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## **THE POSSIBLE EFFECTS ON MARITIME OPERATIONS OF ANY FUTURE CONVENTION OF THE LAW OF THE SEA**

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When the Chief of Naval Operations kindly invited me to initiate our discussions on this important subject, I had hoped that the recent session of the conference at New York would have got a little further. That progress was made, I am in no doubt. I am also in no doubt that it is very important that at their August 1976 session in New York enough progress is made to enable governments to agree to the broad terms of a new convention which could be finalized in 1977.

But because of this rate of progress, it does mean that we can discuss the crucial issues the conference has before it in an unrestricted way and not feel bound by any positions our own governments might otherwise by now have adopted. Indeed, I must stress from the outset that my views are those of a professional naval officer, not of a

maritime lawyer nor of an official negotiating for his national interests in the matter. But it is inevitable that I will have frequently to refer to the arguments that are still taking place in the conference for it is these that will colour the backcloth against which any future maritime operation will take place.

Such operations in such a context are of, course, a peaceful exercise of maritime power. I do not address the question of belligerence.

My theme in this discussion of how a new convention might affect future maritime operations is that the cornerstone of any future convention must be the maintenance of the often challenged but long established freedoms of the seas. I hope to show you that both maritime and coastal states stand to gain by the maintenance of this concept.

Freedom of the seas, of course, implies not only a freedom of action but a responsibility to respect the rights of others. I acknowledge from the start, and I will go over the ground in more detail later on, that we are living in a changing world and that there is a very reasonable case to be put which calls for more careful definition of the rights of states on, in, and under the oceans of the world. States have every right to look to their security and economic interests: and the better understanding that is reached on these issues, the less chance there is of friction and tension. A new convention will depend entirely on a sound balance of all interests being struck. The United Kingdom has both maritime and coastal state interests. We firmly believe in the maintenance of the balance of strategic deterrence and depend extensively for our livelihood on unfettered contacts with our trading partners—we have the third largest mercantile marine in the world (after Liberia and Japan). At the same time, our geographical position as an island state, separated from our European neighbours by the busiest straits of the world, on a continental shelf rich in hydrocarbons and fish, gives us significant coastal state interests. A balanced convention is therefore as vital to my country as to any.

We have only reached this view after many years as a maritime nation and in common with most of us here could not claim to have been consistent in our views over the last 2,000 years. Let me say something since nothing is new under the sun, least of all the ocean, about those 2,000 years and the sum of human experience they convey to us.

In the earliest days the sea was believed not only to hold inexhaustible stocks of fish, which were free for anyone to take, but to extend over such vast distances that the waters themselves could not similarly be taken. What could not be taken was free for common use by all men. To the Romans

who enshrined this principle in the Justinian Code, such a view was probably more a luxury that the undisputed masters of the Mediterranean could well afford, since it was unlikely that anyone would challenge it, rather than an act of liberal statesmanship.

Nevertheless, after the collapse of the Roman Empire there was no major change to this principle until the crusades brought a Europe emerging from the Dark Ages into contact with the Mediterranean. This stimulus to commerce allowed Mediterranean practice, Roman in origin, to spread to the Atlantic seaboard, and the rolls of Oleron gained immediate success and wide recognition among the nations of North West Europe. But although these codes talked of freedom, this freedom began to become discretionary. As Mediterranean trade revived in the 13th and 14th centuries, the conflicting claims of the trading nations on the waters around their coasts became the dominant issues.

The Venetians began to charge a fee for entering the Adriatic, and Venice's chief rival, Genoa, claimed similar jurisdiction over the Ligurian Sea. In north-west Europe, countries made similar claims: The Danes, Swedes, and Poles claimed various parts of the Baltic and the English, with what some of you may feel was characteristic expansiveness, the channel, the North Sea, and the whole of the Western Atlantic. Slowly the sea from being free from any jurisdiction became, like the land, subject to the authority of those who had the power to enforce that authority. But the two great naval powers of the day were Spain and Portugal and, using the Pope as a maritime arbitrator which had the wholly desirable effect of giving their claims the authority of God, they began to apportion the oceans of the world between them so that both countries' interests in their newly discovered possessions in the Americas, East and West Indies, Africa, and India were

protected. Their dominance culminated in the Treaty of Tordesillas which, in effect, divided the globe in half; a feature which even the Pope had sought to avoid.

With the growth of English naval power in the middle of the 16th century, her ships began to challenge the monopoly of Spanish trade with the Indies. The first Queen Elizabeth sought to justify the activities of men like Sir Francis Drake by an appeal to the principle of the freedom of the seas—the first time this concept had been expressed for four or more centuries. Her Majesty refused to concede that Spain “had any right to debar British subjects from trade or from freely sailing that vast ocean, seeing that the use of the sea and air is common to all: neither can any title to the ocean belong to any people.”

While England was having difficulties with Spain, Holland, which was also increasing in power, was having the same difficulties with Portugal. The Portuguese cited the Papal Bull of 1493 in support of their trade monopoly; to counter their arguments Grotius wrote his famous treatise on the law of the sea. He stated quite categorically that “Since the sea is just as unsusceptible of physical appropriation as the air, it cannot be attached to the possession of any nation.”

By this time, however, the British had forgotten their late Queen’s stand and her successor, King James I, commissioned John Selden to write a refutation of Grotius supporting the concept of a closed sea; a principle which was duly followed so long as the British felt that their interests were best served by protecting their trade against foreign competition. However, during the 18th century there was a slow and gradual change in British policy. The old order whereby strong maritime powers waged war to protect their trade was changed by the Industrial Revolution in England. There was for a time thereafter no

foreign competition, and so British interests were now best served by completely free and unrestricted trade. Thus, by the early 19th century Britain was once again an unequivocal supporter of the freedom of the seas.

It seems clear that the policy of the superior maritime power, and not for the first time, carried the day. When one power has been predominant, freedom of the seas has been its policy. It would be an oversimplification to say that when dominance of the sea was in doubt nations pursued a policy of closed seas which went unchallenged until one power again became predominant, but it is nevertheless not far from the truth.

Later on I will attempt to show how the maintenance of the freedom of the seas has developed from being principally in the interests of major maritime powers to the situation today when it safeguards the interests of the international community.

As trade increased, piracy became a growing nuisance on an international scale. Initially countries were content to rid the seas of pirates harassing their own trade while being quite content to let them do their worst among their rivals. Nevertheless, the consciences of some enlightened men and the timing of history ensured that piracy and the slave trade were suppressed in an era when the principle of the freedom of seas was being upheld under the umbrella of Pax Britannica. It could not have been effected in the absence of the freedom of the seas, and the dividend this then gave is enjoyed by all nations.

Another example of benefit from the freedom of the seas is to be found in the contribution to the surveying and charting which has been done for over 200 years by the hydrographic fleets of our various countries. Their freedom of navigation and their cooperation results in world chart series for all the mariners of every nation. There is no ship which does not benefit from the ability to sail

and work on the seas of the world with hydrographic data which has resulted from this very freedom of access. Long may it continue.

That having been said, we all know that the law of the sea is not merely an affirmation of unfettered freedom. The freedom of the high seas became a regulated freedom through agreements by flag states that their ships should follow certain rules about safety, avoidance of collisions, interference with submarine cables, and similar matters of general concern. It is important to recognize, however, that ships were to be regulated only by their own flag states.

In more modern times came the recognition that the coastal state had an interest, and indeed a claim, on the belt of water immediately surrounding its own coastline. This claim was ultimately recognized in the concept of the territorial sea. The development which balanced this concession to absolute freedom at sea was the establishment of the right of innocent passage through the territorial sea. Coastal states accepted the erosion of full sovereignty implicit in the acknowledgement that a foreign ship could not be prevented arbitrarily from passing through the territorial sea so long as she was doing no harm.

This harmonious compromise was further developed by the 1958 Geneva Conventions on the law of the sea. What started as an attempt to codify all past practice, in fact, went further and resulted in recognition of the increasing attention being given to the exploitation of the resources of the sea and the seabed, and whilst high seas freedoms were to a large extent preserved, these conventions for the first time addressed the rights to exploit the resources of continental shelves and the conservation of the living resources of the high seas.

The 1958 Geneva Conventions have, I believe, served the international community well. The listing of the freedoms

of the high seas was useful, as were the provisions concerning nationality for all ships, piracy, and slave trading. So also were the definition of innocence of passage in the territorial seas as being not prejudicial to the peace, good order, and security of the coastal state; the definition of the rights of hot pursuit; and the safeguarding of the right of passage through straits. There were also many other valuable provisions relating to navigation and resource exploitation. But there were major omissions too, the most far reaching being the failure of the 1958 conference to agree on a maximum breadth for the territorial sea and the failure to set objective limits to coastal state rights in respect of fisheries and the continental shelf. The large increase since 1958 in the number of merchant ships sailing under flags of convenience has also called into question whether dependence on flag state regulation is sufficient to safeguard coastal state interest.

The main pressure for a new law of the sea convention has, however, been generated by the increase of man's knowledge associated with a desire to exploit the resources of the sea and the seabed. "The common heritage of man should be used for the benefit of mankind as a whole" is a popular cry. If we are to use the seas and the resources in and under the sea for the benefit of the international community in an orderly fashion, we must aim to reexamine and strengthen existing law to fit today's circumstances and fill in the gaps in the 1958 conventions that I have already mentioned.

There are, of course, a number of ways of doing this, and it is precisely because of this fact that negotiations in the conference directed toward reaching a consensus have been prolonged and difficult. A position somewhere between the somewhat imprecise but possibly, maritime oriented regime that came from the 1958 conventions and those states who have been calling for

extensive coastal state sovereignty and jurisdiction must be found.

We must not be discouraged by the length of negotiations on this complex subject. Each member state of the United Nations surely has to attend to its own immediate needs before acting as a member of the international community to safeguard the broader world interest.

With good reason coastal states are concerned with sovereign rights, and the obvious proof of the growing concern for this is to be found in the large increase in the number of states now claiming a wider territorial sea. The numbers have increased markedly since 1958. Some states believe that an extension of sovereignty over the sea is an essential safeguard to their security. There is much public discussion of security, both in the defense or military sense and also in the civil or police sense. Many newly emergent and emerging states think of increased sovereignty as an essential precursor of economic well-being. Many states also, and my own is no exception, look to the wealth of the natural resources of the continental shelf to contribute substantially to economic well-being and are showing a real concern about conservation of fish stocks and an understandable feeling that they should have prime responsibility for assuring the future of a resource they claim for their own country. However we must remember the other side of the coin.

This is that to extend the frontiers of sovereignty is at the same time to increase the burden of national security and certainly not to make it easier. If we are to develop new laws, we must ensure that either the coastal state or the international community has the ability to enforce them. Laws that cannot be upheld fall into disrepute and are certain sources of international friction. While I well understand the importance of the work being done in the present conference on the

settlement of disputes, I am sure we would rather that its aim should be a consensus likely to minimize the occurrence of disputes. Moreover, it is axiomatic that the greater the area of the continental shelf or greater the volume of water that the coastal state can lay claim to, the less the resources freely available to others.

One of us here represents a landlocked state, and there are others amongst us whose countries say that they are geographically disadvantaged. Any view that the seas are free requires that the rights of every member of the international community be considered in drawing up the balance between the interests of the coastal state and the community as a whole. There is no shortage of public discussion on this either.

Coastal states have a third interest which is gaining in importance as the worldwide lobby for the protection of the environment grows. None of us here would quarrel with the need to take every reasonable precaution to minimize the risk caused by collisions and groundings or by poor construction of ships. Pollution control, too, is listed high in the requirements of all these days. It is an important matter which the convention must address.

I mentioned earlier that flag states had come to accept the need for certain rules to guide the conduct of shipping. An amalgam of these rules on safety, the avoidance of collision and pollution control add up in many minds not merely to the maintenance of good order but to the need for traffic regulations as the means of assuring it. Se lanes and traffic separation schemes do, of course, have a valuable part to play. The United Kingdom and France believe that they have already been instrumental in improving traffic conditions in the Dover Strait, and they look forward to the observance of these schemes becoming mandatory. I would welcome also the establishment of

similar schemes in other busy shipping areas around the world. Latterly the International Maritime Consultative Organization (IMCO) has taken the lead in initiating international conventions in this broad field of good order at sea. However, IMCO neither lays down nor enforces law. Governments use the IMCO machinery to conclude agreements, and it is their responsibility to give these agreements the force of law. Should we not agree to urge our governments to place their trust in IMCO and make proposals to it? Furthermore, should we not also agree that we should urge our governments to ratify conventions agreed through IMCO and to enforce rigorously the ensuring legislation?

The international community currently accepts that outside the territorial sea it remains the flag state's responsibility to enforce regulations on their own shipowners and masters. To overcome the laxity of some flag states and in particular to regulate those ships that sail under a flag of convenience, it may be necessary to introduce a different enforcement regime. Consideration should be given to what seems a very sensible idea that a form of port state jurisdiction may well provide a better balance between the interests of the coastal state and those of the international community, the theory here being that a coastal state whose regulations have been flouted and who does not have confidence that the flag state will take appropriate action will appeal to the state into whose port the offending ship next calls to prosecute that ship.

Let me now summarize the coastal state's interests as I have outlined them to you. They amount, I suggest, to "a requirement to extend their sovereignty and jurisdiction into the sea area and on to the continental shelf, adjacent to their shores so as to ensure their state's security, militarily, economically and ecologically."

I have previously laid emphasis on the meeting of these justifiable aims while preserving the natural maritime rights of the international community as a whole. Furthermore, in examining the history of those rights, we saw how we arrived at the basic doctrine of high seas freedoms on the back of maritime power. In the remainder of my talk I would like to show that these freedoms developed in the last 150 years now safeguard the rights of the international community.

The high seas freedoms stipulated in the 1958 convention were the freedom of navigation and overflight, the freedom to fish, the freedom to lay submarine cables and pipelines, and other generally recognized and customary international freedoms.

I would like to dwell for a while on what to us, as mariners, must be the most important aspect, "freedom of navigation and overflight."

We are not in this convention addressing the historic rights of warships in time of war. Nevertheless, in spite of the fact that I have barely mentioned any military matters so far, I still see a very clear role for the military in the wake of a new convention. We are all here because our countries deem it necessary to maintain navies for reasons of national security. Warships have traditionally been involved with maintaining the freedom of navigation of merchant ships, and we would claim that the deployment of our navy in support of trade has been a stabilizing factor in increasing world prosperity.

In the past the number of ships engaged in trade that plied the seas was miniscule compared with the number today. Under the umbrella of high seas freedom and as the economies of the countries of the world partly under imperial influences expanded during the 19th century, trade began to flow in all directions. This expansion has accelerated as the colonial empires have waned and the colonies and pro-

tectorates have become independent countries. With the growth of international companies and the complex economic relations that exist today, the very foundation of our society depends for its future on economic efficiency. To carry cargo by sea is and will remain in the foreseeable future the most cost effective manner of trading. We see examples everyday of the world's dependence on energy supplies, and the battle against poverty and starvation can only begin to be tackled with any hope of success if trade across the sea is allowed to proceed about its lawful occasions, unhampered and unmolested.

Economic stability is intrinsically bound up with the balance of power and in this imperfect world in which we live the balance of strategic deterrence is of the utmost importance. We surely must accept the fact that navies have a part to play in maintaining that balance of power and that they must operate and train in the areas in which they need to exert their power. These areas coincide with the world sea routes which, in many cases, pass through what we expect to become economic zones. Efforts in the past to declare zones of peace have much to commend them, but they will never be zones of peace for all the fine words that are spoken unless we can be confident that no one will cheat. Let us not delude ourselves, we cannot be certain of that today. No doubt we all look forward to the day when world tensions are eased and that the opportunity occurs for the major alliances to scale down the effort deployed to maintain this strategic balance, but we must deal with things as they are and not as we would wish them to be. Meanwhile we should, I think, take advantage of the phenomenon that we are in the presence today of an expanding maritime power, which is far from achieving that position of maritime dominance that I have historically associated with allegiance to the freedom of the seas and which seems to

be content, for reasons which are not yet clear, to support a doctrine of maritime freedom.

I have now outlined to you why I see a requirement for the coast states' needs to be put in perspective with the requirements to safeguard the rights of the international community.

Let us then assume that we achieve an acceptable balance of interest in an internationally agreed convention. The need will then arise for coastal states to evolve internationally acceptable methods of enforcing the laws which they will be entitled and indeed have a duty to enact.

Varying historical and constitutional factors will influence the way different countries tackle the task. It would be wrong to assume that there is a single correct way and if others do not do things in the way we do, either they or we are in error. I would like to explain to you how we in the United Kingdom see ourselves undertaking this. We could have established some kind of force on the lines of the U.S. Coast Guard and this may be an attractive model for many countries to follow. We have, however, decided to meet our expected increased responsibilities by the development and improvement of the existing pattern involving continuing co-operation between the civil authorities concerned and our Armed Forces rather than by some radical change. The Royal Navy has for many years provided ships for fishery protection duties, and though the extent of this task will increase, it will hopefully be carried out in an atmosphere of international accord.

As regards fixed offshore installations, these are of course subject to the normal external threat posed by another power and in this respect we see the services defending them within the framework of their normal function to defend the realm. But today we face an increasing threat from terrorists. Many people advance the theory that an oil

platform, like an aircraft, is an attractive target for hijackers wishing to gain publicity. Around our shores, in the stormy waters of the North Sea and off the Coast of the Shetlands, to hijack an oil rig to make a political point such as demanding the release of political prisoners would be very difficult and require considerable skill and resources. There are many targets associated with the oil and gas industries ashore which it would be much more easy to tackle.

Nevertheless, there is a threat, and in our view that is best met by mounting deterrent patrols by ships and aircraft. Sophisticated ships are not needed for this. The important thing is to deploy ships with good seakeeping qualities and good communications. If the ships and aircraft can be seen and heard they deter, and if any incident occurs they have the ability to get to the scene quickly and observe and report. This is also a priceless asset in the event of an accident. A new convention will, we assume, confirm the existing entitlement of the coastal state to establish safety zones around installations on its continental shelf and even enhance their status. In the light of this we envisage a requirement to operate a force of about eight ships backed up by fixed wing surveillance aircraft and shorebased helicopters to undertake concurrently fishery protection and deterrent patrols in the area of offshore installations. We have chosen a 200-foot lightly armed ship of about 1,300 tons to fulfill these tasks. In the poor weather conditions around our coasts we have decided that an all-weather capability is more important than high speed, and thus the fast patrol boat, an attractive option for many countries, is not a realistic one for the United Kingdom.

We also envisage these ships being useful in reporting incidences of pollution and for assistance in maintaining good order in traffic separation schemes. Here our aim is to advise shipping on the state of traffic so that it

can more easily follow the traffic separation scheme. We have not found it either practical or desirable to attempt to positively control the traffic, believing that no sea captain would take kindly to being controlled from shore and that an attempt to do so would be likely to lead to more radio assisted collisions than it avoided.

In all these tasks we see our forces being used to safeguard our coastal states' rights and at the same time to ensure that the rights of the international community will be served as well—they will be there to monitor and report. The legal action that ensues from any incident they observe will be taken up by the civil authorities.

Maybe in due course an international force should be set up to carry out these tasks. Perhaps regional arrangements can be expanded. We already have in the Northeastern Atlantic a fisheries convention whereby some 14 countries (both East and West) agree to the monitoring of each other's fleets by fishery protection ships flying an international fishery protection flag.

But before that kind of situation can become commonplace we must achieve an agreed and acceptable convention. Inevitably there will have to be compromises. Some may not be to the liking of the coastal states who may feel that their sovereignty, their ability to exploit their resources, is weakened. Some may not wholly suit the maritime powers who will find rights and privileges long taken for granted will become conditional. And in the balance it will be the coastal states who will have the major increase in the responsibility for safeguarding all our rights in their waters. Those of us who know how very seriously the progress of mankind can be hampered by failure to resolve issues such as those the convention has to address can only wish the negotiators well. I do not think I would be guilty of heresy if I said that it would be nice to think that the convention would put all



us naval men out of a job, that there would be no need for armed forces at sea. But, as things stand today, there can be little prospect of this, and only by maximizing the flexibility of maritime forces can the burden they impose on national economies be reduced.

Against this background of a future where the rights and responsibilities of maritime and coastal states will need some degree of enforcement and a

future where power politics may make the movement of naval forces a sad but necessary condition of preserving peace and good order, may I suggest that we could usefully discuss the following points amongst ourselves: the rights and duties of warships under a new convention; the enforcement of the laws at sea; and the need to continue to operate and train in key areas to maintain the balance of deterrence.

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