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# A DISCUSSION OF SOME OF THE PROBLEMS OF THE "NEW TERRITORIES", WITH SPECIAL EMPHASIS ON THE SEABED ISSUE.

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**(Course C-53 - "Scandinavia in international relations").**

Ladies and Gentlemen!

In this lecture I shall talk about some of the problems of the so-called "new territories" of the world. Roughly speaking, I have chosen to split the subject into two parts: The first part will be a rather general and maybe somewhat abstract presentation of the issues which this complicated and diffuse subject involves. The other part will be a more specific presentation and discussion of recent developments, especially with regard to the seabed and the ocean floor.

First of all, however, we need to define our subject matter and its key concepts. What do we, for instance, mean by the term "new territories"? A "new territory" is defined in the following, two-step way:

> *"A geographical area which (I) is not already placed under the rule of any state or placed under the authority of any international organization, and (II) is becoming the object of an activity which calls for regulation and control of what is going on in the area".*

This definition defines not only the term and the concept "new territory". It also defines the central problem of a new territory, namely the need of law and order, the need of some kind of regime – national or international – to perform the task of regulating and controlling the activity which is taking place or is about to take place in these areas.

This problem is not a self-evident one. One may for example ask; what exactly are these activities that allegedly should be regulated and controlled, and why should they be regulated and controlled?

The activities in question may be manifold. In a new territory, they start with geographical exploration, which is usually followed by a more or less scientific investigation of the territory concerned. Gradually the scope of possible activities widens up, to include on the one hand economically directed enterprises like prospecting and eventually actual economic exploitation of the territory's natural resources. On the other hand, the activities may also include military or strategic measures like testing of weapons systems or even establishing bases or deployment of forces.

Activities like the ones mentioned – whether they be of scientific, economic or strategic character – certainly call for some degree of regulation and control. Traditionally, these tasks are performed by national governments, but new territories are, per definition, areas lying outside the scope of traditional national jurisdiction. Therefore, the developments concerning these areas constitute a truly international problem. Activities taking place in new territories do necessarily affect various legitimate interests – both public and private – in several countries. When several countries or private citizens or agencies of several nationalities are engaged in activities within a new territory, there certainly will be diverging interests which have to be reconciled. Anarchy and lawlessness have to be avoided, some degree of law and order has to be established. I think it is generally accepted that it is in the interest of all mankind that the present and future developments of the new territories take place in a peaceful and orderly manner, and that these areas shall not become the scene or object of international discord.

Then one might ask; exactly which ones are these areas that we are referring to as new territories?

The term "new territories" denote areas that are distinctly marginal in a geographical sense as well as in a political and legal sense. More specifically, these areas may be said to include the outer space and other celestial bodies, the world oceans (the High Seas), the seabed and the ocean floor, and finally the polar areas, including both the Antarctic and the central parts of the Arctic.

The political and dynamic characteristics of these areas are marked by two, partly divergent considerations with regard to the parties which are engaged in activities in the areas:

1) The respective abilities of the parties concerned with regard to utilization or exploitation of the area; in an other word, their respective capabilities.

2) The need for a minimum degree of law and order, that is, the need for political and legal regulation.

As I said at the outset, the central, unsolved problem of the new territories is the question of their present and future regulation. This raises another question which is of vital importance not only to the parties directly involved in the developments regarding one ore more new territories, but which has significance also in a wider, global context. This question is: Shall this regulation eventually take place through conflict or through cooperation? Most of you would probably agree that whenever possible, cooperation is to be preferred to conflict as a way of solving problems. Still, there is the question of how to cooperate, of what kind of cooperation is best suited to accomplish the regulation of the new territories? Should one, for example, choose an universal model of cooperation, where all nations cooperate on an equal footing? Or should one adopt a more exclusive principle, leaving it to the nations most directly concerned in the respective areas to work out solutions for these areas? What ought to be the rôle of the U.N. with regard to this issue? What is the feasibility of establishing one or more so-called ”territory-owning international organizations” to govern the new territories and their utilization? Etc, etc. Also, there is the question of what kind of cooperation is best suited to take care of the various legitimate interests, including those of the small states, in the new territories, where the big powers, because of their superior capabilities, are in a position to play a much more dominant rôle than elsewhere in the world.

I shall not give you the final answer to these questions, but we shall be aware of their significance in connection with the more specific issues – especially the seabed issue – which we shall discuss later on.

Now let’s take a look at the so-called ”extra-national resources”.

One of the most potent factors behind the dynamics of the new territories, behind the emergence of the problems connected with these territories, is the existence – real or imagined – of various natural resources within these areas. The image of such resources as potential

sources of wealth has been a motive force to trigger exploration, prospecting and finally eventual economic exploitation. Such resources as may be found in the new territories are, with a broad and general term, called "extra-national resources". The extent of some of these resources is already fairly well known, whereas in other areas our knowledge is very poor indeed. On the whole, one must be prepared to expect some surprises with regard to these matters, one way or the other.

The Oceans have always been an important source of food in the shape of various living organisms, but in recent years certain species have been exploited so intensely that they almost have been threatened by extinction. The heavy killing of the whale has necessitated international regulation of the whaling operations, and for certain areas like the northern Atlantic, international agreements have been reached for regulating the exploitation of certain species of fish. Time and again, however, experience shows how difficult it is to reach general agreements on regulatory measures. Today there is a growing interest for those of the food reserves of the Oceans which have not been exploited as yet. Potentially, the Ocean is a producer of high-quality food-substances which can be exploited to a much larger extent than today if appropriate techniques are developed to utilize other organisms than those which traditionally have been caught for food for human beings. One example here is the krill, a small shrimp-like creature which exists in enormous quantities in the Antarctic Ocean. It appears that the krill can be processed and made into food for humans, and that it is particularly valuable because of the high protein content.

Traditionally the oceans are free for everybody, but the question of a radically more intensified exploitation of its riches also raises the question of international control and regulation of such activities. Furthermore, there is the question of pollution which may disturb an optimal utilization of the oceans' living resources. Such questions may be dealt with through international agreements, which will be binding to the extent that the respective countries are willing to accept them.

While the oceans always have been a source of food (living resources), they are nowadays increasingly being regarded also as a reserve of industrial resources. The ocean water is in itself an enormous reservoir of many of the most important minerals for modern industry. For those of you who care for figures, I can mention that according to recent calculations, the oceans' water contain 15 billion tons of copper and the same amount of manganese, 20 billion

tons of uranium, 500 million tons of silver and 10 million tons of gold. However, it is on the seabed and on the ocean floor one finds the resources that are most likely to be exploited, and the figures here are even more impressive.

The oceans' own electrolytical process has resulted in the formation of so-called magnesium nodules, which cover large parts of the seabed. Investigations conducted during the International Geophysical Year (IGY, 1957-58) shows that only in one single area in the Southern Pacific Ocean there are approximately 200 billion tons of such nodules lying on the seabed. The average mineral concentration of these nodules is 32 % magnesium, 22 % iron, 19 % silicium plus considerable quantities of kalcium, aluminum, nickel etc. Other parts of the ocean floor are covered by rich mineral deposits containing for example 20 % aluminum oxydes and 13 % iron oxydes. Such deposits, with a thickness of about one 100 meters, can be found in areas covering about 100 million square kilometers. And this is only the surface of the seabed. Underneath the seabed there are natural resources just as underneath dry land. Here the interest has mainly focused on the oil, which has already for many years been actively exploited on continental shelves. All told, we can safely conclude that the knowledge available today shows that the oceans and the seabed underneath contain natural resources of a magnitude many times as large as the ones which can be found within the national territories of all the world's countries combined. This might not be too surprising when we keep in mind that he seabed and the ocean floor beneath the High Seas comprise as much as 5/7 of the Earth's total surface. The exploitation of the seabed resources is still difficult, but no longer theoretically impossible, and in view of the present developments within submarine and underwater technology, it will just be a matter of time before exploitation of the oceans and the seabed, even on the great depths, will be both practically and economically feasible.

As for the polar regions, our knowledge about their value as reservoirs of raw materials is somewhat more uncertain. We do know, however, that there are enormous oil and gas reserves along the coasts of the Arctic Ocean, and there is evidence supporting the assumption that these resources – the oil and gas deposits – extend into the seabed underneath large parts of the North Polar Basin and the Arctic Ocean itself. The legal situation of the ice-covered Arctic Ocean is presumably the same as with regard to the High Seas elsewhere in the world, but the situation is somewhat complicated because some countries adhere to the so-called "sector principle", and there are some doubts and uncertainties as to the interpretation of this principle. Practical exploitation of the Arctic Ocean itself as a source of raw materials may

still be such a remote possibility that it won't create any control- or regulation problem for many years to come. But on the other hand, other use of extra-national areas in the north, for example in connection with transportation, already has created political and legal difficulties. This is due to the fact that while on the one hand, all known lands and islands in the Arctic is firmly placed under national sovereignty, there are still uncertainties regarding the status of the ice-covered waters, straits and passages between the various islands in the north. This question is for instance very acute with respect to the Northwest Passage; a question which has resulted in a serious U.S.-Canadian controversy.

Apart from climatic similarities, the conditions in the Antarctic are rather different from those found in the Arctic. While in the north it is the frozen ocean which is the extra-national area (the new territory), you have in the south an ice-covered continent considerably larger than all of Europe. Antarctica today is marked by extensive as well as intensive scientific research, which is conducted in active international cooperation between 12 nations. These research activities, which have a purely scientific character, started under the IGY, and they do not have economic exploitation as a prime target. But exploration and research will in most instances also be a starting point for subsequent exploitation, and there is no reason to believe that this won't be the case in Antarctica too. Mineral deposits of various kinds have already been traced, but so far, none of these deposits can be expected to be profitably exploited under the severe climatic conditions which prevail in Antarctica.

What, then, is the possibility of exploiting such resources as might be found in the outer space and on other celestial bodies? We can safely conclude, I think, that this possiblity is very slight indeed. The kind of regulation and control of space activities which may be needed in the foreseeable future, will primarily serve security and safety goals. This has in part a military aspect, namely to prevent the space from being used for warlike purposes; in part there is the safety aspect of preventing certain activities in the space, like nuclear explosions, that might have harmful effects on the Earth. These problems have already been dealt with in the Outer Space Treaty between the U.S.A. and the U.S.S.R. in 1967; hence the most urgent need for regulation has been satisfied, and the questions concerning sovereignty rights, property rights and controls are not immediately relevant.

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I have – on purpose – spent a rather large part of this lecture hour on a more general, background presentation of the problems of the new territories, with a certain emphasis on the prospects of exploitation and utilization of these territories. Before looking more closely into some more limited aspects of the problems, we shall sum up the essence of the foregoing:

1. Some parts of the world are, because of some common features in a political and legal respect, known as the ”new territories”.

2. To the extent that the new territories contain any natural resources, these are considered to be extra-national; so-called ”extra-national resources”.

3. The new territories are – more or less rapidly – becoming the scene of various activities, including systematic exploration and potential exploitation of extra-national resources.

4. Such activities as are taking place in the new territories are increasingly in need of regulation and control.

5. The developments taking place in the new territories - including the eventual regulation of certain activities – will, to a greater or lesser extent, affect the whole international community of nations, including big powers as well as small states.

6. To avoid international conflicts, the eventual regulation of the new territories should be the object of some sort of international cooperation, so as to assure that all legitimate interests are given proper consideration.

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Now let’s turn to a more specific presentation and discussion of a few more limited aspects of the problems of the new territories. From a national, Norwegian point of view, it would probably have been most interesting to deal with the recent, present and future developments in the polar areas. I understand, though, that the audience prefers to concentrate on issues concerning the ocean and the seabed. This of course is fair enough, especially considering that while the developments in the polar regions directly concern only a rather limited number of countries, the developments with regard to the ocean and the seabed are a direct concern to most countries in the world.

Le's first have a look at the legal, political and technical developments which make up the background for today's situation with regard to these issues.

Historically, the sovereignty of states has been tied to land territory, and the seas have been the possession of none, free and open to all. Allowance has only been made for the "legitimate" need of coastal states to control activities close to their shores, and the law of nations has acknowledged the sovereignty of coastal states over their territorial waters. The general principle of international law used to be that these territorial waters stretch three miles out from the coastline, once the maximum reach of a naval gun. Of course, military technology has long since outdistanced the old guns and made the three mile limit irrelevant for defense purposes. Recent claims by many states for wider territorial waters, or for exclusive fishing rights beyond the three mile limit, must be seen as an effort to establish more up-to-date criteria for the rights of coastal states in waters bordering on their shores.

At the same time, technology has now made it possible to exploit natural resources, e.g. oil and gas, of the seabed both within and beyond the old territorial limits. Thus, it has become necessary to determine who shall have property rights and regulatory powers over the seabed as distinguished from the waters above it. There is still general agreement on the principle of the freedom of the seas, even though some states do claim territorial waters far beyond commonly accepted limits. There is an equally strong agreement that exploitation of natural resources on "underwater land" requires a high degree of regulation and control. At first, the problem concerned only submerged areas in shallow waters close to the coast. For these areas the problem was solved by a Convention on the Continental Shelf, which was adopted at the 1958 Geneva Conference on the Law of the Sea.

The Continental Shelf is a natural continuation of the coastal land; a "shelf" of varying width stretching out into the sea before there is a steep slope down to greater depths. The change from the more or less flat shelf to the steep slope often may be gradual, so that it may be difficult to determine where the Continental Shelf actually ends. A usual definition of the Continental Shelf has been that it includes that part of the seabed outside the coast which lies in waters no more than 200 meters deep. Since the shelf is a natural extension of the coastal land, it was also natural to claim that the sovereign rights of a coastal state must extend to the Continental Shelf. The 1958 Geneva Convention, therefore, confirmed the sovereign rights of an adjacent state to the seabed and subsoil of the Continental Shelf outside its coastline.

In 1958 it was generally thought to be impossible to exploit seabed resources in deeper waters than some 200 meters, but subsequent developments have shown that there is practically no lower limit for such operations. The 1958 Convention on the Continental Shelf, therefore, no longer provides a satisfactory solution to practical problems of seabed rights. In fact, the Convention's definition of the Continental Shelf is so vague that in present circumstances it may create more problems than it solves. Article I of the Convention contains a major modification of the general 200 meters limit to the Continental Shelf by stating that:

> *"... the term "Continental Shelf" is used as referring (a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts".*

Rule (b) was necessary as a measure to regulate title to submarine areas at depths lower than 200 meters, but separated from the adjacent coast by a deeper trench. This is the rule that has given Norway title to a large portion of the seabed under the North Sea in spite of the fact that these areas are separated from Norway by the much deeper Norwegian Channel.

The "exploitability principle" in rule (a) however, while apparently just a minor modification to provide flexibility in an otherwise arbitrary rule in 1958, today means that there is no defined limit to the Continental Shelf.

With a technology which gradually cancels all former limits to the exploitability of submarine resources, the only remaining requirement for a state's control over the seabed and its subsoil is that the submarine areas are "adjacent to the coast". Progressively, as the practical depth limit disappears, coastal states may extend their control ever further into the sea until it reaches mid-ocean. In theory, at least, all seabeds may then be divided between adjacent coastal states. This problem of sovereign rights over the seabed is acute, and it was brought to the attention of the United Nations' General Assembly in 1967. Since then, the problem has been discussed by a special U.N. committee, which comprises 42 states, and which has the impressive name The Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction. In this committee, Norway has played a rather active rôle, as the chairman of the committee was the Norwegian U.N. delegate, ambassador

Edvard Hambro, who subsequently (1970-71) became the president of the U.N. General Assembly.

The results of the U.N.'s dealing with the seabed issue are not too impressive, so far. However, the Seabed Committee succeeded in reaching some kind of agreement on the following principles:

1. A definite lower limit shall be established for a coastal state's rights over the seabed.
2. Submarine areas beyond this limit shall be established as joint international territory, common to all men and nations.
3. The international areas shall be placed under the jurisdiction of the U.N., and the U.N. itself or a special agency shall regulate exploration and exploitation of the international seabed.
4. The U.N. shall be authorized to grant concessions for exploration and exploitation in international parts of the seabed to individual states and/or private groups and to demand fees for such concessions.

In December last year (1971) the U.N. General Assembly endorsed the preparatory work which the Seabed Committee had made to pave the way for a new international conference on the peaceful use of the seabed. The proposed conference will probably be held in 1973, and it will deal with all aspects of the Law of the Sea. The purpose of the conference is to define zone limits and reach agreements about what rights the individual states will have within the different zones. The conference is also going to discuss methods and criteria for distributing the income from exploitation of natural resources on the seabed.

The Law of the Sea is a rather comprehensive subject, which involves four main problems:

- The delimitation of the territorial waters of the coastal states.
- The delimitation of the fishery zones of the coastal states.
- The delimitation of the Continental Shelf.
- The exploitation of the seabed beyond the Continental Shelf.

With regard to the territorial waters question, there are considerable differences between the countries. Some Latin American countries have claimed 200 nautical miles, whereas the U.S.A. and Great Britain have insisted on only 3 miles. Norway has, together with the other Scandinavian countries, traditionally claimed a 4 mile limit. At the proposed Conference, many states will probably suggest a common standard of a 12 mile limit, as a reasonable compromise solution.

With regard to the question of fishery zones, there is a tendency today that coastal states claim ever wider areas, like 50 or even 100 miles. The Norwegian fishery zone limit, however, is 12 nautical miles. Also with regard to the Continental Shelf, there is a tendency towards enlarging the national shelf areas and more regulatory powers to the coastal states. There is reason to believe that the conference next year will drop the old 200 meters criterion, and fixing a new general limit of say 500, maybe 600 meters. Although Norway as of yet has not taken an official stand on this matter, I should think that our government would endorse a move like that. That would be natural, anyway, because the oil-rich Norwegian Continental Shelf has its greatest width between 200 and 500 meters below sea level. Also, fixing a limit of say 500 meters would mean that the Norwegian Arctic island territory of Spitsbergen would be linked to mainland Norway by a contiguous shelf, all under unquestionable Norwegian sovereignty. On the other hand, it should also be mentioned that there has been suggested publicly that Norway unilaterally internationalize her Continental Shelf all the way up north to Spitsbergen, that we give it all away to the U.N. to help the U.N. solve their financial problems. I do not, however, consider such a move on the part of our government to be very likely.

With regard to the questions of the utilization and exploitation of the seabed beyond the Continental Shelf, three main alternatives have been discussed:

(1) That the seabed shall be free for all.

(2) That the coastal states share it all between themselves.

(3) That the area shall be internationalized.

In view of the principles already adopted by the U.N., it seems most likely that the third alternative; some kind of international regime, eventually will be established. This would be in full accordance with official Norwegian policy, as Norway for several years has shared the

American viewpoint that the seabed must be regarded as the so-called ”common heritage of mankind”.

A remaining question, however, is how this internationalization is to be organized. Possibly, this question might be solved by means of one or more conventions about establishing an international authority, which might acquire the character of a ”Territory-owning international organization”. The most realistic solution, though, seems to be that of establishing an agency with strictly limited functions as a licencing and controlling authority.

Such a solution may conceivably serve a double or dual purpose:

(1) To solve the problem of regulation and control with the eventual exploitation of the extra-national resources of the seabed.

(2) By means of licence fees and royalties, to solve the U.N.’s financial problems, and thereby making it possible to reallocate income resources to underdeveloped countries or for other global, ideal purposes.

In principle it is feasible that such a solution also, in a more or less modified way, might be applicable to other new territories than just the seabed. As a matter of fact, similar ideas have also been proposed with regard to the future utilization of the Antarctic. I shall not go into details as to the Antarctic problems, but partly because Norway is one of the limited number of countries actively engaged in Antarctic developments, and partly for the sake of comparison, I’ll give you a very brief outline of the relevant features. Seven nations – including Norway – have made claims to sovereignty over vast stretches of the Antarctic continent, but none of the claims have ever won general international acceptance. Together with 5 non-claimant nations – including the superpowers U.S.A. and U.S.S.R. – these 7 countries entered into extensive scientific research cooperation in Antarctica back in 1957 in connection with the IGY. Mainly because of the successful experience of the cooperation, all 12 parties signed a treaty, the so-called Antarctic Treaty of 1959. Among other things, this treaty provides for a very high degree of cooperation mainly with regard to the scientific research activities, but also with regard to other practical and political problems. This cooperation is being carried on by means of regular consultations between the parties concerned. The treaty did not, however, give a final solution of the sovereignty disputes, nor did it give specific guidelines regarding regulation of eventual economic exploitation of the area. Sooner or later, these problem will become acute, and some kind of solution has got to

be worked out. The similarities between Antarctica and the seabed may not seem too obvious to everyone, but there are some parallels. In both instances, there is the existence of a new territory which fits into our definition:

> *"A geographical area which (II) is not already placed under the rule of any state or under the authority of any international organization, and (II) is becoming the object of an activity which calls for regulation and control of what is going on in the area".*

Therefore, the kind of solution which eventually might be found for the seabed, must also be expected to have considerable impact on future developments in Antarctica.

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Finally, let's have a look at how our discussion of the problems of the new territories fits into the general scope of this whole course, which deals with Scandinavia in international relations. Norway, as well as the other Scandinavian countries Denmark and Sweden, is a small country in a big world dominated by big powers. It might, therefore, be tempting to discuss our topic within a strictly small-state perspective. One might, for instance, want to ask a whole series of questions like the following ones: How do the developments on the seabed or in the polar regions affect a small state? What is the rôle of the small state with regard to these developments? What would be a natural small-state policy with regard to the question of internationalization of such new territories? Etc., etc.

Instead, I'd like to warn you against putting a too heavy emphasis on the alleged peculiarities of the small state. Small states are sometimes supposed to be inherently different, both with regard to their respective interests and with regard to their behavioral patterns, from the middle powers or the big powers. Personally I am inclined to agree with the following statement by the research director of the Norwegian Institute of International Relations, Mr. Johan Jørgen Holst:

> *"Smallness is in and of itself an irrelevant basis on which to establish allegiances, coalitions and commitments in international relations".*

This, on the other hand, does not mean that it is irrelevant or impossible to evaluate the problems of the new territories from a distinctly Norwegian point of view.

Such an evaluation has been presented by dr. Finn Sollie in his article ”Current problems in the polar areas” in Cooperation and Conflict, - the journal of Nordic Studies in International Politics. As the author points out, for Norway, current developments promise rich opportunities as well as major problems. Exploration and potential exploitation of the Arctic, of Antarctica and of the seabed touch upon vital Norwegian interests, and the country must therefore be active in the process of finding a solution to the sovereignty issue and devising a political and legal framework for future developments in all three regions. As a small nation with limited resources and manpower, Norway may not be in a position to demand international recognition of her claims, but she may join in multilateral efforts to establish a reasonable balance between national and international interests and rights. To accomplish this, it will be necessary to have full understanding of the problems involved, to know the alternative solutions that may be possible, and to examine ways and means of reaching them.

Both from a national and from an international point of view, the challenge of the new territories calls for further research and study of the problems which they present in an age of unprecedented scientific and technological progress.