

FINN SOLLIE et al.

The Challenge of New Territories

The Challenge of New Territories – An Introduction
Willy Østreng & Gunnar Skagestad 1



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Foreword

Reinforced by advanced technology and the surging demand for energy and raw materials, Man's natural curiosity has now led to the systematic exploration and exploitation of the vast areas which have not formerly been part of the organized system of territorial states. The continental shelf and the deep seabed, as well as the icy reaches of the polar regions, are gradually being brought into the realm of economic and industrial activity. To make this 'colonization' of new territories – comprising more than three quarters of the globe – an orderly process, and to develop a legal, political and organizational framework for that process, may be Man's greatest challenge in the last quarter of the twentieth century.

Both from an international point of view and in terms of the specific interests of the several nations involved, current negotiations for an international agreement on a new law of the sea and the seabed to regulate conditions in the oceans of the world, concern a wide range of issues and problems that cannot be couched in narrow technical-judicial terms.

The present volume comprises a series of articles on important aspects of the many-faceted *problematique* of the present day new territories. The articles are a product of a research program at the Fridtjof Nansen Foundation for the study of international legal, political and organizational problems arising in connection with the development of the new territories.

The volume is the first in a series to be published. Of the contributors, Per Antonsen, Gunnar Skagestad, Kim Traavik and Willy Østreng are research fellows at the Nansen Foundation. Tønne Huitfeldt is a Major General in the Norwegian Army and Helge Vindenes is the Deputy Director of the Legal Department in the Norwegian Ministry of Foreign Affairs.

The Fridtjof Nansen Foundation
at Polhøgda, Norway

June 1974

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Director

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The Challenge of New Territories - An Introduction

WILLY ØSTRENG & GUNNAR SKAGESTAD

Currently, the industrialized countries are in the process of expanding the frontiers of their economic activities. Through the application of highly advanced technology, large parts of the Arctic, the Antarctic, the oceans and the ocean floors are now becoming the scenes of an ever more extensive and diversified exploitation of natural resources. Multinational companies and governmental and private entrepreneurs of various nationalities have already established themselves in many parts of the above-mentioned regions, where they are making heavy investments in resource exploration and exploitation. More capital will no doubt be invested, and it is a fairly safe bet that this development is going to accelerate, in intensity as well as in extent, in the years to come, as the impact of the global raw material scarcity makes itself felt. This makes for a new development in international politics, a development to which the world community will have to adapt and accommodate itself. However, the question is: *How* will this adaption process manifest itself - through *conflict* or through *cooperation*?

Sizable portions of the areas in question are what is commonly known as *new territories*, i.e. areas which (a) *have not pre-*

*viously been subject to the internationally recognized sovereignty of any state or placed under the authority of any international organization, and which (b) are becoming the object of activities which create the need for the regulating and control of what occurs in the area.*¹ The absence of a firm political and legal order in such areas makes for an increased conflict potential and enhances the probability of manifest disputes or even overt hostilities between the countries involved. The so-called 'cod war' between Great Britain and Iceland, the '*Manhattan* dispute' between the USA and Canada, and the 'lobster war' between Brazil and France, may be cited as cases in point. Some of the conflicts which have occurred in new territories, will be discussed more thoroughly in this collection of articles. We shall, therefore, at this stage be content to forward some general considerations concerning the background and the underlying issues with regard to conflicts in new territories. A 'normal' train of events would be the following:

(1) Within a certain ownerless area there occurs a kind of activity (e.g. scientific exploration or commercial exploitation) which creates the need for regulation.

(2) Due to its natural (geographical, climatic, etc.) characteristics, the area in question cannot be effectively occupied and thus be placed under national sovereignty in the conventional sense. Neither does there exist any international apparatus capable of dealing with the problems of such new territories. Therefore, the above-mentioned activity cannot be adequately regulated through existing national or international law.

(3) In a situation like this, two alternative courses of action on the part of the parties involved, exist:

First, the parties involved may choose to try and solve the problems through *international negotiations*. This was what happened in Versailles in 1920, when Norway was conferred the sovereignty over the Svalbard (Spitsbergen) archipelago. Similarly, the international scientific cooperation under the Antarctic Treaty was secured through negotiations between the states concerned. A third, more recent example, is the efforts presently being made under the auspices of the UN, aimed at creating an internationally recognized seabed regime.

Second, one or more of the parties may feel compelled to solve the problem through *unilateral action*. In such cases, one or more of the states involved feels that vital national interests will be at stake if the problems in the new territory are not immediately brought under control. Considerations of 'international emergency rights' may in such cases be decisive in tipping the scales, so that states implement unilateral national measures in order to safeguard their own national interests. (This is what happened in the cases of, viz. Canada's enactment of her 'Arctic Waters Pollution Prevention Act' in 1970, and Iceland's claim to a 50 nautical miles fishery zone in 1972.) If more than one state is involved in the same region, the outcome of such unilateral action may be *international conflict*.

The present collection of articles has been entitled *The Challenge of New Territories*. It is, of course, well-nigh im-

possible to give a fully satisfactory or exhaustive presentation of a topic as many-sided as this one in the course of some two hundred pages. As an editorial guideline, we have therefore chosen to restrict our scope somewhat, mainly focusing on the Arctic and the sea/seabed. This means that corresponding problems in other new territories, such as the Antarctic and Outer Space, are dealt with rather superficially, or hardly at all. This should not be interpreted as an *a priori* contention that the problems of the Antarctic and Outer Space are less important than those of the Arctic and the seas, but rather that they are less immediately pressing and consequently may be dealt with in a more long-range time perspective. The developments concerning the sea and seabed issues and in the Arctic are discussed in general terms in Kim Traavik's article 'The Conquering of Inner Space. Resources and Conflicts on the Seabed', and in Finn Sollie's article 'The New Development in the Polar Regions'. These articles give, *inter alia*, a survey of the resource potentials of the areas in question and of the economic/extractive activities currently taking place there. Further, the legal, the security-political and other general political problems arising in this connection, are presented and discussed in rough sketch. These articles span a wide register of issues, some of which will be discussed more intensively in other articles in this collection.

The term 'New territories' is applied to several, mutually more or less diverse regions, each with peculiar characteristics and problems of its own. In 'New Problems - Old Solutions', Gunnar Skagestad and Kim Traavik describe and analyse the 'solution models' constituted by the Svalbard (Spitsbergen) Treaty, the Antarctic Treaty and the Geneva Convention on the Continental Shelf. The basic premise of the analysis is the contention that even though the problems vary from one region to another, these models may provide useful points of departure for the efforts directed at solving the problems sur-

rounding the new territories in general. In their article 'The Arctic Ocean and the Law of the Sea', Kim Traavik and Willy Østreng discuss this problem specifically with regard to the Arctic sea areas. Current literature within this field, legal as well as political science literature, reflects the commonly held view that the whole of the Arctic Ocean should be included in the future global ocean regime. The authors of this article demonstrate, however – on the backdrop of the very special geographical, climatic and political characteristics of the Arctic – that such a perspective is not necessarily the only one feasible, and by no means the only justifiable.

Helge Vindenes, in his article 'The UN Conference on the Law of the Sea – the Basic Problems from a Norwegian Point of View', gives a comprehensive survey of the problems facing the delegates to the UN Conference on the Law of the Sea, which is due to convene in Caracas in 1974. The author's focus is mainly on the interrelationship between the several issues, and on the national interests of the participating countries in these issues. Tønne Huitfeldt ushers in a new perspective by focusing the attention toward the security-political aspects of the developments in the Arctic in his article 'Strategic Uncertainty in the Arctic?' In particular, the author explores how the situation as it now develops in the Arctic could facilitate the achievement of certain important aims of Norwegian foreign policy. The question of continental shelf delimitation into the North Atlantic and the Arctic Oceans is of direct interest to Norway, both in an economic and strategic context. The question has also, however, significant geopolitical aspects. This is the topic of Finn Sollie's article 'Norway's Continental Shelf and the Boundary Question on the Seabed', wherein the author highlights, *inter alia*, the possible consequences of various different solution alternatives.

The development in the Arctic and the sea areas raises, to a greater or lesser ex-

tent, a whole series of questions, which may be referred to by such cues as: *Security policy/strategy*, the *extent of territorial waters/jurisdiction*, and *economy/supply of resources*. These are sensitive areas where national interests allow little leeway for compromise. It is politically difficult, or next to impossible, to give concessions in issues salient to a state's very existence. International conflicts in new territories may therefore become both irreconcilable, permanent and difficult to solve.

However, the problems in the new territories may also lead to consequences well outside the territories in question and the parties directly involved there. Indirectly, these issues make their impact felt upon other and more traditional issues in international politics, e.g. the East/West conflict. The 'cod war' between Great Britain and Iceland and the US-Canadian dispute over the navigation rights in the Northwest Passage both deviate from the set pattern of cohesion between members of the same defence-political bloc. Moreover, the development in new territories may also serve to exacerbate existing conflict dimensions. This may well be the case with regard to the North/South dimension in global politics. It may thus be argued that since only the wealthiest countries of the world possess the capital, technology and know-how necessary to bring forth the hidden riches from the new territories, the underdeveloped countries would be 'spectators' rather than 'actors' in the exploitation of resources in these areas. For the underdeveloped countries, this 'spectator status' may cause a relatively deteriorating position when the impact of the new resource extraction makes itself felt on the world economy. These problems are discussed in Willy Østreng's article 'Strength and Impotence. The Developing Countries and the Development in New Territories', and in Per Antonsen's article 'Natural Resources and Problems of Development'.

The study of new territories also defines an approach to the study of relations be-