legal continental shelf of another state without the latter's knowledge or consent, or use of such devices in the exclusive economic zone of another state without the latter's knowledge or consent.

9. *See* art. 25, 13 U.S.T. 2312, T.I.A.S. No. 5200, 450 U.N.T.S. 82.

10. Substantial quantities of low-level radioactive wastes have been dumped in the marine environment since 1946, often with few precautions. It would also appear that occasionally high-level radioactive wastes have been deposited on the seabed. For a number of reasons, including the accumulation of high-level wastes in temporary sites on land, seabed or subseabed disposal of such wastes is being increasingly studied as a viable option, particularly in the case of relatively small countries with limited land alternatives. Radioactive wastes may, no doubt, be one of the "toxic, harmful or noxious substances" mentioned

We may perhaps conclude that the Convention, evaluated from a non-national point of view, does not effectively serve any of the functions of a law of the sea treaty enumerated by Ambassador Stevenson because of its silence, vagueness, or ambiguity on major issues. The present Convention, however, should not be evaluated in isolation. Even a treaty, which in itself is of somewhat limited value, can be extremely valuable if it were to strengthen world order by furthering equity between states. But, as Ambassador Koh has pointed out, the Convention does not do this. The Convention, in fact, does precisely the opposite.

Up to forty percent or more of ocean space,[11] by far the most valuable in terms of economic uses and accessible resources, is now recognized as being within national jurisdiction. The magnitude of this appropriation, which has been carried out under a cloud of misleading rhetoric, is unprecedented in history, in terms both of the area and of the resources involved, and is grossly inequitable not only to landlocked and geographically disadvantaged states[12] but also as between coastal states themselves.[13] The gainers are two categories of states. The first category of major winners are states with long coasts fronting on the open oceans. The one or two dozen states, both developed and developing, which are the great gainers in this category, are predominantly the great powers of the present or of the future. The second category of major winners are mid-ocean archipelagic states, ranging from large countries like Indonesia and the Philippines to the small emerging island states of the Pacific basin:[14] for instance, the Pitcairn Islands,[15] with less than 60 inhabitants, will legally control a maritime area several times that controlled by the Federal Republic of Germany with over 60 million inhabitants. Kiribati, with about 55,000 inhabitants, will control a maritime area larger

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in article 194(3)(a) of the Convention. Convention, *supra* note 3, art. 194(3)(a). Moreover, under article 210(1), states have accepted the obligation to "adopt laws and regulations to prevent, reduce and control pollution of the marine environment by dumping." *Id.* art. 210(1). Nevertheless, it seems highly unfortunate that the drafters of the present Convention did not see fit, as in 1958, to single out the dumping or release of radioactive wastes in the marine environment as worthy of special precautions. It is unlikely that this omission is fortuitous since the Convention contains special provisions with regard to foreign nuclear powered ships transiting the territorial sea. *See id.* art. 23.

11. It is not yet possible to give a precise estimate of the area of the marine environment which will pass under coastal state jurisdiction under the provisions of the present Convention. Much will depend on how coastal states will interpret, inter alia, articles 7, 47 (baselines), 76 (continental shelf), and 121 (islands) of the Convention.

12. Articles 69, 70, and 82 are hardly adequate compensation to landlocked and geographically disadvantaged states for the loss of unhampered use of vast areas of previously high seas and of access to the resources contained therein. Part X of the Convention does not confer upon landlocked states greater rights than they already enjoy under existing conventions.

13. According to James Bridgman, J. Bridgman, Paper No. 3 given at Villanova Colloquium on Peace, Justice and the Law of the Sea (1977), ten coastal states, of which six are developed, obtain more than half of the exclusive economic zones of all coastal states. While Bridgman's calculations may not always be entirely accurate and while he may underestimate the effects of the Convention on mid-ocean archipelagic states, there is no doubt that the majority of coastal states gain relatively insignificant maritime areas as compared to the areas gained by a handful of states.

14. Mid-ocean archipelagic states are not confined to the Pacific basin. The Cape Verde Islands and the Seychelles are examples of small archipelagic states in oceans other than the Pacific.

15. The Pitcairn Islands are not a state and therefore the archipelagic principles in part IV of the Convention cannot be applied. However, the potential exclusive economic zones of Pitcairn, Oeno, Ducie, and Henderson overlap.

than that controlled by the People's Republic of China with more than one billion people.[16]

This is not to say that for many reasons some extension of coastal state jurisdiction in the marine environment was not unavoidable. I certainly have no objection to a 200-nautical mile exclusive economic zone which conveniently consolidates into a single regime a variety of coastal state jurisdictional claims advanced over the past forty years. To be equitable, however, the extension of coastal state control in the marine environment should be balanced at least by clear and definitive limits to national jurisdiction, by the development of an expanded concept of state responsibility, and by the establishment of a viable and meaningful international regime beyond national jurisdiction which would be able to compensate in some measure those countries which will inevitably suffer from the extension of national jurisdiction in the oceans. It is precisely these balancing factors which are lacking in the Convention.

There are no clear and definitive limits to national jurisdiction in the Convention. Rather, the Convention exhibits, in all its parts, an overwhelming concern for safeguarding the rights and interests of coastal states and a corresponding reluctance to mention specific coastal state duties, other than in matters directly related to navigation and overflight.[17] As for the international regime beyond national jurisdiction, I can only describe Part XI of the Convention and related annexes as having little relationship to reality.

It would have been desirable to establish beyond national jurisdiction an international regime and related institutional mechanisms sufficiently strong and comprehensive to be able: (a) to contain expansionist pressures of coastal states; (b) to manage effectively ocean space resources for the benefit of all; and (c) to compensate[18] landlocked and geographically disadvantaged states for loss of access to the resources of areas previously beyond national jurisdiction.

At the Conference, however, it soon became clear that an international ocean space regime and related institutions to replace the freedom of the high seas would not be tolerated by the major maritime powers. It thus became all the more important to establish for the seabed beyond national jurisdiction a regime and institutions which would be viable and which would be perceived as performing useful functions both by developed and developing states. Unfortunately, the viability of the future international regime for the seabed beyond national jurisdiction and economic realities were largely forgotten by the contending parties in the almost theological debate which developed in Committee I of the Conference. Compromise in this debate led to the drafting of a text creating a largely symbolic

16. Although mid-ocean archipelagic states, generally poor, often gain a greater per capita marine area than states with long coastlines fronting on the open ocean, they usually do not possess the human, technological, and financial resources required to develop independently the frequently rich resources of the areas passing under their legal control. We must anticipate, therefore, that the resources of these areas may in practice be exploited by states which possess the necessary requisites. Such states are often wealthy countries with long coastlines fronting on the open seas.

17. Duties of coastal states in matters not directly connected with navigation are usually stated in vague general terms, often qualified by other provisions in the text. The concern to safeguard the interests of coastal states sometimes extends to the marine area beyond national jurisdiction, as in articles 66 and 67 on anadromous and catadromous stocks.

18. For instance, this result could be achieved through preferential fishing licenses and other means.

regime with few useful functions. My comments in this connection will be very brief.

First, the scope of the international regime and related institutions has been limited: (a) by defining the words "activities in the Area" to mean only activities of exploration for, and exploitation of, the resources of the Area;[19] (b) by giving the word "resources" the limited meaning of mineral resources[20] *in situ,* thus excluding living resources of the seabed; and (c) by drafting a text which is almost exclusively addressed to the exploration and exploitation of manganese nodule deposits.[21] Second, the Seabed Authority to be established under the Convention, while possessing very detailed rulemaking authority, is substantively so weak as to be unlikely to be viable and structurally so complex as to be unworkable. For instance, the Authority has no say whatsoever with regard to the limits of the international seabed area.[22] The composition of and decisionmaking procedures in the key organ of the future Authority—the Council—are so complex as to make timely and effective decisions on important matters very difficult.[23] Unrealistic production limitations,[24] heavy bureaucratic controls, substantial fees, production charges, and other payments payable by those who have obtained production authorizations[25] further weaken the Authority.

Numerous further serious objections to Part XI and particularly to Annex III of the Convention may be superseded by draft rules and regulations adopted by the Preparatory Commission established by the Conference.[26] Although Resolution II adopted in April of 1982 replaces for the foreseeable future other provisions

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19. The Area is defined as the seabed and ocean floor and the subsoil thereof beyond the limits of national jurisdiction.

20. In the 1971 Declaration of Principles no such limited meaning was given to the word "resources". Declaration, *supra* note 2.

21. The text thus completely ignores the existence of the recently discovered polymetallic sulphide deposits and makes only passing mention of the possibility of exploitation of other seabed mineral deposits.

22. *See* Convention, *supra* note 3, art. 143. In previous versions of this article the Authority was to be notified by coastal states of the limits of their national jurisdiction and was required to register and publish the notifications received. Now these vestigial functions have been taken away from the Authority, which does not even have the right to remind coastal states which delay defining the outer limits of their legal continental shelves of their obligations under the Convention. Thus, the Authority could be faced with a situation in which it cannot begin exploitation of the mineral resources of the area beyond national jurisdiction because it is not informed of the relevant limits of national jurisdiction. While such an extreme situation is unlikely to arise in the case of mineral deposits very far from any land, it is certainly possible that the Authority could be inhibited from exploiting deposits less than five to six hundred miles from the coast because of uncertainty about jurisdictional limits.

23. *See id.* arts. 161-62. Decisions on questions of substance are taken by majorities from two-thirds of the members present and voting to a consensus.

24. *See id.* art. 151. The production limitation system in the Convention is unrealistic in part because commercially exploitable manganese nodule deposits are found within national jurisdiction due to the provisions affecting the limits of national jurisdiction found in other parts of the Convention. Consequently, the major effect of production controls applicable *only* to manganese nodules mined in the international seabed area would be merely to weaken the competitiveness of the Authority.

25. *See id.* annex III, art. 13. In this connection it should be recalled that while manganese nodule exploitation can become a promising new source of minerals, first generation technology is costly and still unproven. Furthermore, numerous problems, such as the method of disposal of tailings, remain to be resolved. Hence fees and charges should be minimized for an adequate initial period in order to encourage production.

26. *See id.* resolution I.

of Annex III,[27] it remains problematic whether the principle that the seabed and its resources beyond the limits of national jurisdiction are a common heritage of mankind can be implemented in any meaningful way under the terms of the Convention.[28] If this is true, the concept of peaceful, cooperative, and equitable development under international auspices of resources beyond national jurisdiction for the common benefit of all could fall into disrepute.

There is no question that, despite its many merits, the Convention elaborated at the United Nations Conference on the Law of the Sea is fundamentally flawed: inequality between states is increased, law and order in the seas is only marginally improved, and the concept of common heritage of mankind is ineffectively implemented. Nevertheless, we cannot reject the Convention out of hand if we believe that it is important to maintain some semblance of a global law of the sea[29] or if we support the introduction of the principle of common heritage of mankind into international law.[30] Judgment on the usefulness or otherwise of the present Convention must also depend upon general considerations of public policy and upon whether the Convention appears desirable from a national point of view.

From this latter point of view the Convention may appear far from attractive to certain categories of states, for instance, to landlocked countries. On the other hand, I am puzzled by the United States' opposition. This opposition cannot be due, at least to any major extent, to the substance of the Convention, for the latter protects most of the United States' interests.[31] I suspect therefore that the opposition of the present administration may be rooted more in an ideological rejection of the concept of common heritage (and this would be a real tragedy) as well as in general frustration with the attitude of much of the developing world. We must remember in this connection that for many years the United States has been subjected to apparently insatiable demands on the part of the developing world and

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27. *See id.* resolution II. This resolution replaces, *inter alia*, articles 4, 6, 7, 8, and 13 of annex III of the Convention.

28. Recall that among the basic objectives of the international regime for the seabed beyond national jurisdiction are: (a) the equitable sharing of benefits derived from activities in the Area, and (b) rational management of the resources of the Area. The structure of the future Authority and related Enterprise and the manner in which they will operate are too cumbersome and inefficient to enable us to expect any financial benefits for the foreseeable future from the exploitation of the manganese nodules of the abyss. As for the second objective, the Authority, among other things, has functions too narrow to be able rationally to manage the resources of the Area.

29. This argument, however, can be overstressed. The world will not fall into instant chaos if the Convention is not ratified. It is in the self-interest of all states to be cautious in unreasonably interfering with traditional inclusive uses of the marine environment.

30. Here again the argument can be overstressed. The concept of common heritage has been accepted, to some extent, for outer space; its acceptance with regard to the deep seabed would be a useful step forward and could be an additional precedent for the international community. An ineffective Authority, however, could be disastrous.

31. Marine scientific research and manganese nodule mining are the only significant United States' interests which are not as well protected as might be desirable. Bilateral and, perhaps, regional agreements can be used to supplement the Convention more fully to protect United States' interests in marine scientific research. As for manganese nodule mining, assured access to commercially exploitable deposits is guaranteed under resolution II. Even if this were not the case, however, exploitable manganese nodule deposits can probably be found not too far from one or another American island in the Pacific Ocean and such deposits could be brought under national jurisdiction through appropriate interpretation of the continental shelf and straight baseline provisions of the Convention. The problem of technology transfer under article 5 of annex III is not sufficiently important to justify refusal to sign the Convention.

some of the leaders of developing countries have at times been abusively critical of some attitudes of the United States. The subject of the law of the sea could perhaps be seen in some quarters in Washington as an appropriate occasion to rebuff the developing world. If there is any substance at all in this speculation of mine, the future of the Convention does not look too promising. It would be ironic indeed were the *coup de grace* to the viability of the present Convention to be given by the United States, which has some responsibility for the collapse of the traditional law of the sea.

I would like to conclude with a paragraph from a 1970 State Department Bulletin:

> The stark fact is that the law of the sea is inadequate to meet the needs of modern technology and the concerns of the international community. If it is not modernized multilaterally, unilateral action and international conflict are inevitable. . . . The United States, as a major maritime power and a leader in ocean technology . . . has a special responsibility to move this effort forward.[32]

These words are as true now as they were thirteen years ago. The present Convention is not the end, but rather the beginning, of a long process which must lead to a more rational and efficient use of our environment and towards a more just and equitable world order.

32. *United States Policy for the Seabed,* DEP'T ST. BULL. 737 (1970) (statement by President Nixon).