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ADDRESS BY AMBASSADOR J. ALAN BEESLEY, Q.C.

THE FUTURE LEGAL REGIME OF THE OCEANS

INTRODUCTION

The subject of my address is the future legal regime of the oceans. To do justice to this topic, I would have to be not merely a lawyer, a diplomat, and a former naval reserve officer, but a prophet. While it may be a surprise to some of those present, I do not claim divine guidance for the views I shall express.

My basic thesis is that the members of the NATO Alliance have a vital interest, individually and collectively in the future legal regime of the oceans since an agreed constitution of the oceans is prerequisite to a peaceful and stable world order; that the present uncertainty and confusion in the Law of the Sea contributes to instability and could lead to possible threats to the peace; that a breakdown of the current efforts within the UN to achieve a multilateral treaty on the Law of the Sea would result in the kinds of unilateral action which could lead to much greater instability; and that it is thus essential for every country represented here to make a major effort to ensure that the Law of the Sea Conference reaches agreement on a new legal regime of the oceans.

I accept that there is a point beyond which the members of the Alliance cannot be expected to go in order to achieve agreed solutions. The cost could prove too high. I propose therefore to examine the new legal principles emerging from the Law of the Sea Conference with a view to focussing attention at this Symposium

on their implications for the Alliance, and, in particular, whether they are likely to contribute to peace and stability or undermine it.

Some idea of the fundamental nature of changes in the law being proposed by these new principles can be gathered from the "Single Negotiating Text" which emerged from the recently concluded Geneva session of the Law of the Sea Conference, or rather from the respective Chairmen of the three main Conference Committees. While it would be dangerously misleading to view the text as an accurate reflection of the stage of negotiations of the Conference, for it is a "negotiating" text, and not a "negotiated" text, as I will explain, it nevertheless provides a basis for detecting some of the newest and most radical trends in international law, every one of which remains highly controversial It will not surprise anyone here to learn that any comparison of the Single Negotiating Text with the 1958 Geneva Law of the Sea Convention reveals potential changes in the law so basic as to be almost revolutionary. It may be surprising, however, that the provisions of the Single Negotiating Text having military implications -- which may, of course undergo considerable modification -- do little violence, in my personal view, to the interests of the Alliance. I propose to comment briefly on some background political factors, before turning to substantive issues.

BACKGROUND

I assume that everyone here is well aware that the international community is embarked upon the most important law making exercise since the drafting of the Charter of the UN, namely, the Law of the Sea Conference, the largest mutilateral conference

of the Conference is no less than the preparation of a basic constitution of the oceans. I assume also that everyone knows that after six years of preparatory work and three rounds of negotiations, the Conference has not yet reached any definitive conclusions on the future legal regime of the oceans.

The origins of the Conference are not quite so well known. They stem from two separate and seemingly unrelated events in 1967. In that year the USSR canvassed a large number of countries to determine the degree of support they would receive for a 12 mile territorial sea coupled with a high seas corridor through those international straits which would become territorial as a result of universal agreement on a 12 mile limit. This initiative, in itself, is interesting, in light of the great build-up of a world-wide naval capacity of the USSR since that time. The responses to that diplomatic initiative made clear that there could be no agreement on the two issues mentioned without agreement on other related questions, particularly fisheries. That same year Ambassador Pardo introduced in the U.N. a proposal to declare the seabed beyond national jurisdiction to be the common heritage of mankind, with the result that an Ad Hoc Committee of the U.N. was established to consider the legal regime and international machinery required to implement that principle. Shortly afterwards, in 1970, the two initiatives merged when the Ad Hoc Committee became the Preparatory Committee of the Law of the Sea Conference with a widely expanded mandate, including not only the subjects already mentioned but such questions as the extent of the continental shelf, the nature and extent of coastal environmental rights, coastal fisheries rights,

the archipelagic concept; the regime of the high seas; islands; delimitation questions, and many other important and complex issues.

Throughout the whole of the preparations for the Law of the Sea Conference and during the three sessions of the Conference there has been no single text such as is normally produced by the International Law Commission, the official law-making organ of the U.N. to aid delegations in their consideration of the many complex issues. The reason is that it was decided that the subject matter was too highly political and the law required too much modification for the preparatory work to go to the International Law Commission. Given these circumstances it is not surprising that it has not proven possible to complete the work of the Conference thus far. Indeed it is remarkable that so much has been achieved in such a relatively short space of time in laying the basis for a major restructuring of the Law of the Sea. Dozens of competing formulations on over a hundred issues have now been reduced to a few on each issue, and single formulations on some. Even so it finally proved necessary around the mid-point of the recently concluded Geneva Session to delegate to the Chairmen of the three Committees of the Conference the task normally assigned to the International Law Commission, namely, the preparation of a single negotiating text which could form the basis of future negotiations. Such a procedure was considered at the preceding Caracas Session, a year earlier, but not accepted since the negotiating process had not yet proceeded to the point where the broad trends could be identified with any precision.

The task was carried out by the Cameroon's Chairman of the First Committee with respect to the regime and machinery for the seabed beyond international jurisdiction; by the El Salvador Chairman of Committee II with respect to the jurisdictional and other legal issues relating to the territorial sea, passage through straits, the contiguous zone, the economic zone, fisheries, the continental shelf, the archipelagic concept, straight baselines, historic waters, islands, delimiation of boundaries, and a variety of other complex issues; and by the Bulgarian Chairman of Committee III with respect to the preservation of the marine environment, the regulation of scientific research and the transfer of technology. This "Single Negotiating Text" produced by the three Chairman, and comprising over 300 articles, has now been transmitted to all governments represented at the Conference with the intent that it form the basis of the negotiations at the next session to be held in March in New York. It is important to note that while the text is in some cases an accurate reflection of the results of the negotiations to date, in other cases it represents merely the Chairman's personal views of the lines of a possible accommodation. It is for this reason that I have emphasized that it would be highly misleading to attach too much importance to particular formulations in the Single Negotiating Text. The major importance of the text is the impetus it can provide for the ongoing negotiations of the Conference. I propose, however, to refer on a selective basis to certain provisions in the negotiating text in order to illustrate points of importance which are in issue in the Conference, and the general line of the trends emerging on these questions.

CHANGES IN THE LAW

The two basic principles of international law upon which the existing legal order is founded are those of state sovereignty and freedom of the high seas. These two traditional principles of international law, upon which the Law of the Sea has been based for 350 years, are now undergoing a major transformation. They are being replaced by new concepts, partaking in some cases of both of these pre-existing principles but differing from each in important respects. I refer to the emerging concepts of the economic zone, the common heritage of mankind, the archipelagic doctrine, and the right of transit through international straits. In simple terms, the economic zone reflects a functional approach, consisting of coastal jurisdiction directed to specific objectives and falling short of total sovereignty but infringing upon certain traditional freedoms of the high seas such as fishing and using the sea as a disposal area, while maintaining others such as freedom of navigation. The concept of the common heritage of mankind applicable to the seabed beyond national jurisdiction (but not to the superjacent waters) is the negation of individual state sovereignty and the converse of the "first come first served" principle of the freedom of the high seas. The archipelagic concept is essentially an extension seawards of state sovereignty, but subject to certain important exceptions reflecting the pre-existing right of freedom of navigation. The right of transit is, in essence, the application of the traditional freedom of the high seas to bodies of water which would be otherwise subject, under traditional concepts, to the right of innocent passage, or to the total sovereignty of the coastal state. Before

and their possible implication for the Alliance, it is, I think, necessary to make a brief examination of the traditional concepts of the Law of the Sea, their origin, and the interests which they served to protect, in order to provide a basis for comparison with the law as it appears to be developing and the interests which it may or may not protect.

HISTORIC NATURE OF THE CONFERENCE

There is a tendency to compare the present law-making exercise with those undertaken under U.N. auspices in 1958 and 1960 or during the days of the League in 1930. In my view these comparisons are not valid. While each of the three Conferences in question attempted to produce some progressive development of the Law of the Sea, they were all essentially codification conferences. The present Conference represents something quite different. I have already mentioned that if one compares prevailing legal concepts, even as of 1967 (and taking into account the lack of general agreement on the 1958 Geneva Conventions on the Law of the Sea), with those now being discussed in the Law of the Sea Conference, the contrast is startling.

It is quite clear that the international community has embarked on a basic re-examination of the existing principles of the Law of the Sea and is now already well into the process of radically restructuring the law. While some codification is occurring, the Conference is mainly concerned with producing fundamental changes in the Law. Indeed this is the stated purpose of many states engaged in the Conference (including my own). The only comparable period in history of which I ---

Grotius (on behalf of Holland) and Selden (on behalf of Britain) were debating the very topic of my address today, namely, the future legal regime of the oceans.

It is relevant to recall, at least in passing, the nature of the debate during the first part of the 17th Century, and the reasons behind it. Britain had asserted extensive jurisdiction over the adjacent oceans, principally to combat smuggling but also for other purposes. It will be recalled that a series of Papal Bulls had purported to grant whole oceans to certain countries. The question was raised by the Dutch as to the validity and desirability of this approach. The origin of the debate was the seizure in 1604 by an Admiral of the Dutch East India Company of a Portuguese vessel, but the underlying issue which soon emerged was whether it was in the interests of European powers to continue to assert jurisdiction far out to sea or to confine their claims instead to narrow maritime belts, leaving the high seas free for the use of all nations. John Selden argued in his historic treatise Mare Clausum that a large area of the seas might lawfully be appropriated to the needs of a coastal state. Grotius argued in his famous thesis Mare Liberum, and later in his treatise De jure belli ac pacis, that the sea by its own nature must be free to all. Grotius wrote in 1609 "Most things become exhausted with promiscuous use. This is not the case with the sea. It can be exhausted neither by fishing nor by navigation, that is to say, in the two ways in which it can be used." However faulty that premise may appear today, it was accepted as the basis of the Law of the Sea for the ensuing 350 years. Grotius won the debate. It was decided, for specific and functional reasons, that it was in the interests of the states in question, mainly Britain

of sovereignty to a narrow coastal belt of sea, in most cases three miles, which became known as the territorial sea, and to assert the principle of the freedom of the high seas for the ocean spaces beyond. I once had the pleasure of listening to Buckminster Fuller explaining the reasons behind this major decision. As he put it, the rules then developed were tailored to the interests of colonial powers, particularly those with global empires or ambitions to acquire them. The two principles of sovereignty over the territorial sea and freedom of the high seas beyond, were the pillars upon which the European colonial powers built their empires. The law understandably reflected their commercial, economic, military and political interests. The rules were very effective in safeguarding the interests they reflected.

An ingenious legal device that was developed as a logical extension of the philosophy upon which this system of law was based was that of flag state jurisdiction. Under that doctrine ships of any state were subject to the protection of the flag they flew wherever they might be -- not only in the high seas but even in the territorial sea of another state, if they were exercising the right of innocent passage in the territorial sea of other states. It is no exaggeration to characterize flag state jurisdiction over both merchant and naval vessels as a kind of roving sovereignty of the flag state in which they were registered. Interestingly, while certain rules of law were developed to ensure the proper administration of these vessels, both

internally and with respect to the world at large, there was no development of a concommittant concept of flag state responsibility to go hand in hand with the doctrine of flag state jurisdiction. Thus if a ship caused damage to another ship or even another state, the flag state was not responsible unless the vessel was a naval or state-owned ship. Moreover, if the vessel was state-owned then it was subject to sovereign immunity from the jurisdiction of other countries. This principle was just illustrated in Canada when the British carrier HMS Hermes refused to submit to the jurisdiction of a Federal Court in Quebec City, and ignored a writ of arrest which had been served on it. Thus there was flag state jurisdiction, free from flag state responsibility. This applies even today, for exampl with respect to damage to the environment.

As a consequence of these rules both merchant and naval vessels have for centuries enjoyed the maximum degree of freedom of manoeuvrability on the oceans of the world. Apart from the obvious benefits already mentioned, every nation remains dependent upon freedom of navigation--and the freedom of trade which is based on it--today, as much as ever. The doctrine of the freedom of the high seas no doubt has also made a certain contribution to a peaceful worl since it was well known that anyone interfering with a naval vessel or even a merchant vessel flying a flag of another state did so at his peril. Certain exceptions to the rules of flag state inviolabili were admitted, confined to piracy and slavery, with respect to which a rule of universal jurisdiction was developed, whereby any state could take such measures as may be necessary, including the seizure of slave ships and pirate ships, to combat these crimes.

These rules were perfectly viable for their time -- and it proved a lengthy time, lasting in most respects until the period between the two world wars. Beginning about then, however, pressures began to arise for the reflection of new interests in the Law of the Sea.

PRESSURES FOR PROTECTION OF NEW INTERESTS

The first pressures for changes arose out of the desire of coastal states to protect the fisheries and adjacent waters. This eventually became partially reflected in the 1958 Geneva Conventions, which recognized the right of the coastal state to adopt conservation measures, but no mechanism was established and no real jurisdiction recognized. It did not prove possible to reach agreement either in 1958 or 1960, even on a 12 mile continguous fishing zone. Economic pressures for coastal jurisdiction had also arisen, founded largely on the 1945 Truman Proclamation of the extension of coastal jurisdiction over the resources of the continental shelf, which culminated within a relatively short space of time in the 1958 Geneva Convention on the Continental Shelf. A further consequence of the Truman Proclamation, however was the claims which it generated by certain Latin American countries which were not confined to the seabed but encompassed the superjacent waters as well, intended primarily to assert fisheries jurisdiction but taking the form of a territorial claim consisting in several cases of a 200 mile territorial sea. Thus by the late fifties and early sixties there were conflicting claims and counter-claims reflecting new economic interests in the sea and seabeds of the world. The

decolonization process added great impetus to the pressures to change the old law, and reflected the interests of the coastal states and / the newly independent states who were not maritime powers. Not until well into the 1960's, however, did pressures begin to arise for yet another interest to be reflected in the developing Law of the Sea, namely, the preservation of the marine environment itself. Controversies occurred at the 1969 Brussels IMCO Conference which were not wholly resolved. In 1970 Canada passed its controversial Arctic Waters Pollution Prevention Act asserting environmental jurisdiction extending 100 miles from shore north of the 60th parallel.

In the meantime some initial steps had been taken leading to what has by now become a full scale multilateral review and redevelopment of the law. I should like now to turn to a consideration of some of these changes which are occurring.

INTERNAL WATERS

I have said that the traditional Law of the Sea is based upon principles of state sovereignty and freedom of the high seas. Thus states have traditionally exercised total sovereignty over their internal waters, that is to say those waters lying landward of the baselines of the territorial sea, as affirmed in Article I of the 1958 Geneva Convention of the Territorial Sea. There has been little or no controversy concerning the regime of internal waters, although there are marked differences of views as to the status of certain bodies of waters, such as those of the Philippines archipelago, for example, and whether these are internal waters, territorial waters or high seas. The [illegible]

problem proposed by Article I of the Single Negotiating Text is to include archipelagic waters of an archipelagic state within those categories of waters over which sovereignty of a coastal state extends.

While no attempts have been made thus far in the Law of the Sea Conference to question the regime of internal waters, there have been certain developments relating to the rules pertaining to the utilization of the straight baseline system and the definition of straits, to which I will refer later, which could have the effect of transforming certain existing internal waters into international straits. Moreover, suggestions have emerged with respect to estuaries and other geographical situations which could have the result of creating moveable baselines, and thus a body of internal waters which could expand and contract. Article 6 of the Single Negotiating Text from Committee II provides "Where because of the presence of a delta or other natural conditions the coastline is highly unstable, the appropriate points may be selected along the furthest seaward extent of the low-water line and, notwithstanding subsequent regression of the low-water line, such baselines shall remain effective until changed by the coastal state in accordance with the present Convention."

The negotiations relating to historic internal waters have been confined mainly to historic bays and have not so far resulted in any alteration or clarification in the law, and it consequently remains difficult to determine whether certain bodies of water, such as, for example, some of those comprising the North East passage are historic internal waters or historic territorial waters or a series of international

straits (a point to which I shall return).

TERRITORIAL SEA: INNOCENT PASSAGE

Moving seaward, it has long been accepted also that states exercise sovereignty over the territorial sea, but not total sovereignty, since the regime of the territorial sea is subject to the right of innocent passage for ships of other flag states, as provided for in Article 1 and 14 to 20 of the Geneva Convention on the Territorial Sea. The same articles recognize the sovereignty of the coastal state over the air space of the territorial sea, with no right of innocent passage (a point to which I shall return). Most states accord the right of innocent passage to naval vessels as well as commercial vessels since the Corfu Channel case (although even the USA took the contrary position prior to the first World War), but some states, including the USSR, do not accord the right of innocent passage in the territorial sea to foreign warships. Article 15 of the USSR Statute on the Protection of the State Border recognizes the right of innocent passage only for merchant ships. Some other states accept the right of innocent passage for naval and military vessels but require advance notification.

It has been generally agreed, moreover, that the right of innocent passage consists of a right to traverse the territorial sea without making any threats to the peace, good order and security of the coastal state, the determination of any such threat lying with the coastal state. The Territorial Sea Convention provides that while the Coastal state may not hamper innocent passage through the territorial sea, it may prevent passages which are not innocent and temporarily suspend innocent passage to protect its security.

It provides

The two most important developments in the Law of the Sea Conference relating to the territorial sea are on the one hand the general trend towards acceptance of a 12 mile territorial sea (Article 2 of the Single Negotiating Text) with certain consequential implications for international straits, to which I will refer later and the demands of some states, including Canada, for the redefinition of the right of innocent passage so as to take into account threats to the environment as well as threats of the traditional nature to the security of the coastal state.

The basic rules pertaining to the regime of the territorial sea are not altered in the Single Negotiating Text. However, Article 16 spells out the meaning of non-innocent passage in the following language:

(a) any threat or use of force against the territorial integrity or political independence of the coastal state or in any other manner in violation of the Charter of the United Nations;

(b) any exercise or practice with weapons of any kind;

(c) any act aimed at collecting information to the prejudice of the defences or security of the coastal state;

(d) any act of propganda aimed at affecting the defence or security of the coastal state;

(e) the launching, landing, or taking on board of any aircraft;

(f) the launching, landing or taking on board of any military device;

(g) the embarking or disembarking of any commodity, currency or person contrary to the customs, fiscal

(h) any act of wilful pollution, contrary to the provisions of the present Convention;

(i) the carrying on of research or survey activities of any kind;

(j) any act aimed at interfering with any systems of communication of the coastal or any other state;

(k) any act aimed at interfering with any other facilities or installation of the coastal state;

(l) any other activity not having a direct bearing on passage.

Article 18 provides that the coastal state may make laws and regulations relating to innocent passage in respect to any or all of the following:

(a) the safety of navigation and the regulation of marine traffic, including the designation of sealanes and the establishment of traffic separation schemes;

(b) the protection of navigational aids and facilities and any other facilities or installations including those for the exploration and exploitation of the marine resources of the territorial sea and the seabed and subsoil thereof;

(c) the protection of cables and pipelines;

(d) the conservation of the living resources of the sea;

(e) the prevention of infringement of the fisheries regulations of the coastal state, including inter alia, those relating to the stowage of gear;

(f) the preservation of the environment of the coastal state and the prevention of pollution thereto;

(g) research of the marine environment and hydrographic surveys;

(h) the prevention of infringement of the customs, fiscal, immigration, quarantine or sanitary or phyto-sanitary regulations of the coastal state.

Article 19 provides that coastal states may establish sea lanes and traffic separation schemes and that tankers and ships carrying nuclear or other inherently dangerous or noxious substances or materials may be required to confine their passage to such sea lanes and must carry documents and observe special precautionary measures established for such ships by international agreements.

Article 23 of the Single Negotiating Text provides that a ship not complying with the coastal state regulations concerning navigation shall be liable for any damage to the coastal state, including its environment or its ships. On the other hand the same article provides that, if the coastal state acts contrary to the articles causing loss or damage to a foreign ship exercising the right of innocent passage, the coastal state shall compensate the owners of that ship.

It can be seen from the foregoing that the right of innocent passage is considerably altered (or, in the view of some states, clarified) by the foregoing provisions of the Single Negotiating Text.

A further point of considerable controversy is whether the coastal state should have the prescriptive right to lay down construction standards for ships passing through its territorial sea as a means of preserving and protecting

the environment. There appear to be some internal inconsistencies in the Single Negotiating Text on this point.

Article 18(2) of the Committee II Single Negotiating Text which lays down coastal state rights to regulate innocent passage through the territorial sea - in conformity with the provisions of the Convention and other rules of international law - provides that such laws and regulations shall not apply to design, construction, manning or equipment of foreign ships, or matters regulated by generally accepted international rule unless specifically authorized by such rules. However, in Article 20(3) of the Committee III text, the coastal state is empowered to establish more effective laws and regulations with respect to the territorial sea than those laid down in international rules and standards for the prevention, reduction and control of pollution from vessels. The article further provides that in establishing such laws and regulations the coastal state shall, consistent with the aim of achieving maximum possible uniformity of rules and standards governing international navigation, conform to the international rules and standards established through the competent international organization or by general diplomatic conference. It further provides that such laws and regulations must not have the practical effect of hampering innocent passage through the territorial sea. It can be seen that there may be some ambiguities and inconsistencies as between the Committee II provisions and those of Committee III, a point of particular importance.

It should be noted that the Statute of the Northern Sea Route of the USSR subjects the passage of merchant vessels through

including equipment, supplies, and the conditions of the vessels. In order to ensure that the prescribed standards and conditions are met, the Chief of the Administration of the Northern Sea Route and his deputies and inspectors can inspect and prohibit ships from sailing the route.

INTERNATIONAL STRAITS

The traditional rules relating to passage through international straits other than those regulated by a particular treaty regime have consisted of the same rules as those applicable to the territorial sea, namely, the regime of innocent passage, with the single exception that the coastal state has not had the right to suspend the right of innocent passage. This rule is being subjected to considerable discussion in the Law of the Sea Conference. The great powers and most of the countries represented here today have joined in proposing a new rule of law consisting of a right of unimpeded transit to replace the existing right of innocent passage through all international straits, with no requirement for submarines to navigate on the surface, no requirement for prior notification by naval or military vessels, and no right on the part of the coastal state to impede such transit passage. The proposal by the USA and USSR on straits, as put forth by the UK and reflected in the Single Negotiating Text, would also give aircraft the same freedom of overflight that they have on the high seas. These free transit proposals, including aircraft as well as ships, represent a radical departure from existing law.

The major point of importance to note is that the position of the USA, the USSR and the UK is very fully reflected in the Single Negotiating Text in Articles 34 to 44. These articles are extremely complex, and may warrant separate discussion. It should be noted also that these new rules would

apply not only to those international straits which would become territorial by virtue of the establishment of a 12 mile territorial sea but also to all international straits, other than those subject to an existing treaty regime. The UK proposal reflecting this same approach, is moreover, coupled with a redefinition of international straits which is so broad that it would apply to almost any stretch of salt water eventually connecting two parts of the high seas or a part of the high seas with the territorial sea of another state.

The USA/USSR/UK proposal on straits is one of the more controversial issues under consideration at the Law of the Sea Conference. It is being resisted by certain straits states who are asserting the right, in varying degrees, to protect their security and their environment.

The provisions on transit passage are found in Artciles 37 to 43 of the Single Negotiating Text. Article 37 provides that they apply to straits which are used for international navigation between one area of the high seas or an exclusive economic zone and another area of the high seas or an exclusive economic zone. Article 38 provides that all ships and aircraft enjoy rights of transit passage, which shall not be impeded, through such straits. Article 38 goes on however to provide that if the strait is formed by an island of the straits state then transit passage shall not apply if a high seas route or route in an exclusive economic zone of similar convenience exists seaward of the island. This latter provision has been interpreted by countries such as Chile, Norway and Canada as meaning that the determination of whether or not a particular passage is an international strait can be made on the basis of the convenience of a particular route. Thus a passage between two islands of the strait state or between an

island and its mainland which may previously have enjoyed the status of internal waters will become an international strait, although not one subject to transit passage. Article 44 lays down the regime for such straits, namely, the regime of innocent passage. The regime of innocent passage, rather than transit passage, applies also to international navigation between an area of the high seas or an exclusive economic zone and the territorial sea of a foreign state.

Article 44 provides that there shall be no suspension of innocent passage through such straits.

This new definition of international straits is further complicated by the provision in Article 38 that the right of transit passage recognized under that article may also be exercised for the purpose of transit to or from an international strait state. The provision is considered somewhat obscure. It is presumably intended to provide for the conditions pertaining in the strait of Hormus, and, perhaps, Singapore, in the Straits of Malacca.

Another point of some controversy relating to international straits is whether a strait which has not thus far been used as an international strait nonetheless falls within the definition, or whether the Corfu Channel decision, which took into account actual useage of a strait in determining whether or not it was international; remains valid law.

The most important and controversial question relating to international straits may well turn out to be whether certain straits are viewed by both super powers as having the same status. I understand that the USSR has indicated to Chile, Tanzania, and Indonesia that it does not regard certain straits between their

being international straits, whereas the USA and many of the countries represented here have taken the contrary view.

Another difficult aspect of the same problem is whether the new proposals concerning the regime for international straits will apply to such bodies of water as the Kara Sea, the Vilkitsky Straits, the Laptev Sea, the Demitri Laptev Strait, the Sannikov Strait and the East Siberian Sea. This question has particular implications for countries such as Canada, which does not accept that the Northwest Passage is an international strait. The basic problem is that the new principles proposed for passage through international straits could undermine peace and stability instead of contributing to it if the great powers disagree as to their applicability to certain straits.

It will be recalled that the 1958 Convention on the territorial sea provides that where straits made up of territorial waters connecting two parts of the high seas but are not used for international navigation they are governed by the general provision guaranteeing the right of innocent passage through the territorial sea (Article 14). The waters of such non-international straits have the same status as ordinary territorial waters and are subject to the same limitations. This means, for example, that the coastal state may temporarily suspend innocent passage through them for security reasons (Article 16, para 3). If such straits connect two parts of the high seas and are also used for international navigation, a special provision applies. Not only is the coastal state precluded from prohibiting the innocent passage of foreign ships in such straits, it may not even suspend such passage. The prohibition of suspension applies also to straits connecting one part of the high seas and the territorial

Another rather controversial question is that the Single Negotiating Text proposal would also, of course, make a basic alteration in the present rule of suspendable right of innocent passage with respect to straits not used for international navigation and the non-suspendable right of innocent passage for straits used for international navigation. In the first case the new rule would be a right of innocent passage, while in the second case the right is one of free transit, that is to day, virtually complete freedom of passage for all ships and aircraft, with no coastal enforcement rights, analagous in that respect to the rules applicable as if they were actually on the high seas. No notice to the coastal state would be required and it would include passage of military ships and overflight of military aircraft. It would even allow submarines to cross such straits submerged since the requirement to navigate on the surface and to show a flag is linked to the concept of innocent passage, which would no longer apply. Most NATO states have given support to the USA/USSR/UK proposal. Most straits states have opposed it and the controversy remains unresolved.

The outcome of this issue of classification and definition of straits and the regime applicable could presumably have major implications for both the NATO Alliance and the Warsaw Pact.

Because of the importance of the issue it is worth noting some of the actual provisions in the Single Negotiating Text. Article 38 provides that transit passage is the exercise not only of the freedom of the navigation but also overflight "solely for the purpose of the continuous and expeditious transit of the strait". Article 39 provides that ships and aircraft while exercising right of transit passage

shall:

(a) proceed without delay through the strait;

(b) refrain from any threat or use of force against the territorial integrity or political independence of a strait state or in any other manner in violation of the Charter of the United Nations;

(c) refrain from any activities other than those incident to their normal modes of continuous and expeditious transit unless rendered necessary by force majeure or by distress;

(d) comply with other relevant provisions in this Part.

2. Ships in transit shall:

(a) comply with generally accepted international regulations, procedures and practices for safety at sea, including the international Regulations for Preventing Collisions at sea;

(b) comply with generally accepted international regulations, procedures and practices for the prevention and control of pollution from ships.

3. Aircraft in transit shall:

(a) observe Rules of the Air established by the International Civil Aviation Organization as they apply to civil aircraft; state aircraft will normally comply with such safety measures and will at all times operate with due regard for the safety of navigation;

(b) at all times monitor the radio frequency assigned by the appropriate internationally designated air traffic control authority or the appropriate international distress radio frequency.

Article 40 provides that a strait state may

designate sea laws and traffic supervision schemes, which shall conform with generally accepted international regulations.

Article 41 provides that the strait state may make laws and regulations relating to transit passage through straits in respect of:

(a) the safety of navigation and the regulation of marine traffic as provided in Article 40;

(b) the prevention of pollution, giving effect to applicable international regulations regarding the discharge of oil, oily wastes and other noxious substances in the strait;

(c) with respect to fishing vessels, the prevention of fishing, including the stowage of fishing gear;

(d) the taking on board or putting overboard of any commodity, currency or person in contravention of the customs, fiscal, immigration or sanitary regulations of the strait state.

The same article provides that such laws and regulations shall be non-discriminatory and shall not have the practical effect of denying hampering or impairing the right of transit passage. The article goes on to make the important provision that loss or damage incurred by the strait state or other state in the vicinity through acts of ships or aircrafts entitled to sovereign immunity and acting contrary to the provisions of the treaty shall entail responsibility of the flag state for such loss or damage.

Article 43 provides again that a strait state shall not hamper transit passage and that there shall be no suspension of transit passage.

A point of some importance from the point of view of

strait states is that they have no right to enforce the laws they are permitted to enact pursuant to Article 41, neither for the protection of their security or their environment. The obligation of a flag state imposed by Article 39 or by the legislation passed by the strait state pursuant to article 41 falls solely to the flag state for enforcement. A further point of importance is that the major powers and most maritime states, and indeed most states represented here have refused to accept compulsory third party settlement of any questions relating to the security of strait states.

I should like to return to this question a little later since it is one of the issues on which the Conference could founder, given the very strong position taken by the major powers to the effect that there can be no agreed Law of the Sea Treaty without a resolution of this issue which is satisfactory to them. I refer here to the positions of the USSR, USA, UK and France since China has taken a diametrically opposed position.

ECONOMIC ZONE

I have already touched briefly on the concept of the economic zone. It is in essence a new form of contiguous zone. Heretofore the only kind of contiguous zone accepted at the 1958 Law of the Sea Conference was one extending out to a limit of 12 miles and confined to customs, fiscal and sanitation purposes. During the Law of the Sea Conference, however, a number of states, particularly India and Egypt put forth proposals for a contiguous zone extending beyond the proposed 12 mile territorial sea but falling well short of the outer edge of the proposed economic zone. I shall at this point merely draw attention to the distinction between that kind of contiguous zone and the economic zone concept

The economic zone concept is so fundamental to the future success of the Law of the Sea Conference that it warrants special consideration. There have been more lengthy and intensive negotiations on that subject than on any other, with the exception only of that of the common heritage. It will be recalled that the economic zone concept originated from the patrimonial sea proposal put forth by certain Latin American states (principally Mexico, Colombia and Venezuela); the analagous economic zone concept put forth by Kenya; and the functional approach followed by Canada, Norway, Australia, New Zealand and certain other countries. All of these proposals had in common the same basic elements, namely, coastal state sovereignty over the resources of both the seabed and the water column out to a distance of 200 miles, coupled with certain defined and restricted jurisdictions for the purposes of preserving the marine environment and controlling scientific research. The Latin American version of the concept includes the reaffirmation of the continental shelf doctrine asserting coastal jurisdiction to the edge of the continental margin, whereas the Kenyan proposal would limit jurisdiction of any kind at 200 miles. It hardly needs emphasizing that the proposal is one of the most radical to emerge from the Law of the Sea Conference. Not surprisingly, it remains controversial both in doctrinal and in more practical terms. The major maritime powers continue, for example, to assert that the waters of the economic zone have the status of high seas, while some states would consider them as quasi territorial sea. The majority view, however, is quite clearly that the waters of the economic zone are neither high seas nor territorial sea but have a status based on some elements of each of these two regimes, but constituting, in fact, a totally

new legal regime.

Given the intensive consideration which this proposal has received it may be useful to look at the language which emerged from the informal negotiating group set up under the chairmanship of the Norwegian Minister without Portfolio, Jens Evensen, in the face of the inability of the Conference to agree on a formal negotiating group with delegated powers. The "Single Negotiating Text" produced by the Chairman of Committee II is modelled on the Evensen text and provides as follows:

Part III, The Exclusive Economic Zone, Article 45.

1. In an area beyond and adjacent to its territorial sea, described as the exclusive economic zone, the coastal state has:

(a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether renewable or non-renewable, of the bed and subsoil and the superjacent waters;

(b) exclusive rights and jurisdiction with regard to the establishment and use of artificial islands, installations and structures;

(c) exclusive jurisdiction with regard to:

(i) other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds; and

(ii) scientific research;

(d) jurisdiction with regard to the preservation of the marine environment, including pollution control and abatement;

Convention.

2. In exercising its rights and performing its duties under the present Convention in the exclusive economic zone, the coastal state shall have due regard to the rights and duties of other states.

3. The rights set out in this article shall be without prejudice to the provisions of Part IV.

The first point to note is that whereas the formulation (just quoted) would recognize exclusive jurisdiction of the coastal state over scientific research, the Evensen Group formulation did not go that far in meeting the demands of some of the coastal states. It is important to note also succeeding provisions of both the Evensen Group text and the Committee II Single Negotiating Text affirming the freedom of navigation and overflight and of the laying of submarine cables and pipelines and "other internationally lawful uses of the sea" relating to navigation and communication.

MILITARY USES

One of the most serious disputes which has arisen on issues of direct interest to the Alliance is the question of the interpretation of "other internationally lawful uses of the sea". Certain developing countries from Latin America and Africa have taken a very strong position to the effect that military activities other than mere rights of passage are not permissible in the waters of the economic zone. Some countries (such as Peru and Brazil) have even gone so far as to argue that naval manoeuvres and firing practices would be precluded. A much larger group of developing countries representing all regions has taken a similar stand with respect to the uses of the seabed of the economic zone, and, in some cases, the continental shelf beyond the economic zone. An equally strong position has

been taken by the major maritime powers affirming pre-existing freedoms of navigation relating to military uses of the waters which would now become a part of the economic zone. The formulation eventually worked out in the Evensen Group, developed principally by Mexico and reflected in Article 47 of the Single Negotiating Text provides that where conflicts arise over this issue "the conflicts should be resolved on the basis of equity and in the light of the relevant circumstances, taking into account the respective importance of the interests involved to the parties as well as to the international community as a whole". Some delegations have criticized this formulation as representing merely another type of third party settlement procedure, but it can be seen upon analysis that the provision has substantive as well as adjectival implications. It is relevant also to note that Article 47 of the Single Negotiating Text provides further that in exercising and performing their duties under the Convention in the exclusive economic zone, "states shall have due regard to the rights and duties of the coastal state and shall comply with the Laws and Regulations enacted by the coastal state in conformity with the provisions of this part and other rules of international law". It can be seen that an attempt has been made to arrive at a balance as between the interests of a coastal state and those other states who will continue to make certain uses of the economic zone. Precisely because of this built-in tension, however, and because of the newness of the concept, it is extremely important that compulsory third party settlement procedures be set up so as to interpret and develop the legal content of these new provisions.

FISHERIES

Quite clearly individual members of the Alliance have a national interest in the fisheries aspects of the economic zone proposal, but they are not presumably of direct interest to the Alliance except perhaps to the extent that the fishing fleets of certain countries such as the USSR perform quasi-military as well as purely fisheries functions. The point of relevance here is that coastal states will have greater control over such activities. There may, however, be an Alliance interest in some of the other forms of jurisdiction proposed for the coastal state under the ecoonomic zone concept, particularly those relating to preservation of the marine environment and control of scientific research.

ENVIRONMENTAL JURISDICTION

With respect to coastal jurisdiction for the preservation of the marine environment, the most that can be said at present is that the issue remains unresolved. An illustration of this is that the economic zone provisions emanating from the Evensen Group and sanctioned by the Chairman of Committee II in his contribution to the Single Negotiating Text are not in accord with the substantive provisions concerning preservation of the marine environment which have emanated from the Chairman of the Committee concerned with the preservation of the marine environment. As a general comment, the Committee II provisions can be seen to recognize certain defined forms of jurisdiction of a coastal state, falling short of interference with freedom of navigation, whereas the Committee III formulations are based essentially on flag state jurisdiction, with little or no recognition of coastal state rights except with respect to certain provisions relating to Port state jurisdiction which

are not considred by most coastal states as an adequate substitute for coastal jurisdiction. Agreement has not yet been reached either on enforcement measures with respect to coastal jurisdiction for the preservation of the marine environment, a point of particular importance given the fact that attempts to control marine pollution must necessarily encompass nearly every known use of the sea by man. I do not propose to develop this point but would be happy to exchange views later on during the discussion period.

A point of particular importance to my own country, however, is that even the Third Committee formulations in the Single Negotiating Text recognize a special regime of exception in providing that nothing in the relevant article shall be deemed to affect the establishment by the coastal state of appropriate non-discriminatory laws and regulations for the protection of the marine environment, "in areas within the economic zone where particularly severe climatic conditions create obstacles or exceptional hazards to navigation and where pollution of the marine environment according to accepted scientific criteria could cause major harm to or irreversible disturbance of the ecological balance".

SCIENTIFIC RESEARCH

There is presumably a distinct Alliance interest also in the nature and extent of jurisdiction exercised by coastal states within the economic zone over scientific research conducted by other countries. There has been a strong clash of interests on this issue between the developing countries, some of others whom want complete control, and most of the developed countries (excluding Canada) who equally strongly support total freedom of scientific research. The controversy has not yet been resolved [illegible]

coastal state have complete control over resource oriented research but that purely scientific research should be permissible without the consent of the coastal state, provided the coastal state is notified, is permitted to participate and receives the results of the research. A number of developing states and some developed states, including Canada, have pointed out that there is no way of differentiating between pure scientific research and economically oriented research, or between pure scientific research and military research. The suspicions of the developing countries were greatly increased during the Geneva Session of the Law of the Sea Conference by press reports to the effect that deep sea activities thought to be related to manganese nodule exploration and exploitation were in fact directed towards the salvaging of a submarine. The most that can be said on this issue at this stage is that it may be one in which the members of the Alliance, since there is no uniform Alliance position, may have to accept the best accommodation they can achieve. If certain types of research of a military nature were questioned then presumably the provision previously mentioned concerning "internationally lawful uses" would come into play.

INTERNATIONAL SEABED AND CONTINENTAL SHELF

I have already referred to the possible implications for the Alliance of coastal state jurisdiction over the seabed extending out to 200 miles in all cases and to the edge of the margin where there is a natural prolongation of the shelf beyond 200 miles, assuming that this provision proves acceptable in return for some form of revenue-sharing beyond 200 miles, as seems likely. The disagreement between the

majority of the developing countries and most members of the Alliance concerning the right of other states to conduct military activities with respect to the seabed over which a coastal state has jurisdiction has particularly important implications with respect to sound surveillance systems. The question has been raised not only by a specific proposal put forth by Mexico during the Caracas Session of the Law of the Sea Conference but it has also been discussed in the Geneva Disarmament Commission during the preparatory work for the Seabed Arms Control Treaty. It will be recalled that the Seabed Treaty prohibits the installation of nuclear weapons or other weapons of mass-destruction upon the seabed beyond 12 miles from territorial sea baselines but lays down no restrictions upon such activities as the installation of sound surveillance systems. It may be that the issue can be considered resolved on the basis of the Mexican compromise reflected in the Single Negotiating Text concerning the settlement of conflicts about "internationally lawful uses of the sea". It would be illusory, however, in my view, to assume that such conflicts will not arise. Thus if there is a vital NATO interest in maintaining maximum freedom to install sound surveillance systems on the continental shelves or the economic zone seabeds of other countries, then this right is no longer beyond question but may become subjected to a certain type of dispute settlement procedure.

COMMON HERITAGE

I have referred several times to the concept of the common heritage of mankind as one of the other major new

developments in the Law of the Sea. A UN resolution was passed at the XXVth General Assembly on December 15, 1969 which affirmed that the resources of the seabed and subsoil beyond national jurisdiction belong to the common heritage of mankind as a whole, particularly the developing countries, and that this area should be reserved for purely peaceful purposes. The resolution also called for a moratorium on exploration of that area pending agreement on the legal regime to be established for the area and the international machinery to be set up to administer it. A number of western delegations, including some of those represented here, do not support the resolution. Nevertheless the so-called Seabed Committee and the subsequent sessions of the Law of the Sea Conference have based their work in large part upon that resolution. The work of Committee I on these questions involved some of the most far reaching and intrinsically interesting issues being discussed at the Conference. They have very little effect however, on the interests of the Alliance except, perhaps, to the extent that the international authority to be established to manage the area may gradually develop certain functions with respect to the superjacent waters of the seabed, such as pollution control and the extent to which the authority may conceivably at some date in the future interfere with military activities of any state on the seabed or sub-soil beyond national jurisdiction. I do not propose to discuss these questions this morning but merely to flag them for future consideration. I would like to point out, however, that the implications of the principles being developed on these questions may ultimately go far beyond the physical area of

the seabed. What the international community is attempting to do is to develop the first international management system for some of the resources of the planet earth, based on principles of sound conservation, rational development and equitable distribution of benefits. My personal view is that any negation of individual state sovereignty involved is far outweighed by the collective benefit that may ultimately ensue. Indeed I know of no development in international law since the Second World War of comparable significance, except, perhaps, the agreement reached on outer space prohibiting assertions of sovereignty over outer space and celestial bodies and precluding the orbiting in space of weapons of mass-destruction. The point of importance, in my view, is that the common heritage concept is based on equitable principles, and if the members of the Alliance resist this trend, they jeopardize the fate of the Conference as a whole. The only other remotely analagous example of an approach which goes beyond the nineteenth century concepts of sovereignty, on which the international community is still founded, is the agreement on the denuclearization of the Antarctic which also placed in abeyance competing claims to sovereignty.

ARCHIPELAGOS

The other new concept of major importance to the Alliance is that pertaining to the status of the waters of archipelagos. This subject still remains one of considerable controversy in spite of the great advances which have been made in narrowing the areas of differences. The oceanic archipelagic states have asserted claims to sovereignty over all of the waters enclosed by the islands of which they consist. They have agreed in principle to the establishment

of sea-lanes in straits used for international navigation and in some cases have agreed even on the precise regime to be applicable, including the width of passages to be left open to free navigation, the height at which aircraft can fly, etc. In some other cases, however, oceanic archipelagic states in question have continued to insist on some degree of environmental and security control over passing vessels and aircraft, and this remains a controversial issue, since the major maritime powers have made their acquiescence in the archipelagic concept conditional upon agreement concerning rights of transit through the sea lanes to be established in international straits traversing the archipelagos. There are a number of important ancillary questions such as the right to designate sea lanes and to establish traffic control systems, to regulate discharges of noxious substances, the length of baselines which may be drawn to enclose the island chains and the ratio of land to water required for an archipelago to qualify under the proposed regime. All of these questions are , however, in my view incidental to the basic one of rights of navigation which, while close to solution, remains unresolved.

An additional complication relates to the extent to which the rules applicable to oceanic archipelagos may also be applied by coastal states with respect to their off-lying archipelagos. The Single Negotiating Text contains, for example, an interesting provision (Article 131 of the Second Committee provisions) that the preceding provisions relating to oceanic archipelagic states are without prejudice to the status of oceanic archipelagos forming an integral part of the territory of the continental state. This question is of interest to countries such as Canada and

India, and perhaps Spain and Ecuador.

There are a host of other issues, the resolution of which or where the failure of any proposed settlement could have implications for the Alliance, such as the regime to be established for islands, the rules permissible for the application of the straight baseline system, the principles applicable to claims to historic bays, the possible development of a concept of enclosed or semi-enclosed seas, and treaty obligations eventually developed for the peaceful settlement of disputes - anyone of which could form the subject of a separate symposium. None of these issues touch so directly on the interests of the Alliance, however, as those which I have discussed.

ALLIANCE INTERESTS IN SUMMARY

In sum, the issues of particular importance to the Alliance are as follows:

- the definition of the right of innocent passage in the territorial sea
- the breadth of the territorial sea
- the jurisdiction exerciseable by coastal states over contiguous zones beyond the territorial sea
- the rights of coastal states concerning the setting of construction, manning and equipment standards in the territorial sea
- freedom of navigation in the economic zone, as affected by coastal state environmental powers
- freedom of scientific research in the economic zone as affected by coastal state jurisdiction over scientific research

- the rights of states to conduct military activities in the waters of the economic zone of another country
- the regime of passage through international straits
- the definition of international straits
- the right of the international authority for the seabed beyond national jurisdiction to control activities in the superjacent waters
- the rights of the international authority to control military activities on the seabed or in the sub-soil of the areas beyond national jurisdiction
- the regime of passage through the sea lanes of archipelagos.

COMMENTARY

The basic change in the law which is emerging from the Law of the Sea Conference is the rejection of both the narrow nineteenth century concept of sovereignty and the laissez faire principle of freedom of the high seas and the acceptance in place of each of a new approach and a new concept based on the need to manage ocean space. This principle, and that of the special role of the coastal state in exercising this management function, were adopted unanimously at the Stockholm Environmental Conference. If it is fully reflected in the new Law of the Sea through the concept of the economic zone and the common heritage of mankind, with an effective international authority to manage the resources of the seabed legal national jurisdiction then we have reason for optimism concerning the future of the oceans.

The Law of the Sea has been based on the notion of competing rights, with little or no recognition of the

need in every system of law for the imposition of duties to go hand in hand with rights. Areas of the sea have been treated as subject to the assertion of sovereignty of one state or another, with no corresponding duties concerning the fisheries of such areas or the environment itself. The oceans beyond the territorial sea have been subject to the principle of first come first served, a laissez-faire regime defended under the name of freedom of high seas. Freedom of the high seas has meant freedom to over-fish and licence to pollute. These are the freedoms which must be circumscribed. It is the freedom of navigation for purposes of commerce and "other internationally lawful uses" such as legitimate self-defence which must be protected.

CONCLUSIONS

One hears many dire predictions concerning the fate of the Law of the Sea Conference and the nature of the law which may emerge from it. I would like to quote one such forecast by Richard A. Frank, a lawyer with the Centre for Law and Social Policy which is I understand a Washington-based public interest law firm, writing in the May 18 weekend edition of the New York Times.

> "It is the year 2000. The coastal powers have extended their sovereignty to the centers of the oceans. Cargo and military vessels must pay tribute as they pass from one sovereignty zone to another or as they transit straits through which passage once was free. Conflict between the "have" and "have not" countries, as governments jostle over the resources of the seabed, keeps the world in a state of tension. Fish are a rarity; the few

species that survive taste rather odd, for they inhabit an element befouled by enormous amounts of pollution. In most coastal areas, swimming in the sea is forbidden by law. The contamination has killed most of the sea's phytoplankton, the primary source of the earth's oxygen. The environment needed to sustain life on earth is wearing away."

I do not accept that view of the law of the future. It is an all too realistic appraisal of the possible consequences of the failure of the Law of the Sea Conference but it is far removed from the legal regime which seems likely to result from a successful conference.

I said at the outset of my statement that I did not claim any pretensions to the role of prophet. It is quite impossible to make precise predictions as to how the Law of the Sea will develop over the next 25 years. I have attempted, however, to identify certain emerging principles of international law from which it is evident that the law is undergoing rapid, radical and far reaching changes, some of them, such as those relating to passage through international straits, proposed by members of the NATO Alliance and also by members of the Warsaw Pact. It seems evident, however, that the law of the future may bear little resemblance to pre-existing traditional concepts. I wish to reiterate also the warning I gave earlier that it would be unwise to assume that the rules reflecting the interests of the Alliance which are embodied in the Single Negotiating Text, such as those relating to transit of international straits and the regime applicable to sea lanes traversing archipelagos are more or less generally agreed. It is relevant in this connection to bear in mind that it is the great powers, some

of whom are represented here, who are making these rights a condition of their acceptance of the Treaty as a whole, and who have been successful in obtaining provisions in the Rules of Procedure for decisions by consensus. It follows that those straits countries refusing to accept the proposals of the maritime powers on rights of transit may utilize the consensus procedure to prevent agreement. I made clear also in my opening remarks my own view that if the Conference breaks down then we can expect a rash of unilateral actions by states which may be far more extreme than any rule of law which might emerge from the Conference.

UNILATERAL ACTION

If some of the states represented here pass unilateral legislation asserting fisheries jurisdiction up to 200 miles before the Conference agrees on such a rule, then there is no guarantee whatsoever that other states would base action they may take on these precedents. The history of the period following the Truman Proclamation should be borne in mind. A claim to a 200 mile fishing zone by one country could precipitate a claim to a 200 mile territorial sea by another country. Similarly, legislation asserting the right to explore and exploit the resources of the seabed beyond national jurisdiction could result in competing claims by other countries and even precipitate a dispute between states and the UN itself, in the form of a new International Authority, which might be established against the opposition of certain states, with far more sweeping powers than would be the case if it was established by negotiation.

CHOICE OF ALTERNATIVES

Two dangers face the Alliance. One is that it will be necessary to accept new rules, some of which will almost certainly create real problems for the Alliance. The other danger is, in my view, worse, namely, the chaos, instability and the potential threats to the peace which could ensue from a breakdown of the Law of the Sea Conference. Thus, these choices face the individual members of the Alliance. Admittedly it does not lie with the states represented here to bring about the success of the Conference. They cannot do it without the cooperation of other states and other interest groups. It does, however, lie with the states represented here to defeat the Law of the Sea Conference through adopting unduly rigid attitudes based on traditional concepts of international law that are being rejected by the majority of the states members of the UN.

I have attempted to demonstrate that the traditional concepts of international law represented a functional approach to law adequately reflecting the interests requiring protection, and have explained how pressures have arisen to modify the law so as to reflect new interests. These new pressures and the interests which have generated them are primarily the desire of coastal states to conserve the living resources of the sea and acquire a preferential right to their harvesting; an analagous desire by coastal states to ensure sovereign rights over the resources of the seabed and subsoil adjacent to their coasts; a desire by coastal states to obtain acquiescence in their rights to assert jurisdiction to preserve the marine environment and control scientific research in the waters adjacent to their shores; a desire on the part of many states, primarily those of the

Third World, to preserve the area of the seabed beyond national jurisdiction for the common heritage of mankind but particularly for the benefit of the developing countries; and to reserve it for exclusively peaceful uses; and the desire of the maritime powers and most other developed states, in response to these pressures, to preserve and even expand upon the pre-existing freedoms of navigation and to ensure their right to participate in the exploitation of both the living resources of the sea within the economic zone of other countries, and both the living and non-living resources of the sea beyond the jurisdiction of other countries. The general interest of the international community would seem to require a balancing of interests as between the general need for freedom of navigation and the general interest in the preservation of the marine environment. The desirability of ensuring that degree of freedom of navigation necessary to preserve or expand upon military uses of the sea is not so widely accepted and, indeed, may prove to be the most controversial issue in the Conference. It is my own view, however, that in spite of the importance and far reaching changes in the law being brought about in the third Law of the Sea Conference, the interests of the Alliance need not be endangered. We are living in the age of future shock, and we must react to change with imagination and flexibility. The developed countries must continue to seek conciliation, not confrontation, with the developing countries. The new concepts being developed provide the basis for accommodation which could respond to the demands for changes in the law, particularly those being made by developing

of the sea essential to the defence of Alliance interests. It may not, however, prove possible to obtain general agreement upon an unfettered right of transit through international straits. It behoves every member of the Alliance, therefore, to give the most careful consideration of the importance of this principle to the Alliance and to the possible implications of failure to achieve a Treaty embodying this principle. The time is rapidly approaching when the choice may have to be made as to whether this should be a sticking point for the members of the Alliance and whether its importance is so fundamental that it must be insisted upon even at the possible cost of failure of the Conference.

After seven years of negotiation many of us are wearying of the struggle and are turning to other possible approaches such as unilateral action. I have personally participated, however, in two seven-year law-making exercises in the UN, each of which was eventually successful, and neither of which even began to approach in importance and complexity the problems being negotiated in the Law of the Sea Conference. I can only conclude with a plea for patience and for renewed and continuing commitments on the part of all of us to a negotiated solution to the problem of the Law of the Sea, some as ancient as international law, some as new as the latest developments in technology.

I am aware that I have raised a number of questions while suggesting few solutions. I should be happy, however, to participate in a discussion of these questions with those who may have comments, suggestions, queries or objections to the views I have expressed.