IMPLICATIONS TO WESTERN NORTH ATLANTIC COUNTRIES OF THE NEW LAW OF THE SEA: A SEMINAR
BERMUDA, NOVEMBER 8-10, 1976

ADDRESS BY J. ALAN BEESLEY, Q.C., ASSISTANT UNDER-SECRETARY OF STATE FOR EXTERNAL AFFAIRS AND LEGAL ADVISER, OTTAWA, CANADA

THE THIRD LAW OF THE SEA CONFERENCE: THE CONSEQUENCES OF SUCCESS OR FAILURE

Introduction

Mr. Premier, Ministers, Mr. Justice Seaton,

Mr. Mayor, Mr. Chairman, Ladies and Gentlemen:

May I say how pleased and honoured I am to have been asked to address this distinguished assemblage on a subject of such importance to all of us as the consequences of success or failure of the Law of the Sea Conference. I should like also to express my personal appreciation to the Bermuda Biological Station, the Bermuda Law of the Sea Committee, the American Society of International Law, the Government of Bermuda, and all those concerned with the Seminar for the warm hospitality they have extended to us all. I must, at the same time, compliment them on the way in which they have organized our three day seminar so efficiently, in a manner which has enabled us all to work very hard on concrete problems in an atmosphere of goodwill and harmony. This has contributed greatly to the openness and frankness with which we

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have exchanged views on issues which are not merely important but, in many cases, delicate, sensitive and controversial. I am sure that I am speaking for all of the guests who have taken part in this Seminar when I say that I have learned a good deal from it and I am most grateful for having had the opportunity to participate in it.

Background

In spite of the very considerable expertise reflected in this room, it is, I think, useful to reflect for a moment upon the background to the Law of the Sea Conference, against which the changes in the law being proposed and the historic nature of the Conference can be better perceived. It is widely known, for example, that the Conference owes its origins in large part to the initiative taken by Ambassador Pardo in 1967 when he introduced into the UN a proposal to declare the sea-bed beyond national jurisdiction to be the common heritage of mankind, with the result that an Ad Hoc Committee of the UN was established to consider the legal regime and the international machinery required to implement that principle. It is important to note that his proposal, as adopted by the UN, was limited to the sea-bed resources and not the water column above nor its living resources, and the proposal was confined to "the sea-bed beyond national jurisdiction". What may not be so widely known is that the Conference had its origins also in a wholly separate but related diplomatic initiative consisting of approaches by the USSR to a large number of countries

directed towards determining the degree of support which might exist for agreement on 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 USSR proposal subsequently became translated into a joint USSR-USA proposal, including, in addition to the territorial sea and straits aspects, the question of coastal fisheries jurisdiction and, interestingly, the possibility of compulsory third-party settlement of fisheries disputes. A third development in 1969 worth noting in passing was the Torrey Canyon incident, which alerted the world to the dangers of degradation of the marine environment and led directly to the 1969 IMCO Brussels Conference which produced two important multilateral treaties.

These two major diplomatic developments, the one embodying a radically new approach based on the concept of the common heritage of mankind reflecting, at least initially, the range of interests of the third world rather more than the industrialized states, and the other reflecting in concrete terms the strategic and economic interests of the two super powers in world wide freedom of transit provides an apt example of the differing perspectives from which one may view the Third Law of the Sea Conference. Two points of importance are worth noting concerning these differing "windows on the world". Firstly, in 1970, the two diplomatic 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 I have just referred to but such questions as the extent of the continental shelf, the nature and extent of coastal environmental rights, scientific research jurisdiction, the archipelagic concept, the regime of the high seas, the regime of islands, delimitation questions, and many other important and complex issues. This agreement on such a broad agenda for the conference was resisted at first by a number of developed countries, including particularly the great powers, who proposed instead a "manageable package" of a few selected issues. It seems likely that neither of the originators of the two diplomatic initiatives mentioned envisaged such a broad result with such far-reaching implications. Yet it was virtually inevitable. I should mention in passing that Canada was one of the few developed countries which strongly supported the convening of a Third Law of the Sea Conference with a broad mandate, in the knowledge that a piecemeal approach was no longer viable in the light of pressures for change in the law on a wide range of issues and, indeed, the Canadian Delegation chaired the negotiations in which the terms of reference for the Conference were negotiated and I had the honour of introducing the relevant Resolution 2750 adopted at the UN General Assembly 25th Session in 1970.

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The second point of importance worth noting about the two diplomatic initiatives mentioned is that, in the intervening period since 1967, many of the complex issues on the Agenda of the Third Law of the Sea Conference have been negotiated to the point of widespread agreement, and some to the point of consensus, but differences of views still exist concerning two original proposals,namely the legal regime of transit through straits and the international institutions to be established to implement the concept of the common heritage of mankind. Indeed, it is said by some that these two questions, certainly among the most important facing the conference, may be among the last to be settled, since they each raise a complex range of factors which are closely interrelated - both intrinsically and in terms of political trade-offs - with other questions still under negotiation.

Historic Nature of the Conference

Having recalled the immediate background to the Conference, I would like to draw attention to its historic nature. I am not referring to the fact that it is said to be the largest conference ever held in the history of man nor, unfortunately perhaps, one of the longest, nor the magnitude of the task of attempting to produce a comprehensive constitution for the oceans as a whole, but rather to its intrinsic significance. The Conference is often compared to the attempts made in 1930 to resolve certain outstanding Law of the Sea problems or to the much more sophisticated efforts made in 1958 and 1960 at the

First and Second Geneva Law of the Sea Conferences. In my view, these comparisons are not valid. While each of the three Conferences in question attempted to produce, in varying degrees, some degree of progressive development of the Law of the Sea, they were all essentially codification conferences. The present Conference represents something quite different. If one compares prevailing legal concepts, even as of 1967, with those concepts now being discussed in the Law of the Sea Conference, the contrast is so dramatic as to be startling. Never, in the whole history of law-making on the international plane, have so many basic changes in legal principles and such fundamental departures from pre-existing conceptual approaches been proposed, developed and crystalized into new principles of international law in such a short space of time. Nine years seems a long time, and, believe me, it is, for those of us who have been involved in it since its inception, but it is a very short span in the history of man, given the far-reaching implications of what is being attempted - and, I suggest, is being achieved, a point to which I shall return.

What is occurring is, firstly, a basic re-exar ination of pre-existing principles of the Law of the Sea, long since completed, and the reformulation of totally new principles, a process now almost concluded, and the translation of these principles into new rules of law - the part of the process not yet terminated - which will not merely restructure the particular branches of the Law of the Sea but which will produce major changes in the

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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 world powers of the time, mainly Britain, France, Spain, Portugal and Holland, to confine assertions 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. He argued that the two principles of sovereignty over a narrow territorial sea and freedom of the high seas beyond were the pillars upon which the European colonial powers built their empires. I would not wish to comment on the validity of that proposition, but it is demonstrably true that the law understandably reflected their commercial, economic, military and political interests. The rules were, moreover, very effective in safeguarding the interests they reflected. In this sense, they represented a very sensible functional approach to the law.

An ingenious legal device that was developed as a logical

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extension of the philosophy upon which this system of law was based was that of flag state jurisdiction. Under the doctrine, ships of any state were subject to the protection of the state whose 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 that other state. I am aware of the importance of this concept to all of those here present, including, of course, the Government of Bermuda, which is itself a flag state. Nevertheless, flag state jurisdiction over both merchant and naval vessels has been characterized as a kind of "roving sovereignty" of the flag state in which they were registered. Thus, freedom of the high seas coupled with flag state jurisdiction became, in practice, a basis for roving sovereignty which tends, of course, to favour the more powerful maritime and naval powers, sometimes to the detriment of lesser powers (and even, some would say, to the detriment of the interests of world peace and security.) Certain rules of law were developed to ensure the proper administration of these vessels, both internally and with respect to the world at large, but there was no development of a concomitant concept of flag state responsibility to go hand in hand with the doctrine of flag state jurisdiction. 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 recently illustrated in Canada when the British carrier HMS Hermes refused to submit to the jurisdiction of a Federal Court in Quebec City, and quite properly ignored a writ of arrest which had been served on it. Thus there was flag state jurisdiction, free from flag state responsibility, a system of law almost unique in that it enshrined important far-reaching rights without corresponding duties. This applies even today, for example, with respect to damage to the environment. I am sure that no one here would suggest for a moment the rejection of the doctrine of flag state jurisdiction but it behooves all of us to consider carefully the implications, for example, of the virtually unfettered right to pollute at will the marine environment of an area such as that of Bermuda.

To illustrate the practical consequences of the changes wrought in technology and related uses of the oceans over the centuries, imagine the consequences for a mythical and unnamed state of using moveable lighthouses to attract the "turtle into the basket", only to discover that the "turtle" lured to the rocks is a super-tanker loaded with oil. In the good old days - or the bad old days, if you wish - when a ship sank, there were unfortunate consequences in both human and economic terms, but there was no threat to the environment entailed. Today, we must all question the validity of the rule which means, in practice, that as a ship sinks, the flag state jurisdiction sinks with it

into the ocean while the coastal state is left with the problem of the damage done.

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, it must in fairness be noted that 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 world 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 rule of flag state inviolability 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. It has been suggested, incidentally, that polluting vessels should, like pirate ships and slave ships, be subject to "universal jurisdiction" whereby any state could act against them to enforce international law. This idea has not been received with enthusiasm by flag states.

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 contiguous 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 seas and seabeds of the world. Advances in technology leading to the development of huge self-contained

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factory fleets capable of completely over-fishing certain species of fisheries and to the construction of massive super-tankers capable of polluting vast areas of the oceans added to these pressures for coastal state jurisdiction to cope with these problems. The decolonization process added great impetus to the demands for changes in the law to protect the interests of the coastal states, particularly 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. The Torrey Canyon incident led to an interesting development, namely, acceptance of the right of a coastal state to bomb a ship into oblivion, however far it might be from the shore being threatened. This is called the right of intervention. Strangely enough, however, the coastal state was given no preventative powers to direct the ship or its captain to act according to certain rules or to conform to certain standards in order to avoid a catastrophe. It was necessary to await the catastrophe, or the imminence of one, before any action could be taken. It can be seen that we sea lawyers are a curious breed, deeply committed to traditional concepts and reluctant to alter them. If air lawyers had acted in a similar fashion, the Wright Brothers would never have got off the ground. As it happens, however, the system of air law works very well, even though it is based on virtually total

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control of aircraft and crew, including manning, equipment and construction standards, by the state whose airspace is being entered by aircraft of another flag state. Sea lawyers are deeply fearful of allowing any such rights to coastal states with respect to ships passing through their waters and flying the flag of other states. 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 re-development of the law. I should like now to turn to a consideration of some of these changes which are occurring.

New Concepts Emerging from the Conference

Two radically new concepts are emerging from the Conference, namely, the economic zone and the common heritage of mankind. The first embodies elements from both the high seas and the territorial sea regime but is, in my view, a doctrine sui generis. While it is asserted by some that the economic zone constitutes the high seas, the strongly held view of the vast majority is that it constitutes neither high seas nor territorial sea.

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 analogous 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 sovereign rights over the resources of both the seabed and the water column - that is to say, both the living and non-living resources - 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 implications for Bermuda are obvious. The new law would expand Bermuda's jurisdiction for these specific and limited purposes to 200 miles. I refer, of course, to an extension of jurisdiction such as is now occurring in many parts of the world, based on negotiations with those countries directly affected and not to the kind of extension asserted and enforced against the will of other states, which would raise the question of the enforcement capacity of the state extending jurisdiction.)

The Latin American version - consisting of the patrimonial sea concept - included 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. As elaborated in the Revised Single Negotiating Text, it is unmistakeably clear that the coastal state does not exercise sovereignty or jurisdiction over the zone, but only sovereign rights and defined jurisdiction within the zone. Nevertheless, 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 to some extent controversial even at this late stage, 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 the 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 incorporating some elements of each of these two regimes, but constituting, in fact, a totally new legal regime. There is criticism of the concept on the grounds that it divides up large portions of the world amongst coastal states. These criticisms characterize coastal states as being somehow outside the international community when, in fact, over ninety percent of the peoples of the world reside in coastal states, and the coastal states together comprise the majority of the states of the world. This is not, of course, to suggest that the legitimate interests of the land-locked states should be over-

looked. On the contrary, these states must be given equitable treatment in the new emerging regime. My point is merely that it is quite misleading to suggest that coastal states are seizing something from the international community when they together represent the major part of humanity. It follows, of course, that they owe a duty to reflect the interests of states which do not have a coastline, or which have a very short one, a point to which I shall return.

The concept of the common heritage of mankind represents an extremely radical, novel and imaginative approach which takes little or nothing from the territorial sea regime nor even from the pre-existing contiguous zone concept. At the same time, it is the antithesis of the high seas regime. While the waters superjacent to the international seabed area may continue to be subject to the laissez faire doctrine of freedom of the high seas, except as amended by international fisheries, conservation, environmental and disarmament treaties, the seabed below and its resources will be subject to a regime of international management, governed by a new international authority. The potential implications of this new concept are truly far-reaching. It can reshape the thinking of all of us about how to live together in harmony, sharing instead of competing for finite resources.

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 rights or state sovereignty involved is far outweighed by the collective benefit that may ultimately ensue. The attitudes, the legal concepts, the economic principles and the international institutions which we learn to apply to the international area of the seabed, to be reserved for purely peaceful uses and for the common heritage of mankind,can teach us lessons in international cooperation which we can translate into action in other areas of human activity - even on the land. The experience we can gain in the first true example of"supra-nationalism" can have profound effects upon existing world order, founded, as it is, on the concept of the "nation-state" with little or no sharing of sovereignty even within the UN. (Indeed, I know of no development in international law since the Charter 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. To illustrate what I mean, imagine the implications of the landings by the USA of astronauts on the moon and the landings by the USSR of space vehicles in the absence of prior agreements renouncing potential claims to sovereignty.) Quite apart, however, from the potentially negative aspects, such as the possible threats to peace which could follow from failure to translate this beautiful idea into concrete rules of law, there are other equally

important considerations of a more positive nature. The point of major importance in my view is that the common heritage concept is directly relevant to - and may even be a pre-condition to - the attainment of the new international economic order. If the developed states resist this trend, they jeopardize the fate of the Conference as a whole and in the process do a great disservice to the international community.

Conference Progress to Date

In broad terms, the concept of the economic zone, whatever its origins, can be said to have actually emerged from the Conference negotiations. The concept has been defined in treaty law language and the principles embodied in it may be said to have crystallized to the point where they are on the verge of gaining acceptance as rules of international law. Some say they already have this status. Whatever doubts may exist on the validity of this thesis, there can be none that the concept would not exist in its present form but for the Conference. State practice, outside the multilateral treaty process, can and does create international law, but the Conference provides important evidence of state practice,i.e. the declarations and proposals of the states involved. There is no doubt that the Conference has laid down the framework within which the customary law-making process is occurring, even before the conclusion of the Conference. Thus, the establishment of a 200 mile economic zone by Mexico in June, the announced intentions of Canada, Norway and the EEC countries to establish 200 mile fishing zones on January 1, 1977 and the

decision of the USA Congress to do the same as of March 1, 1977 are all examples of state practice which is not only influenced by the Conference but is actually shaped in specific and concrete terms by the provisions of the draft treaty emerging from the Conference. In each of the cases mentioned, the action being taken or contemplated is based on the provisions of the Revised Single Negotiating Text. If this is particularly true with respect to fisheries jurisdiction, and was already the case with respect to sovereign rights over the resources of the continental shelf - which is based on a pre-existing treaty, the Geneva Convention on the Continental Shelf - it applies now also, to a lesser extent perhaps as yet, to coastal jurisdiction for the preservation of the marine environment, the regulation of scientific research and sovereign rights with respect to the exploitation and exploration of the seabed to 200 miles where there is no continental shelf.

Unfortunately, the concept of the common heritage of mankind has not yet attained the same status as an emerging principle of international law. While this great concept is now almost universally accepted as the basis for the new regime, its precise legal content is still under intensive negotiation. Certain differences of views continue to exist on other important questions, including some relating to the economic zone (such as the fisheries and seabed rights of land-locked and geographically disadvantaged states and the precise degree of coastal control of scientific research), but there is nonetheless widespread agreement on most of the basic draft treaty articles on the economic zone.

In the case of the common heritage, there is a complete stalemate on the issues relating both to the regime and to the proposed international institutions to be established for the seabed beyond the national jurisdiction. The Fifth Session of the Law of the Sea Conference, just concluded a few weeks ago in New York, made concrete progress on the economic zone, but relatively little on the common heritage. Useful negotiations took place also on other issues, such as the status of the economic zone, the regime for passage through international straits and the rules for delimitation of seabed boundaries as between adjacent or opposite states. For the first time, serious discussion occurred also on the rules applicable to peaceful settlement of disputes. It is disturbing that no discussion occurred on final clauses nor, as a consequence, on the key questions of participation and reservations. It is a cause for serious concern, however, that no progress was made on breaking the deadlock concerning the seabed beyond national jurisdiction.

Prospects for the Conference

No-one can say with certainty whether the Conference will succeed or fail. What is certain is that there remains a good chance that the Conference can succeed, provided governments do not refuse to continue with the exercise because of the time it is taking and the costs involved in terms not only of human and financial resources but the self-restraint required of states on claims they wish to advance while the Conference continues. It is generally accepted that the next (Sixth) Session of the

Conference is likely to prove the "make or break" Session. If the basis for agreement is worked out on the seabed regime, then there will be great pressure to conclude the negotiations on the economic zone, international straits, delimitation of boundaries and other issues. Even so, at least one further full substantive session may be required in addition to considerable work by the Drafting Committee. It seems likely, however, that if visible progress is made at the next Session, governments will be willing to continue to commit themselves to pursue the Conference to a successful conclusion.

Consequences of Success or Failure

A successful Conference would mean agreement on over 500 treaty articles, including annexes, which would together comprise a comprehensive constitution of the oceans - an area, we are often reminded, consisting of over 70 percent of the earth's surface. These rules of law would not exist in a vacuum. They would bind states to act in new ways. They would stipulate a wholly new regime for the rights of passage through international straits. They would lay down totally new principles concerning the management of ocean space. Admittedly, international straits, the areas of ocean space most in need of a management regime, would be exempt from the rules applicable elsewhere but the right of "freedom of transit" through international straits appears to be the price which the coastal states must pay to achieve the agreement of the super-powers on the other rules being developed.

The treaty would, for example, oblige all states to undertake the fundamental commitment to preserve the marine environment, to conserve its living resources, and to cooperate in the carrying out of scientific research. They would establish a single - twelve mile - limit for the territorial sea throughout the world. They would result in a major reallocation of resources as between distant water fishing states and coastal states, and, more importantly perhaps, from developed to developing states. They would effect a transfer of powers and jurisdiction on many issues - with the notable exception of military uses - from the most powerful states to the less powerful. They would give recognition to the concept of the archipelagic state, consisting of sovereignty over the waters of the archipelago - of particular interest to the Bahamas, for example - with clearly defined rights of passage and over-flight through sea lanes. They would bind states to peaceful settlement procedures on most - unfortunately not all - issues. They would, moreover, establish something new in the history of man - an international management system for a major resource of the planet earth - the seabed beyond national jurisdiction. They would reserve this area for purely peaceful purposes. They would subject it to a legal regime governed by an international institution unlike anything now in existance. The international community would actually become engaged in economic development activities whose benefits would be shared by mankind as a whole. Interestingly, the UN, in the process,

would engage in enconomic competition with states and, perhaps, private enterprise. These new rules, if accepted by the international community and coupled with binding peaceful settlement procedures, would undoubtedly make a major contribution to a peaceful world. Of equal importance perhaps, they would lay down an essential part of the foundation for a new international economic order.

What are the consequences of the other alternative - a failure of the Conference? A failed Conference would mean that while the 200 mile limit has come into existance as a fact of international life, none of the safeguards embodied in the draft treaty would necessarily apply. The 200 mile concept, if left to state practice following a failed Conference, is far more likely to become a 200 mile territorial sea than a 200 mile economic zone confined, as it is, to specific jurisdiction and coupled, as it is, with stringent safeguards. The 12 mile territorial sea is a fact of international life, but its application to international straits would not be coupled, as it is in the draft treaty articles, with specific rules concerning rights of passage. New proposals concerning the delimitation of marine boundaries could have sufficient legal weight to erode the pre-existing equidistant-median line rules, but they would not be linked to binding third party settlement procedures, without which the new "equitable" approach would have little meaning. The nine years of work on the international regime and

institutions to govern the seabed beyond national jurisdiction would be lost. Some developed states would almost certainly take unilateral action authorizing their own nationals and other legal entities to explore and exploit the deep seabed beyond the limits presently claimed by any state. Certain developing states might well respond by new kinds of unilateral action asserting national jurisdiction over these same areas. Indeed, they have said they would do so. Disputes over fishing rights, environmental jurisdiction, under-sea resource rights, conflicting delimitation claims, rights of passage in straits and claims to the deep ocean seabed could surface all over the globe. The conclusion is obvious. The Law of the Sea Conference has gone too far in developing new concepts and eroding the "old international law" for it to be permitted to fail at this stage. The particular interests of individual states, be they powerful or weak, maritime or coastal, land-locked or geographically disadvantaged, coincide with the general interest of the international community as a whole in the over-riding need for a successful conclusion to the Law of the Sea Conference. This is no longer merely a desirable objective. It is an international imperative.

Conclusions

It seems clear that the international community is facing the choice, on the one hand, of a very real danger to peace and security - quite apart from the damage to the UN - should the Conference fail, or, on the other hand, an opportunity to demonstrate the heights to which mankind can rise when we are

prepared to look beyond our narrow immediate interests to the broader long-term interests of all. In legal terms, the Law of the Sea Conference presents the opportunity to leave behind us both the narrow 19th century concept of sovereignty, and its faithful companion, the laissez faire principle of freedom of the high seas, and to create new laws in place of each, embodying a totally new conceptual approach reflecting the need to manage ocean space in the interests of mankind as a whole. For far too long, the Law of the Sea has been based on the notion of competing rights, with little or no recognition of the need reflected in even the most primitive systems of law, whereby duties 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 conservation of fisheries in such areas or the preservation of the environment itself. The oceans beyond the territorial sea have been subjected to the principle of first come first served, a regime which tended to benefit the powerful at the expense of the weak, while defended under the name of freedom of the high seas. Freedom of the high seas has meant, increasingly, freedom to over-fish and licence to pollute. These are the freedoms which must be circumscribed, while the essential freedom of navigation for purposes of commerce and "other internationally lawful uses" (including legitimate self-defence) must be protected.

The difficulties in the way of harmonizing the conflicting

uses of the oceans and the divergent interests of states in a comprehensive constitution of the oceans are immense. The dangers of failure are increasingly acute. The benefits of success, however, are immeasurable. Whatever the imperfections of the proposed treaty, it offers the possibility of an orderly regime, in place of the chaotic situation which would otherwise pertain. It may not lie with those of us here tonight to bring about the success of the Conference. This cannot be achieved without the cooperation of many others outside this room. It does, however, lie with every one of us here present to use every ounce of our energy and all the influence we may singly and collectively represent to press forward with perseverence and determination toward the resolution of those problems still besetting the Conference. Alternatively, of course, it could lie with us, and others like us, to defeat the basic purposes of the Law of the Sea Conference through adopting unduly rigid attitudes based either on emotional attachment to traditional concepts of international law or to extreme or unduly acquisitive interpretations of some of the radically new concepts under consideration. As I see it, it is the duty of every one of us, particularly when meeting together as an important opinion-making group as has occurred at this Bermuda seminar, to use our best efforts to encourage our governments and our non-governmental organizations not to give up on the Law of the Sea Conference, but to go that last nautical mile, and to make one further effort to reach the noble objective, for that is what it is, of a global constitution of the oceans.

Surely there is no more fitting place for people like us to commit ourselves to such a worthwhile goal than in this beautiful island of Bermuda, where we see all around us the beauty of the marine environment which we must preserve, not only for its own sake, which is reason enough, but for the sake of mankind as a whole.