

**Ocean Governance and A View Toward Multinational
Security Cooperation in Ocean Space**

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Cooperation in Ocean Space

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Whilst the twentieth century may have been “the century of land,” the twenty-first century is expected to become “the century of ocean.” This paper will first analyze recent dramatic changes in the structure of international society from the perspective of the social sciences, then clarify the idea of a new international law of the sea and the revolutionary structure of the United Nations Convention on the Law of the Sea. The paper will then discuss the necessity of multinational security cooperation as a prerequisite for the existence of a “global human society.”

1. Disorder in the Basic Structure of International Society

(1) The Failure of Agreements Among Nation States and Global Issues

Searching for the essence of “the power of the state” has been a key research theme in the social sciences, including law, economics, and political science. Such research is predicated on the existence of the state. It may look at how states interact with each other, how state power is managed under democratic control, or what specific methods are used to solve international disputes based on agreements among nation-states. Because the international social order is based on the key premise that agreements are made among nation-states, everything starts from the nation-state. As a result, social sciences that are not predicated upon the nation-state or on state power are not accepted as social sciences in the first place. In international law, the term “international society” refers to “intergovernmental society” and the idea of civilians or human beings does not factor in directly. Inevitably, governments are forced to recognize civil issues—that is, global issues—and try in some way to solve them by shunting them into the category of international law, but actual issues that occur in civil society have already long been dissociated from issues that occur at the level of nation-states. International society has heretofore systematically handled intergovernmental issues through international law, which is “intergovernmental law,” but it is becoming clear that to solve issues of mankind that extend beyond the framework of nation-states, or so-called global issues such as the global environment, the North-South gap, and human rights, agreements

among nation-states are of little real use. This is causing the collapse of conventional social scientific methodologies.

(2) Modern Nation-states coming apart at the seams

According to the traditional meaning, international society and international law are “intergovernmental society” and “intergovernmental law.” The first modern nation-states (called “modern territorialistic states” in international law) appeared only 200 to 300 years ago. This feudal era, based on land being the source of all value, was superseded by the capitalistic economy, where money (capital) became the basis of people’s lives. When the capitalistic economy arose, primarily in western Europe, the land-owning classes had a big problem trying to figure out how to maintain their long-held rights based on an outdated notion of land-based value in the new economic system of capitalism.

In such circumstances, the feudal lords reshaped the governance of their land holdings into “States” with the land as “territory.” With this notion of territory, they could control entry into and departure from the State. By also controlling the capitalistic markets to a certain degree, they could siphon economic interests into the areas under their control. This is the system of the present-day nation-state. Recently, however, capitalistic markets have shifted from handling actual products to derivatives, which are invisible products, and transactions have become largely computerized. Now that this change has come about, it has become impossible to manage transactions based solely on the notion of “territory” in capitalism. But no other means exists for a nation-state to manage capitalism. Because the nation-state is founded upon territory and land, which has become inappropriate for managing present-day capitalism, all hope has been lost, and state finances have rapidly fallen into the red. Every country is deeply in the red, with no hope of climbing out of debt. The main basic right of the modern nation-state is the right of taxation—which is essentially taking a percentage from the control of business transactions of all kinds—and this right has stopped working sufficiently. The age when it was enough to see things within the framework of agreements among nation-states is long gone. The law of the sea is in the same situation.

2. Changes in the Concept of the Law of the Sea

(1) Pardoism

As modern nation-states started to come apart at the seams, which is an indication that international society is fundamentally growing dysfunctional, one great man kept his perspective and thought about how humanity could survive. That man was Arvid Pardo,

who in an historic speech to the United Nations on 1 November 1967, expressed his ideas on how to deal with this crisis in humanity. One part of this speech which I am fond of and like to quote often is:

The dark sea is the womb of life. Life was protected by the sea and emerged from it. Even today, within our own bodies, in our blood and the saltiness of our tears, we hold the mark of our distant past. [BACK-TRANSLATION, PLEASE compare with ORIGINAL]

People, today's rulers of the land, are retracing their steps and attempting to develop the deep sea bed. About this, Pardo had this to say:

People's invasion of the deep sea may be the beginning of the end of humanity and life itself as we know it on the face of the Earth. [BACK-TRANSLATION, PLEASE compare with ORIGINAL]

With this awareness of the extremely critical condition facing modern society, Pardo called for the convening of the Third United Nations Conference on the Law of the Sea (UNCLOS III). Humanity as a whole, in other words, must overcome the threat of its own extinction. A system which only allows for some of the approximately 10 billion people on earth to survive, will ultimately lead to man's extinction. We must somehow find a way for all 10 billion to survive on this tiny, love able planet in the twenty-first century. If we do not, Pardo reasoned, civil society will ultimately collapse.

To achieve this, the sea will have to be granted a legal status of "mankind's common heritage." Doing so would create the basic framework of a "civil society." First, it would serve to maintain peace in the seas; second, it would promote the rational development of marine resources for humankind to survive; and third, it would raise the approach to protection of the marine environment to a global level. Pardo is the one who proposed a new order and international law of the sea. The key point to this view is seeing the sea as "the common heritage of mankind," an approach that I have named "Pardoism."

(2) The Basic Structure of the UN Law of the Sea (LOS) Convention and its Three Pillars

The "Pardoist" United Nations Convention on the Law of the Sea is a vast step beyond the structure of previous treaties. Previous treaties were simply agreements on various

matters that had been discussed and agreed upon solely among treaty powers. These agreements affirmed the rights of the individual countries, and were primarily documentary evidence of the agreements made concerning how those affirmations would be coordinated. In these treaties, rights were important while obligations were merely an incidental problem that came with the rights. In other words, the traditional system of international law is a system of dispute resolution based on the rights of nation-states, and international law, which includes the law of the sea, was founded as a “system of rights.” The UN Convention instead acknowledges Pardoism and prescribes the oceans as “the common heritage of mankind.” It retreats a step from Pardo’s proposal, however, in designating only “the sea-bed and ocean floor and its resources” as this “common heritage.” The Third United Nations Conference on the Law of the Sea, which deliberated upon the issue of the protection of the marine environment, continued, however, to discuss the marine environment in terms of it belonging to mankind as a whole. It succeeded in establishing an awareness of the seas and oceans as “one thing,” inserting the following wording into the Convention’s preamble: “Conscious that the problems of ocean space are closely interrelated and need to be considered as a whole...” In this light, one can see clearly that the UN Convention has brought about a logical shift in structure, asserting that the seas belong to all of humanity, which means the rights to the seas do as well, while the duties of their governance lie with the States. The UN Convention on the Law of the Sea is not predicated on a system of rights but on a system of duties.

The first pillar of the Convention is how to ensure peace on the seas. It is clear that maintaining peace in ocean space, which comprises 71 percent of the surface of the earth, is essential to maintaining peace in the world. This is an important keystone of the Convention. Article 88, for example, reserves the high seas for peaceful purposes. From this point on, any military exercises or actions on the high seas must accord with Article 88 or risk becoming a major issue. The problem boils down to how a State will justify exercising its right to self-defense, covered by Article 51 of the United Nations Charter, within the framework of Article 301 of the Convention, the principle of peaceful uses of the seas. The Convention states that because the seas belong to all of humanity, they can be used only for peaceful purposes, clearly stipulated for the high seas in Article 88, “Reservation of the high seas for peaceful purposes.” In this way, the Convention has established systems that also help to build peace.

The second key part of the Convention is the attention it gives to economic concerns. In truth, this was the real agenda of UNCLOS III. By designating marine resources as “the common heritage of mankind” and promoting its management and

development internationally in the name of mankind, the Conference aimed for a radical solution to the deadlocked North-South issue. To solve the problem of the North-South gap once and for all, the Convention aimed to set up a new international regime to replace the system of bilateral assistance that pairs advanced nations with developing nations. Today, as everyone knows, there is no effective international system in place for solving the North-South problem. Basically what we have is no more than a system of financial assistance directly between two countries. Conventionally, international society has only approached the North-South problem within the framework of a donor-recipient pairing between an advanced country and a developing country. Pardo believed that such a system could never solve the problem, no matter how long it was implemented. Instead, he proposed the idea of managing the 71 percent of the Earth's surface—the seas—comprehensively, particularly promoting development of the ocean floor rationally by an international ocean institute that represents mankind to create an international regime that is far superior to the bilateral assistance system to solve the North-South problem.

The third pillar concerns environmental issues. Because the seas belong to all of humanity, it is naturally the people's responsibility to manage the seas. It is understood that carrying out environmental measures on a case-by-case basis as has been the case up to now will not work. What is needed is comprehensive management of all the seas as a single ecosystem. In the stages leading up to the Convention, all marine pollution problems were handled separately, such as pollution caused by marine development, vessels, or dumping. Once the Convention was enacted, a comprehensive approach was adopted for the first time—a revolutionary methodology that allowed various problems of marine pollution to be considered on the same level. The basic awareness motivating this way of thinking was expressed in the preamble of the Convention, as noted above, in the phrasing: "Conscious that the problems of ocean space are closely interrelated and need to be considered as a whole..."

(3) Ocean Governance and Comprehensive Management of the Seas

If the UN Convention on the Law of the Sea is perceived in this way, we see that at the core of its basic structure is the solemn guiding principle that the seas are the common heritage of mankind. The comprehensive management of the seas that goes with the responsibility inherent in the principle of common heritage is known as "ocean governance." This term is a masterpiece created by the International Ocean Institute. The UN Convention observes this principle and stipulates in detail the duties a State is obliged to fulfill. Article 218, for example, prescribes "Enforcement by port States." Up

till now, under the system of enforcement by flag States, a foreign vessel entering the port of another country could never be investigated. But now, whether a vessel is in the territorial sea of a coastal State, on the high seas, within the exclusive economic zone of a third country, or even in the territorial sea of a third State, if that vessel has caused marine pollution in violation of the international treaty, it is a breach of faith toward civil society, and the vessel can be investigated by the port State on behalf of mankind. The Convention establishes this entirely new system. Such a system cannot possibly be explained within the framework of the simple intergovernmental agreements of the past. With this approach, the principle of a common heritage of mankind is not merely an issue of common heritage but necessarily includes “common governing authority.” Not only do the seas belong to all of humankind, but the important issue becomes how humankind will manage the seas—hence, a common governing authority. Elisabeth Mann Borgese states that the Convention for the first time establishes “the principle of cooperation” in international law. The legal principle, she puts forth, requires countries to cooperate based on the notion of humankind.

When this is the case, friction will arise with many of the traditional international structures. In international adjudication, for example, no international tribunal has ever had compulsory jurisdiction over a sovereign nation. Yet, according to the UN Convention on the Law of the Sea, the International Tribunal for the Law of the Sea, established in Hamburg, Germany, holds compulsory jurisdiction for the first time in history over all parties to the Convention, making it possible to freely appeal to the Tribunal even when States engaged in a dispute over jurisdiction are not in agreement.

In addition, international tribunals in the past recognized only sovereign nations as litigants. This was because international society was a society comprised of nation-states, and only sovereign nations were recognized as parties with full rights and duties under international law. It was inconceivable that anything but a State could be a party in an international tribunal. With the International Tribunal for the Law of the Sea, however, a special chamber was set up to allow an agent other than a sovereign nation to bring a suit. That chamber, the “Sea-Bed Disputes Chamber,” accepts actions even from private citizens or companies engaged in sea-bed development. This is a remarkable shift from the limited framework of States as the sole possessors of legal capacity in an international tribunal to a new framework that extends even to private citizens.

Next, I address the issue of protection of the ocean environment. Up to this point, marine pollution has been treated basically as contamination, however the UN Convention on the Law of the Sea now defines it in Part 1, Article 1, Paragraph 4 as the

“introduction by man ... of substances or energy into the marine environment ... which results or is likely to result in ... deleterious effects [to the marine ecosystem].” When the French government carried out its nuclear tests in the South Pacific, it did not ratify the Convention until after the tests had been completed. Television reports at the time showed that the French government admitted to carrying out the tests but claimed that no radioactivity was released. Even if that was the case, bubbling on the surface of the sea due to the vibration from the explosions over a significantly wide area had been observed. This is a clear example of “introducing energy into the marine environment,” covered explicitly in Article 1 of the Convention, and would therefore constitute marine pollution. France was aware of this, which is why the ratification of the treaty had been postponed until after the testing had been completed.

This type of situation is also covered under the Convention in the part concerning exclusive economic zones. An exclusive economic zone is not the territorial sea of a State. The State does not hold sovereignty over an exclusive economic zone but merely has “sovereign rights.” Sovereign rights are considered exclusive jurisdiction, and signify the exclusive right of a coastal State to exploit the resources and economic interests within the zone. The rights to the zone are therefore not based on the territorial concept of ownership by the State. Because an exclusive economic zone is a zone to which the right of economic exploitation is granted exclusively to a coastal State, the coastal State has that much more obligation to manage the ecosystem of the exclusive economic zone.

3. The Need for Multinational Security Cooperation in Ocean Space

(1) Activities to Maintain Peace in the Seas: OPK

On the obligations of coastal States, I believe Japan should promote maritime peacekeeping operations. The topic of the “peaceful use of naval forces” arises from this discussion. Japan’s Maritime Self-Defense Forces (MSDF) must be used not only to fulfill the obligation of showing that Japan is exercising its right of self-defense as stipulated in Article 51 of the UN Charter, but as maritime experts that can contribute in some way to civil society. They must be pressed into action to energetically fulfill new duties brought into existence by the framework of the UN Convention on the Law of the Sea. The United Kingdom, for example, has taken a forward-looking view and aims to spend half of the annual budget for its naval forces on national defense, whilst devoting the other half to efforts in ocean governance on behalf of humankind. The US, although it is not yet a party to the UN Convention, has expressed great interest in this issue, and is starting to study it seriously. With Japan, Article 9 of the Japanese constitution

severely limits the role of the SDF, making such action very difficult. For the very reason that Japan is prohibited to possess military potential or force, I believe my country needs to contribute on a growing scale to civil society. I have taken this idea to Japan's Defense Agency and tried to persuade the agency to use the MSDF for peaceful purposes on the seas as a way of appealing to the global community. I argued that the Japanese people and the international community would interpret this effort correctly as a natural part of the responsibilities of the SDF.

(2) The OPK Tokyo Appeal

One result of my persuasive efforts has been a joint research project under the auspices of the National Institute for Defense Studies, having gained prior approval from the then Defense Agency Vice Minister Akiyama. The plan took the form of the OPK Tokyo Appeal, which was announced in 1997. OPK stands for Ocean Peace Keeping, an acronym created by the research group.

I would like to clarify here that most of the content of the OPK Tokyo Appeal was incorporated into the 1998 final report of the Independent World Commission on Oceans (IWCO): *The Ocean... Our Future*. This report proposes a global action plan for the seas, and was created to serve as a basis for discussion to establish such a plan. Part one of the report, "Promoting Peace and Security in the Oceans" is largely comprised of the ideas that came up in the joint research project at the National Institute for Defense Studies, and deals with the peaceful use of naval forces. Unfortunately, the acronym OPK, a wonderful acronym which succinctly relays the new concept, was not adopted due to opposition from certain members in the IWCO. Most of the underlying ideas were incorporated, however, which is something to be celebrated—an unprecedented case of Japan's original ideas and critical awareness being incorporated into a global document addressing such important issues.

In the world today, various endeavors to promote ocean governance are taking place. One such effort is the Integrated Coastal Zone Management (ICZM), which is an attempt to manage coastal zones that lie between sea and land in an integrated fashion—also known as Integrated Coastal Area Management (ICAM). How to comprehensively manage these zones, which bring together sea and land, including the issue of security, is a topic now being discussed around the world. Many different countries are energetically carrying out research domestically, and Canada has already moved ahead to the stage of implementation. Also, at the global "Rio+10" summit, which is to take place in Johannesburg, South Africa in September 2002, ICAM will most probably be an important topic on the agenda. Unfortunately, there are no

indications that Japan, as an island nation, is taking any action on this issue at this time.

(3) International Measures toward Ocean Governance

At this point, I take a brief look into the international measures on ocean governance. The Intergovernmental Oceanographic Commission (IOC) of UNESCO has determined that 90 percent of marine pollution is land-based, which means that the way in which measures are implemented on land is vital to the prevention of marine pollution. The problem is that discussions of land are tied to the sovereignty of coastal States, and as yet, it is not possible to deal with these issues at an international level. Nevertheless, the rapid mounting awareness of the urgent need to act in order to halt the complete destruction of earth at the international level, has meant that the United Nations has finally taken the first steps toward solution. In September 1999, the International Workshop on Coastal Megacities was held in Hangzhou, China, organized by UNESCO-IOC. It was the first-ever workshop to focus on coastal area management in coastal megacities, and took advantage of this shift in UN policy.

Also, to take direct measures to solve issues related to marine pollution from land-based sources and activities, the United Nations Environment Program (UNEP) has begun a major international project with its Global Program of Action for the Protection of the Marine Environment from Land-based Activities (GPA-LBA). This project seeks to develop a global strategy for protecting marine and aquatic ecosystems from the vastly harmful effects of land-based human activity, and seeks to impose regulations at an international level. UNEP rests at the center of this strategy, and there is even talk of changing the UNEP charter in order to be able to put every effort toward taking steps to resolve these problems over the next 10 years. A coordination office for UNEP/GPA-LBA was established in 1999.

One activity that deserves close observation is the United Nations Informal Consultative Process on Oceans and the Law of the Sea (UNICPOLOS), whose first meeting was held in May 2000. Since the adoption of the UN Convention on the Law of the Sea by UNCLOS III in 1982, those permanent UN bodies whose legal framework had been clarified by the Convention and had been established to implement ocean governance, had their roles limited to extremely specific objectives. These bodies are: the International Seabed Authority for handling seabed development; the International Tribunal for the Law of the Sea for settling disputes; and the Commission on the Limits of the Continental Shelf for establishing the outer limits of a coastal State's continental shelf. Yet there is no body to study and implement ocean governance as a whole. The Independent World Commission on Oceans (IWCO), in its report, mentioned earlier,

called for the convening of a UN Conference on Ocean Affairs, and the establishment of a World Ocean Affairs Observatory. It also proposed a periodically convening World Ocean Forum as a public trust to carry out all civil ocean assessments. None of these have materialize as yet.

At the 1998 Seventh UN Commission on Sustainable Development (CSD-7), however, a notable change could be observed on these issues. Though the meeting did not lead to the establishment of a permanent body, it was decided then to establish an informal standing committee under the auspices of the UN General Assembly that would serve almost like a “springboard” to facilitate more substantial review by the Assembly of developments in ocean affairs. This was the start of UNICPOLOS, whose second meeting was held in May 2001. Although the Consultative Process is informal, it is extremely valuable in that the resolutions the Assembly adopts are based on the reports it produces.

(4) The Need for Multinational Security Cooperation in Ocean Space

In actual fact, my ultimate research theme has been “whether humanity as a whole can survive in the twenty-first century, or not.” I have been researching the law of the sea for nearly 35 years, and I have come to believe that it is not possible to answer this in the affirmative unless a civil society is built that transcends the traditional notions of international society, based on the new thinking on the law of the sea that forms the basis of the UN Convention on the Law of the Sea. In short, humanity has no future apart from living with the sea. Without a doubt, Japan, as an island nation in particular, could not exist geopolitically without the oceans. Also, from a pacifist perspective, a paramount factor in Japan’s modern history and the fundamental principle of our constitution, we have no other rational choice but to try to establish a civil society by securing peace on the seas. In the Lisbon Declaration, adopted together with the IWCO report on 31 August 1998, the new legal concept of “limited sovereignty” was presented, clarifying that limited rights are inherent in the concept of national sovereignty itself. This clarifies the substance of “State obligations” in considering issues of the sea when adhering to the notion of civil society, and is a conclusion developed from necessity out of the principle of “mankind’s common heritage.” The self-imposed pacifism built into the Japanese constitution is also an inherent limit to the exercise of national sovereignty. Japanese people need to be aware that Japan bears the responsibility for civil society to take the global lead in bringing about ocean governance, as no other country can, utilizing this progressive twenty-first-century concept.

Conclusion

To summarize:

- 1) Promoting security in the oceans under the principle of a “common heritage of mankind” as stipulated in the UN Convention on the Law of the Sea—**that is, peaceful use of the sea—does not merely mean to deter intergovernmental disputes in ocean space, which is nothing but a negative form of security.** Peace is not just the absence of disputes, but represents the creation and maintenance of an equitable system based on civil society. The opposite of “peace” in this context would therefore be “inequity.”
- 2) A program for the peaceful use of sea, must first and foremost **promote sustainable development in regional and global society, and be based on the principle of cooperation** within the framework of integrated coastal area management.
- 3) The role of national defense forces, including naval forces, is the key to this program, **and should be studied seriously as a method for a State to fulfill its obligation to civil society.** Here, it is vital to watch the latest movements in the Mediterranean region of the Mediterranean Commission on Sustainable Development (MCSDD), created upon amendment of the Barcelona Convention and the Mediterranean Action Plan in 1995–1996. This Commission is composed not only of representatives of State bodies in charge of the environment and development, but also representatives of local authorities, chambers of commerce and industry, labor unions, and non-governmental organizations representing local communities, not to mention concerned naval authorities.
- 4) **As for the peaceful use of naval forces, it may be possible to pool the collective efforts of the various countries’ naval forces at the regional and international level to conduct law enforcement (OPK) such as joint monitoring and security operations for the peaceful use of the seas.** Through such joint activities, it will be possible to deal with smuggling, illegal immigration, environmental subversion, piracy, and international terrorist activities—threats to civil society.
- 5) The Johannesburg World Summit to be held in South Africa in September 2002, a UN conference on environment and development, **should provide a good opportunity to initiate regional international conferences that include the**

participation of related governments and naval authorities as well as other users of the oceans in order to begin specific discussions on creating a program of multinational security cooperation in ocean space within the framework of integrated coastal area management.