Professional lawyers probably develop a certain dispassion in handling the cases of their clients. Not being one of them, I found it hard to be distantly aloof from the fears and hopes of those I defended. That is probably why I regarded the label Triend of the Accused' an ideal one. It implied an act of comradeship rather than a more sang froid lawyer-client contract.

Unified Inter-Service Code

It would be interesting to allude at this stage to the efforts made by the Government of India to bring about uniformity in the three Services' Acts. The war-time experience of countries like the United States, Canada and the United Kingdom indicated the desirability of making the rights and duties of the members of the Armed Forces readily ascertainable with reference to a single code. These countries had thus gone in for a uniform code for the three Services. The Government of India, also being convinced of the importance of allowing the three Services to develop a feeling of the essential oneness of the Defence organisation, set up in 1965 a committee consisting of representatives from the Ministries of Defence and Law and Justice, and the three Service Headquarters, with the avowed objective of drafting a uniform code for the three Services. The aim was to rationalise the three Services' Acts, taking into consideration the developments in criminology and also the fact mat members of the Armed Forces would in future come from more educated and politically conscious classes.

The Uniform Code Committee, after having deliberated over the matter for nearly 14 years, brought out a draft uniform code. Whilst this draft uniform code was in the final stage of consideration the Army Headquarters wished to reconsider the usefulness and desirability of having a single uniform code for the three Services and withdraw from the committee, advocating that each Service should bring about amendments to its own Service Act to meet its own peculiar conditions. As a result, the efforts at bringing about a uniform code of Service discipline were given up and the draft uniform code was put in cold storage. Recently, however, the Army Headquarters has had second thoughts about its earlier stand and there is a feeling that militaryjustice also needs to be brought in conformity with the modern notions of criminal justice. This thought has obviously emanated from the flood of court cases involving the Army which has made the present higher echelons of the Service rethink about the antiquity of the Army Act, 1950 and the need to reform it and bring it in conformity with the changed notions of justice.

Naval law, or 'the laws of the navy' as it is termed in a popular ditty, has gradually developed into its present form over the last three millennia, i.e., from the days of triremes and galleys to the days of nuclear submarines and ballistic missiles, and has attempted to keep abreast of the changes in the perceptionofhumanrights,requirements of discipline ashore and afloat and the growing transcendence of civil procedures into the Services. like many other disciplines, it is basically protean in nature and would thus continue to evolve in keeping with developments within the Services and without, and to constitute the most important implement for the maintenance of discipline at sea.

11

THE LAW OF THE SEA

No history of the Indian Navy would be complete without highlighting the contribution that the Navy has made towards the formulation of the rational policy governing the uses of the oceans. There has, over the centuries, been a connection between naval strategy and the law of the sea, but never have the implications of this relationship been as complex as they promise to be in the foreseeable future, with the rapidly changing development in these spheres. So far as India is concerned, it had been realized during the first decade after Independence that the trend towards unilateral claims and appropriation of huge areas of the oceans made by many countries around the globe, particularly among the developing coastal states, would engender legal inhibitions to the exercise of navalpower. Notwithstanding this realization, there was no institutional mechanism within the Government to evaluate and co-ordinate ocean-related activities, both national and international, and formulate a national oceans policy. Apart from piecemeal advice from the Ministries of Law and External Affairs or {heir considerations, the practical problems in the field of the law of the sea were increasingly referred to the Navy for examination and advice. Such references to Naval Headquarters led to the realisation that changes in the political character of the world's oceans will require a rebalancing of efforts within the traditionalnavalroles of sea control, projectionof national power and naval presence. It was realised that the increasing complexity of naval missions would principally arise through denial of large areas of ocean space coming under the actual or claimed jurisdiction of coastal states.

Infact the lawof the sea hadbeendeveloping over the centuries around the widely-accepted notion of the freedom of the seas which justified placing the oceans at the disposal of all. This principle was based on two underlying assumptions, firstly, the resources of the oceans were regarded as essentially inexhaustible and, secondly, the resources were treated as *res communis* (common heritage of the world community) as opposed to *res nullius,* granting preferential rights to the 'first-comer', and hence were not liable to appropriation for exclusive use by any single state. In view of these assumptions, the oceans were the subject of political or naval rivalry but their vast economic potential was scarcely recognized and the exploitation of their resources, living or mineral, was minimal.

During these centuries the navy constituted the key element in the development of a nation's uses of the sea. As a result, the coastal states were mostly content with merely claiming a narrow belt of territorial waters. It was only in the 20th century that coastal states, finding their fishery resources near their shores increasingly threatened by large and better-equippedvessels of foreignstates, sought to protect themby extending their national authority over waters adjacent to

their coast. The end of World War II saw the beginning of the decolonisation of the possessions of Western powers and the emergence of new states in Africa and Asia. Fears and prospects of depletion of land-based natural resources stimulated practical applications of modern technology, leading to revolutionary changes in the uses of the oceans or oceanbeds. The TrumanProclamation on the continental shelf, inspired by the American fear of a shortage of hydrocarbons, was followed immediately by those of the developing countries, culminating in the convening of the First Law of the Sea Conference in 1958 and the adoption of the four Geneva Conventions on the Law of the Sea.

Soon after Independence in 1947,lhdia claimed a territorial sea of three nautical miles. Later various questions relating to maritime areas were examined between August 1955 and December 1956 and four Presidential notifications were issued claiming a territorial sea of six miles, a contiguous zone of 12 miles, a conservation zone for fisheries extending up to 100 miles and the continental shelf - the bed of shallow sea area bordering a continent The notifications were mere general pronouncements and no consequential action regarding them was ever taken. As a result of indecision or inaction, India's accession to the four Geneva Conventions on the Law of the Sea continued to remain under consideration for a long period. On September 30,1967, the territorial waters of India were extended to 12 miles, largely as a reaction to Pakistan's extension of her waters from three to 12 miles rather than on any considerations of deliberate policy. Thus, in the then prevailing attitude towards the oceans, the need to articulate any management policy for the oceans was never felt and consequently the question of having any institutional arrangements never arose since the navy represented the major national activity in ocean issues.

It must, however, be recognised that the contribution of the navy in the decision-making apparatus of the Government of India was largely the result of individual efforts made by officers who manned the Law Cadre of the Navy from time to time. One such officer deserving of mention is Shri E.E. Jhirad who took over as the Judge Advocate of the Fleet in 1946 after having served in the Royal Indian Navy for a fewyears. He was an acknowledged expert in the field of International Law and because ofhis interest and specialisaton, he took keen interest in the deliberations of the International Law Commission which had been set up in 1949 by the General Assembly of the United Nations in order to select topics relating to the law of the sea for codification.

The laws relating to the oceans were intensively examined by the International Law Commission between 1949 and 1956 and on the basis of the extensive groundwork done by the Commission, the First United Nations Conference on the Law of the Sea was convened in 1958 and succeeded in adopting four conventions on territorial seas and contiguous zones, high seas, fisheries and conservation of the living resources of the high seas and continental shelves.

The first conference, however, failed to agree on two of the most important issues submitted to it, viz., the precise extent of the territorial sea and the extent of the exclusive fisheries zone. In 1960, therefore, the second United Nations Conference on the Law of the Sea was convened to resolve these two issues but the conference could not succeed in achieving a consensus.

Shri Jhirad the then Judge Advocate of the Fleet was a member of the Indian delegation which participated in the

deliberations of the first and the second conferences on the Law of the Sea and made a significant contribution by espousing and protecting national maritime interests. As a member of the Indian delegation, Shri Jhirad stressed on the *res communis* aspects of the oceans and seas at the two conferences and made significant contribution to the evolution of an acceptable regime relating to the definition of the continental shelf,natureof rights exercised byacoastalstateonits continental shelf, character of the superjacent waters of the high seas or the air space *Sibove* those waters, laying and maintenance of submarine cables and pipe lines on the seabed, prohibiting construction of military installations or bases on the continental shelf, delimitation of the continental shelf between adjacent and opposite states and the dispute settlement procedure, the right of hot-pursuit in international law, pollution of the seas from dumping and radioactive waste, and the passage of warships through territorial waters. The reports on the deliberations in the two conferences amply testify to the persistence and assiduousness with which national viewpoints on these issues were negotiated and gained the acceptance of the international community.

Apart from the work of the two UnitedNations Conference on the Law of the Sea, three major developments were gradually intervening in the 1950s which required a re-evaluation of the scope and importance of sea power. The first major development was political in nature and involved the rapid increase in the number of new nations. Some of these newly emerged nations were inclined to look on international law as an alien system which the Western nations had imposed on them and who in effect, had begun to claim the right to select those rules which suited their interests orwhicharoseout of agreements to which they had themselves been parties earlier. Thus, psychologically, the developing states had come to feel that conditions had changed and that they were not obligated to abide by rules created by others - rules that were not designed to protect their particular interests.

The second development, which was technical in nature, was that the rapidly escalating technological revolution around the globe, especially in developed countries, had alerted the nations of the world to the vast seabed resources of the continental shelf and ocean floors. This technological revolution in the oceans had just started gathering momentum when the Geneva Conventions wereconcludedinl958.Thereafter,ourvisionof what the seas can offer altered and expanded enormously. Until recently, the exploitation of petroleum resources took place in a few areas close to the shore;nowoff-shoreplatformsextractingtheliquidgoldfromthedepthsof the oceans dot the seas all over the world and are rapidly moving towards deeper waters.

The third development was the political polarisation of the nations on the issue of the extent of the territorial sea in 1958 and 1960 around the three and 12-mile limits. The Soviet Union was attempting to gain international recognition for her long-standing 12-mile claim while the United States was still championing the cause of the three-mile limits. There were significant blocks of nations aligned with the positions of the two superpowers. Some of the newly emerging nations of Asia and Africa voted for broadened territorial sea limits as an anticolonial measure and cast their votes with the communistbloc. Aligned with the US were most of theNATO countries and certain traditionally Western-leaning nations. This East-West dichotomy was thus a major problem in the first two Conferences which impeded the development of laws governing the oceans.

After the two Law of the Sea Conferences held in 1958 and 1960 had failed to reach an agreement on the width

of the territorial sea, extension of offshore jurisdiction began to increase at an alarming rate. A number of countries extended their territorial waters to 12 miles or beyond. The Latin American countries which had earlier claimed a territorial sea extending to 200 miles from the coast, consistently maintained it. Some of the African states like Nigeria, Congo, Mauritania and Ghana also extended their territorial sea to a distance much beyond 12 miles.

A strong tendentious move was thus evident whereby coastal states were making unreasonable claims appropriating huge portions of the oceans as an extension of the areas within their jurisdiction and control. Moved to[1] action by this alarming trend, the initiative to call a world conference was taken by Arvid Pardo, Malta's representative at the United Nations. Pardo had a horrendous dream wherein he saw that the era of surface vessels had passed and that the seabed and the ocean floor was littered with crawling and creeping defence installations and other vessels and that mankind was facing the prospect of extinction. Soon after this vision became public knowledge and statements were made by some of the advanced countries denouncing the useof the submarine-launched ballistic missile (SL6M) and other sophisticated ballistic missiles which could be fired underwater from vast distances, and with the articulation of the philosophy of MAD (Mutual Assured Destruction), Pardo was convinced that what he had envisioned was a distinct possibility. He made an impassioned plea in the General Assembly of the United Nations imploring the member nations to preserve the oceans as a common heritage of mankind. This vigorous speech helped a great deal in bringing to sharp focus the pressing need to evolve suitable means for the peaceful uses of the oceans. Inhis speech he expressed the apprehension that some countries might be tempted 'to use their technical competence to achieve near-unbreakable world dominance through predominant control over the seabed and the ocean floor'. This process, he added, had already begun 'and will leadto a competitive scramble for sovereign rights over the land underlying the seas and the oceans, surpassing in magnitude and in its implications last century's scramble for territory in Asia and Africa/ He further pleaded that in order to prevent this scramble by the developed states from causing sharply increasing tensions, the 'claims to sovereignty over the seabed and ocean floor.. . should be frozen until a clear definition of the continental shelf is formulated' and that this 'commonheritage of mankind' should be used for peaceful purposes and its resources 'exploited primarily in the interests of mankind, with particular regard to the needs of the poor countries.'

In 1968 the General Assembly of the United Nations constituted a 42-member committee on the peaceful uses of the seabed and the ocean floor beyond the limits of national jurisdiction known as the Seabed Committee. In December 1970 the General Assembly adopted the 'Declaration of Principles' governing the seabed, the ocean floor and the 'subsoil thereof beyond the limits of national jurisdiction which declared, *inter alia,* mat the **area concerned and** its resources are the 'commonheritage of mankind' and **shall be** subject to an international regime established by an international **treaty** generally agreed upon.

The General Assembly further adopted a resolution to convene a Third Conference on the Law of the Sea which would establish an equitable international regime for the seabed and the ocean floor and 'subsoil thereof

beyond the limits of national jurisdiction. The Seabed Committee was enlarged from 42 to 86 members to act as a preparatory body for mis Conference.

With the convening of the Third United Nations Conference on the Law of the Sea in 1973, the Indian Government set up an Inter-Ministerial Committee on the Law of the Sea and the Seabed under the Cabinet Secretary. The Secretaries of some of the Ministries of the Government of India and the Chief of the Naval Staff were *ex officio* members of this Committee. For each session of the Third UN Conference on the Law of the Sea, the brief for the Indian delegation was processed by this Committee. The Indian delegation to the Third Conference was led by the Minister of Law, Justice & Company Affairs and included two senior naval officers as representatives of Naval Headquarters and the Ministry of Defence -Commodore (later Rear Admiral) F.L. Fraser, Chief Hydrographer of the Navy and Captain (later Rear Admiral) O.P. Sharma, a specialist in naval law who was the Judge Advocate General of the Navy. These officers were responsible for negotiations on all aspects of traditional laws of the sea e.g, the extent of the territorial sea, the contiguous zone, the newly developed concept of the exclusive economic zone, the broadened continental shelf, thehigh seas and the natureof rights exercisablebya coastal state in all these maritime zones and those of ships of other nations transiting these zones. Though some of the developments mentioned are beyond the scope of the period covered in this volume, their significance merits inclusion here, but what also needs to be stressed at this stage is that the conflict involving the interests of developed, developing and underdeveloped states and the incompatible demands of the littoral and landlocked states have virtually led to an impasse especially because the exploitation of the oceans, ocean beds and 'subsoil thereof has been escalating on a geometrical scale and **the** ocean resourcesxespeciallyhydrocarbons are dwindlingatan alarming rate. To qoute Rene-Jean Depuy, author of *The Law ofThe Sea - Current Problems,*The process of decolinisation (particularly after World War II - author)has introduced into the international scene a large number of coastal

and landlocked and otherwise disadvantaged States. The oceans are becoming areas of potential conflicts. As far as the law of the sea is concerned, it is necessary, as the late Wolfgang Friedman said, to go from the law of mere coexistence toward the law of co-operation. As in all periods of upheaval resulting from the advent of new techno logical or economic factors, contradictions are exaggerated, butitis possible to isolate the principles of dialectical tension which activate them. We see four:

- the law of the sea was unidimensional, it is becoming pluridimensional;
- it was essentially a law relating to movement, more and more it is takingits place as a law relating to appropriation;
- for the most part it was a law of a persona l character in which the notion of sovereignty has little place; today, on the contrary, it has become territo rial law with the juridical consequences that it implies;
- akwofaurtiversalratureandfunction,itnowgiveseffectmoreandmore

to regional situations.

These four principles should be understood, as always in a dialectical analysis, as portraying not phenomena of substitution but sources of tension; for each principle; the second alternative does not replace the first; it only confronts the first alternative obliging the first to take account of it without succeeding in destroying the first.

The evolution of the new law of the sea has a direct bearing on India's interests in maritime law. Besides being animportant member of the comity of Asian and African nations which for many years had been demanding extensive changes in the Western concept of the law of the sea and claiming the right tohaveasay and to participate in the formation of the sea law, India had special and vital interests in the emerging law because of her peninsular configuration. After Independence the country was preparing herself to protect her economic interests through national legislation, which she did later in 1976, by declaring the extent of her territorial waters to 12 nautical miles, contiguous zone to 24 nautical miles, exclusive economic zone to 200 nautical miles from the "base line', i.e, the low-water line, and the jurisdiction of the continental shelf over the seabed and the soil below the seabed 'throughout the prolongation of its land territory to the outer edge of the continental margin or to a distance of 200 nautical miles from the base line where the outer edge of the continental margin does not extend up to that distance'. India's policy is thus to support the protection of the marine resources in the coastal areas for exclusive exploitation and the acceleration of the pace of progress towards establishing intemaitonal laws that would not only promote the development of a more balanced and just economic order but would also widen the scope for international cooperation for its establishment.

India has a vast coastline extending to over 6,000 kilometres and a 'constellation' of 1,280 outlying islands and islets, most of which are in the archipelagos of the Andaman and Nicobar Islands in the Bay of Bengal and Lakshadweep group of islands in the Arabian Sea. The Indiancoastal margin in these two seas covers a very large area that has tremendous potential for exclusive exploitation for hydrocarbons and other living and mineral resources.

As defined in Article 10 of the 1958 Territorial Sea Convention, an island is a 'naturally formed area of land, surrounded by water, which is water at high tide'. Since India has 1,280 islands, even if some of these islands are very small, with the growing acceptance of the 200-miles limit of the exclusive economic zone, each island would bring a minimum of 125,000 square nautical miles of sea area into the country's jurisdiction though in some cases there will be considerable overlap of these areas around the coastal islands and mid-ocean archipelagos. These sea areas, along with the entire 200-nautical mile stretchof coastal exclusive economic zone, would place a very large area at the disposal of India for the exclusive exploitation of its resources.

The growing realisation of the immense potential of ocean resources and the rapidly dwindling land resources has already led the main naval powers to attempt to frame the law of the sea to suit their own needs as a result of which they have ended up among the possessors of the biggest exclusive economic zones on the world map. Writing on the international developments concemig the law of the sea in its issue of July 18,1987, *The Economist* paints a grim picture,

In one of the greatest grabs of all time, a quarter of the earth's surfacehas been quietly poached within a few years.

Claims covering a totalarea four times the size of Africa have been asserted and, for the mostpart, conceded with so

little fuss that few people either noticed or understood what was happening.

The growing demand for hydrocarbons and protein from the sea, the growing sophistication of the fishing fleet for taking fish from the sea, the rapidly increasing turnover of the offshore platforms extracting petroleum and gas from the oceans' subsoil and the growing fears of large-scale marine pollution have put paid to the old 'high seas' or 'freedom of the seas' doctrine of the national jurisdictions being confined to a narrow strip of territorial waters, preferably only three miles wide.

As stated earlier, extensive claims to arbitrary stretches of the sea, especially in the Americas, began to multiply from 1945. In 1951, the principle of the three-mile-limit was virtually abandoned by the judgement of the International Court of Justice on the dispute between Britain and Norway, leading to greater prospects of conflict and chaos. The first United Nations Conference on the Law of the Sea in 1958 (UNCLOS1) accepted the continental shelf convention, resulting in the countries bordering the North Sea to divide the sea area and extract hydrocarbons from the subsoil. The participants, however, continued to be divided over many issues and it wasn't just a case of rich states bargaining with poor ones; there were many more complex issues concerning the coalition of coastal states, landlocked states, archipelagic states, 'Broad-margin' claimants, states contesting the rights of passage through international straits such as the Gibralar, Hormuz and Malacca straits, land-based mineral producers and many other groups with conflicting interests and overlapping memberships trying to carve out as much of the new 'world' for themselves as they possibly could, re-mainding one of the 'gold rush' of yore.

But by the middle of the 1960s, winds of change blowing across the oceans were perceptible around the globe and the developingna tions began to assert themselves. The first United Nations Conference held in 1958 had codified the traditional law which appeared to run counter to the interests of newly independent countries though it had produced four conventions reaffirming the old practices: freedom of the seas as long conceived; the coastal state's sovereignty in its territorial sea; its ancillary physical, customs, sanitary and immigration rights in a contiguous zone; and its sovereign rights over the continental shelf. The second Conference held in 1960 attempted to extend the jurisdiction of coastal states over territorial waters to six miles and an additional six miles as exclusive fishing zone but failed to gain the required two-thirds majority for its acceptance and the newly found treasure from the oceans and the ocean beds failed to augment the meagre resources of the developing countries. During the 1960s, however, the accelerating pace of technological, economic social and political changes considerably altered the man-ocean relationship. In 1930 the members of the firstconferencenumberedonly44, the UNCLOS 1 in 1958 had 86 participants, the UNCLOS 2 in 1960 had 88, but the UNCLOS 3 held in 1973 had as many as 137 participants, adding a touch of universality to its proceedings though the alignments, for obvious reasons, increasingly resembled the North-South confrontation of other United Nations Committees; with developed countries seeking to maximise their benefits and the developing countries attempting to develop a new equitable law for sha ring the ocean resources. It is interesting to note that during the third Conference, 'no less than 81 states asserted over 230 jurisdictional claims of varying degrees of importance.' The claims for the exclusive economic zone ranged from 18 to 200 nautical miles, for territorial seas from three to 200 nautical miles and widely varyingpollutioncontrol zones. Arvid Pardo's 'commonheritageof mankind' had virtually overnight shrunk

to 65 per cent of the available ocean area. What is even more significant is that the remaining 35 which is being claimed by the coastal states, an area almost equal to me land area on planet Earth, contains nearly all oil and gas resources, 95 per cent of the harvestible living resources and a very large percentage of the mineral resources.

Besides the petroleum resources, the total reserves of polyrrietallic nodules in the oceans of the world, which are generally found at depths of 3,000 to 6,000 metres and which are widely distributed throughout the major oceans of the world, are estimated at 3,000 billion tonnes and, unlike fossil fuels, are renewable. These pollymetallic modules constitute an abundant source of important metals such as manganese, nickel, cobalt, copper and, to a lesser extent, molybdenum, vanadium, zinc, lead and cadmium, and are spread over an ocean area ranging from 10 to 15 million square kilometres in the Indian Ocean as against 47 million square kilom etres in all the oceans of the world, the richest deposits having been found in the Pacific Ocean.

Besides fish, another important living resources of the oceans is the seaweed which can be exploited for food, fertiliser, chemicals and pharma ceutical products. The demand for agarphytes (tropical seaweeds) and alginophytes (algae) in India and abroad is increasing very rapidly though our country is yet to develop a viable seaweed industry.

The recent allocation of a sea area of 150,000 square kilometres by the International Seabed Authority, a United Nations body for the exploration and mining of the oceans' mineral wealth for commercial exploitation, to India, the first country to be entrusted with such exploitation by the UN, augurs well for the developing countries and could forge an alliance of the 'South' states for an equitable distribution of the ocean resources and acquisition of tiie technology for their extraction and exploitation. After surveying an area of over four million square kilometres in the central Indian Ocean, two mine sites, each of 150,000 square kilometres of commercial viability, tiie richest areas at tiiese sites having a density of 21 kilogramme ofnodules per square rnetre,havebeenidentifiedforthe extraction of our ocean wealth.

AsRene-JeanDepuy,memberoftheJ«shh/feieDnofJntcmiih'o«fl/,says Freedom of the seas has been akin to Treedom of Labour' in Ihe Industrial Europe of the 19th century: in effect the right of the great was licence, that of the poor was submission. But all that has changed and there is a growing realisation in the world comity of nations that the changes in the technological, political, economic and sociological structure of the international society must be accompanied by changes in Law.

Ram Prakash Anand, Professor of International Law at Jawaharlal Nehru University, New Delhi, opines that new lawis taking the place of old dogmas, and this new law must be in accordance with the needs of the new society. The sea is no longer a mere navigation route, a recreation centre, or dumping ground. It is the last phase of man's expansion on the earth andmust become an area of co-operation for orderly progressive world development in which all will share equally and equitably

. One hopes that the law of the sea would continue to evolve to fulfil this hope.