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Freedom of the Seas — an Anachronism

On September 17 the 5th session of the 4th Law of the Sea Conference which had started in February 1973 ended in New York without having produced any tangible results. It is rather puzzling how it is that a conference of such dimensions and such possible and far-reaching implications can have been held without arousing any more interest among the politically minded. A possible reason for the relative lack of interest is that its official title: "Law of the Sea Conference" appears to indicate that the conference is just a gathering of legal experts bent on adding yet more subtleties to the chapter about maritime law which to the ordinary layman has long ceased to be comprehensible and is in any event highly uninteresting.

In fact however, what is at stake there is something of the utmost political importance — an importance which few events in history have surpassed: At stake is nothing more or less than the distribution of the right to dispose of, and to exploit, roughly 70 p.c. of the earth's surface, the greatest distribution struggle in the history of mankind and a "gigantic seizure of land under water". The Conference on the Law of the Sea makes it clear that we have reached a point in history at which all of us will be obliged to abandon once and for all the traditional principle of the "freedom of the seas". Under the modern technological, political, and military conditions this principle has in fact become more and more an anachronism.

The concept and principle of the "freedom of the seas" dates

from a time when the sea was in fact something like a "free good" similar to the air. There used to be modest fishing which was limited to relatively narrow coastal waters and there was the sea as a means of transport; but these two uses apart, the interest in the sea was minimal. The freedom of the seas began where land-based guns could not reach. Since nearly a hundred years ago, however, this situation has undergone a thorough change. The growth of motor-shipping and modern processing techniques at sea has extended the radius of the deep-sea fishing fleets. The sea has become interesting as an economic factor, of whose potential everybody sought to seize as much as he would or could. Thanks to the expanding division of labour and the industrial progress the importance of the sea as a transport medium multiplied within a few decades. 85 p.c. of our inter-state goods traffic is today transported by sea.

Naturally in such circumstances states tend to become more sensitive to any threat to their searoutes. However, the full weight of the problem did not become apparent until after it had been realized what immense riches in the form of mineral deposits were lying under the sea bed waiting to be exploited by ever improving modern technologies. In present circumstances the sea is anything but a "free good". For this reason the freedom of the seas can no longer mean the unlimited right to do what one likes with the sea.

Every coastal state by trying to extend its territorial sovereignty

as far into the sea as possible enlarges its economic and sovereign zone of influence, thus restricting the rights of other states. With the unilateral extension of their territorial waters to 12 or 200 miles unilateral shifts of territory occurred which by their extent dwarf those which happened as results of many a major war. From these circumstances it follows that the most fiercely contested parts of the oceans are those which have not so far been claimed by any country and whose mineral deposits can for the time being still be regarded as "mankind's common heritage". That in this matter it is impossible simply to allow the right of the strongest to prevail is as plausible as the fact that the developing nations and the so-called "landlocked" countries cannot be expected to be the only ones to be left out from the general share-out.

The military and transport-political problems arising from such a share-out are unforeseeable. To arrive at sound solutions which would leave all shipping sufficient room to navigate on the once free oceans would alone be an immense success. Incidentally, it would probably be the first time in history that problems of such magnitude are resolved at a conference table and not by military conflict. Should the Conference on the Law of the Sea succeed — be it after laborious and long drawn-out negotiations — in finding a solution, mankind would have taken such a big stride forward, such a giant step as to dwarf in importance many a technological break-through of the past.

Alfons Lemper