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## Foreword

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# Foreword

HON. EDMUND S. MUSKIE\*

I come from a state that lives by the sea. So it is a particular pleasure for me to write the Foreword to the San Diego Law Review's Sixth Annual Symposium on the Law of the Sea.

The San Diego Law Review has made an immensely valuable contribution in recent years to the literature on modern oceans problems. This year's contribution is especially timely, since 150 nations will meet this summer in Caracas, Venezuela, to participate in the largest conference ever held under United Nations auspices, the Third U.N. Conference on the Law of the Sea.

George Santayana once said that those who cannot learn from history are doomed to repeat it. To me this is the essence of the problem which confronts us here in the United States and will confront all nations at the Law of the Sea Conference. An orderly and equitable ocean regime has become both more vital to nations and more difficult for them to agree upon. They are more dependent than ever before on access to critical areas of the ocean, on its ecological health, and on its mineral and food resources.

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I am convinced that international accommodation is possible in the ocean. I am convinced that a broadly agreed-upon and comprehensive international ocean regime can serve both the world's interest and the national interest. And I am convinced that the international community can bring stability and justice to the seas without compromising the security or the welfare of any nation with high stakes in the ocean. Only concerted action will satisfy our collective interests in the ocean, and this will call for vision and statesmanship of the highest order.

What outcomes are needed? *First*, new international law to regulate the multiple and often conflicting uses of the sea; *second*, new principles of national behavior and self-restraint to insure that sheer military might and technological prowess do not become the sole arbiters of ocean affairs; *third*, new institutions and processes to enable all concerned nations to participate in decisions about the oceans; *fourth*, new arrangements to facilitate scientific study and interpretation of the marine environment; *fifth*, new policies toward ocean resources to ensure their protection and to provide for a fair distribution of ocean wealth; and *sixth*, new initiatives to help the world's poor countries to benefit more fully from the potential of the ocean.

The specific issues before the Conference fall into four basic areas: the territorial sea and rights of passage; economic zones; the deep seabed; and protection of the ocean environment. It may be useful to discuss each of these briefly:

*Territorial Sea and Rights of Passage:* There is perhaps a broader consensus on the issue of the territorial sea than on any other before the Conference, and prospects are good for agreement on a 12-mile limit over which coastal states would exercise sovereign territorial rights, subject to the right of "innocent passage" for others. Despite some recent claims to 200-mile territorial limits by some Latin American states, the 12-mile limit has general support and should be agreed upon.

However, this raises the further question of navigational rights through more than 100 straits which will become territorial seas under the 12-mile limit. The stronger maritime nations—the U.S., U.S.S.R., Britain, Japan—are determined to safeguard such rights. The straits states are pushing for the concept of innocent passage as defined in the 1958 Geneva Convention—guaranteeing free shipping "not prejudicial to the peace, good order, and security of the straits or coastal state," with the straits states themselves making the judgment. The U.S. and Soviets are opposed to any formulation

which might interfere with what they regard as their vital security interests. In return for adequate guarantees of free passage, the principal maritime nations will probably recommend international regulations to protect the straits countries from maritime accidents and pollution from shipping near their coasts.

*Economic Zones:* The concept of an economic zone would give coastal states certain rights of management and/or ownership over ocean resources, short of complete territorial sovereignty, within a larger area off their shores. A 200-mile economic zone has wide support, but other measures based on the continental margins are also under consideration. Since most commercial fisheries and offshore oil and gas deposits are found within the continental margins, the stakes are enormous.

*The Deep Seabed:* The deep seabed has become a focus of growing interest because of extensive mineral deposits—nodules rich in manganese, nickel, copper and cobalt—which are accessible to modern deep-sea mining techniques. Almost all nations agree that an International Seabed Resources Authority should regulate mining of the seabeds (including protection of the deep ocean environment) beyond the economic zones, with net royalty revenues going to international community purposes—especially to assist developing countries. Still at issue are the powers of the Authority, and how it would be controlled.

The United States proposes an especially promising type of international organization which could be a major step toward world order. This organization would receive direct revenue from mining royalties; it would have a tribunal for the settlement of disputes over uses of the seabeds; it would provide for peaceful enforcement of international rules through fines and withdrawal of licenses; and it would operate under voting rules which would steer a middle course between a system giving veto rights to the major powers and a system giving equal votes to all nations regardless of their size or interests at sea. Such an organization could gain both the experience and the confidence of the international community necessary to point the direction toward other opportunities for truly international approaches to solving shared problems.

*The Ocean Environment:* Many scientists are deeply concerned

by the increase in ocean pollution. Little is known about the capacity of the seas to absorb pollution before the danger point is reached. The combination of land-based pollution sources (such as open sewer and industrial waste), pollution from ocean-going shipping (especially from oil spills), and pollution from undersea exploitation, could at some point endanger all ocean life. Some marine biologists are warning that the death of the ocean might mean the end of all life on earth, since marine organisms supply 70 percent of the world's oxygen. One of the most urgent tasks of the Conference will be to establish rules and enforcement mechanisms to limit continued pollution of the seas.

In addressing themselves to these specific problems, the participating nations must seek above all to nurture a new sense of international community toward the ocean. With it must come an over-arching conception of the common good, a capacity for handling our inevitable disputes peacefully, and a set of new political habits and reciprocity, good faith and mutual accountability for our activities in the ocean. These goals are no longer utopian hopes. They are now the imperatives of prudent diplomacy.

This helps explain why the Law of the Sea Conference is so important. For the Conference represents the opening of a new political process for working together on shared ocean problems. So awesomely complex an enterprise as the Conference cannot realistically expect to succeed in all major respects. Most governments, including the U.S., will have to settle for less than their maximum goals. Some issues needing international attention will remain thoroughly unattended, while others will no doubt be dealt with only superficially.

We must anticipate, therefore, what inevitably must become a continuing and permanent Law of the Sea Conference. History will not judge this year's session by some scoreboard tally of completed actions on a long agenda. What will count in the end will be whether today's statements leave the ocean as a lasting international resource and whether future Conferences will have a durable and flexible political framework for collective action.

The articles contained in this volume of the San Diego Law Review cover a range of issues and problems which must be dealt with this summer. Elizabeth Mann Borgese, in her article, "Boom, Doom and Gloom over the Oceans," gives a lively commentary on the sometimes conflicting claims of development, environmental control, and national interests of all concerned parties—while pointing the way toward a reconciliation of various conflicting viewpoints in the Conference.

The piece by Professor Judith Tegger Kildow of MIT gives a tour d'horizon of the substantive and political issues involved in international oceans negotiations and, in so doing, presents a useful introduction to some of the more technical articles which follow. Professor Kildow describes how the various parties concerned have aligned themselves over time on the different issues, demonstrating how the complexities of oceans politics often make strange bedfellows.

The article on the Patrimonial Sea by Ambassador Andres Aguilar M., one of the ideological patrons of that concept, reflects the mounting support which the economic zone appears to be acquiring. Dr. Aguilar also considers the implications which adoption of the concept would have in connecting with the existing international law and other convention proposals.

Professor Nweihed's article on Venezuela's contribution to the contemporary law of the sea is of special interest since that country will host the 1974 conference. Professor Nweihed, author of two major books on the Law of the Sea, reviews the development of the continental shelf doctrine and the concept of the patrimonial sea, with emphasis on the role of Venezuela. He shapes his analysis within an historical perspective which gives the reader a good sense of the evolution of these principles to the present day.

Professor Martin Glassner of Southern Connecticut State College discusses the issue of the rights of the world's 26 land-locked states and other political entities to the resources of the sea. His analysis proceeds from the generally accepted principle that the sea is the common property of all, with established rights of free navigation. This being so, argues Professor Glassner, there should be some formula to allow land-locked peoples some equitable share in the oceans' wealth.

The article by Lee G. Anderson of the University of Miami deals with the economic aspects of international fisheries management—the problem of assigning property rights to fish resources in a way which maximizes economic efficiency. Mr. Anderson does not attempt to analyze the political factors involved in this area of the Law of the Sea negotiations, but in focusing our attention on the economic merits of different approaches to fisheries management, he serves the vital purpose of giving us an important yardstick by which to evaluate the wisdom of various proposals.

Professor Giulio Pontecorvo and Roger Mesznik of Columbia University offer an original analysis of the changing values of ocean resources and how these changes affect the problem of ocean management.

This collection of scholarly studies continues the fine tradition of the San Diego Law Review in contributing to our understanding of the Law of the Sea. It is an honor for me to have been given a small part in this endeavor.