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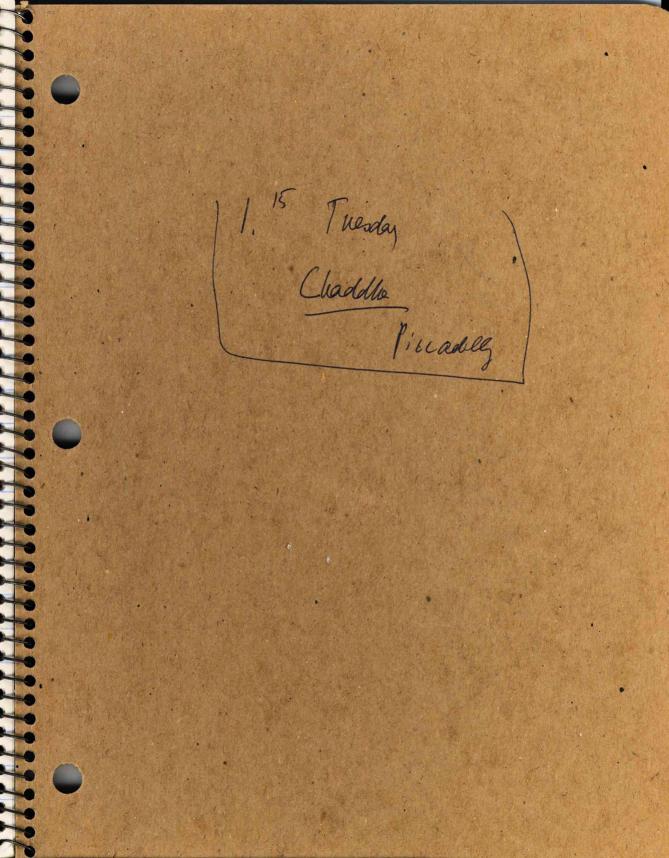
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...Conscious that the problems of ocean space are closely interrelated and need to be considered as a whole...

Resolution of the General Assembly 2750 C (XXV) adopted 17 December, 1970.

When the U.N. Cohference on the Law of the Sea opened on June 20, 1974, at the magnificent, not yet quite finished Parque Central of Caracas, delegates were milling in the lobby of the "Plenary" Hall, in front of a special exhibit. The Government of Jamaica had placed its country on the list of candidates aspi ring to host the headquarters of the Seabed Authority to be established by this Conference. Jamaica had set aside a large piece of land, Dr. A the Showe between Kangeform

And the Suman Cily of Port Royal and there our could ver a model modern commutation rising, with skyr screpers and gardens, and a splender wino of the Cuillian tea

There was no delegate who would not stop on his way to the "Plenary" to get a glimpse of the beautiful photos and plans, which seemed to symbolize and make concrete the aspirations of this Conference: the creation of a new type of international organization to manage the resources of the seabed beyond the limits of national jurisdiction for the benefit of all mankind, with special regard for the needs of the developing nations.

Now, after a month of **bot** debates, the pictures are still there, on the wall, but heat and humidity have begun to wither and crumple the paper. Some maintenance work required the temporary placing of a ladder right in front of the exhibit, which seems to be all but forgotten. No one bothers to stop there any more, look at it -- or even think of it.

For what is uppermost in every one's mind right now, is the issue of the "economic zone," that is, the extension of national jurisdiction over an area covering 200 miles from the coast. In this area, the coastal nation would control resource exploration and exploitation,

choice shore

scientific research, navigation, and pollution.

True, lip service is still being paid to the need for an international seabed regime beyond the limits of national jurisdiction, and one of the main committees -- the First Committee under the brilliant leadership of Ambassador Paul Bamela Engo of Cameroon -- is charged exclusively with the elaboration of its "machinery" in accordance with the Principles adopted by the U.N. in 1970, -- But there is something almost eery in hearing the formulas of 1970 recited -- about the redistribution of the great wealth of the oceans, the Common Heritage of Mankind; about the participation of developing nations in decision-making; about the transfer of technologies, and the closing of the development gap: for the common heritage we are talking about today just is not what it was in 1970.

Then it comprised more than three quarters of ocean space, having a very considerable economic potential, from the exploitation of hydrocarbons to that of hard minerals, and as a consequence it would have had a financial basis for significant distribution of financial benefit to poorer nations. The size and resources of the area would also have made possible reasonably effective international measures for the control of marine pollution and independent research leading to effective scientific and technological transfers.

The seabed regime of which we are speaking today has none of these attributes. 'ts area, in the concept of some delegations, covers the abyssal ocean floor only. Its only business -- at least for the nexts' few decades -- is manganese nodule mining, yilleding an international royalty or tax revenue of not more than 200 million annually, or just barely enough to cover the operating costs of the future "authority" and certainly insufficient to effect any significant distrib=

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ution of financial benefits.

The hering in In Represented w 1 UNCTAD -- My Men Men he riganous Outral any Japes on the We dule mining countries and Companies, Mul This mus he full participation of the deculying nelians in the preduction an Markeling of the nodule -will g un herden, a dhe negolistim heren Nu noolule preduces and the jocke Wellow bill break dam.

Such a situation does not need, cannot afford, and will not tolerate a complex and costly machinery, about the structure of which, furthermore, the technologically less developed nations will have very little to say.  $\Lambda^{\perp}$ t is an open secret that the companies of the nodule mining countries have been and are now negotiating the terms of their cooperation in the exploitation of nodules. It is not likely that they will come up with a machinery providing for the effective participation of the developing nations in decisionmaking and management! There is, at the same time, an unholesome haste in the air surrounding the delegations of the nodule-ming nations -- a mood of: "Hurry up! sign on the dotted line -- while yet your minds are taken by the euphoria over the economic zone -- or we'll go ahead without you."

There is an uninspiring analogy between this development and that of the "energy crisis."

Memories are short, and thus it was quickly forgotten that it was the State Department, under advice by the oil companies, that first suggested a hike in the price of crude. Then it was quickly blamed on OPEC and the Arabs. The developing nations hailed it as a triumph: the beginning of the end of imperialistic exploitation. Were they aware that they played directly into the hands of the big oil companies? it was the companies that got out of the "crisis" the hugest profits in their history. Very few developing nations gained. and most of them lost dramatically.

It has been forgotten -- and mentioned here only by one delegate, rolinsor riphagen of the Netherlands -that the extension of national jurisdiction in ocean space was first proclaimed, not by a developing nation; but by the United States, with the Truman Proclamation of 1945. This was then whole-heartedly embraced by the oil companies, and later also by other industrial concerns, for whom it seemed more convenient to deal with one weak country at a time with regard to the exploitation of resources under its jurisdiction, than to deal with a strong international organization.

Now instead the economic zone is presented as a generous concession by the rich to the poor! What is sure, instead, is that the rich are going to profit from it; and that most poor nations will not gain at all -- which will further widen the development gap -while a/few may gain, but their gains will be far less spectacular, and far more speculative, than the gains of some of the oil producing developing nations. The great problems of the oceans -- the effective conservation and management of living resources; pollution; will remain unattended.

Bitter delusion is bound to set in over the next few years. Marreaty is rammed down the throat of the The conference in will not hold. The economic four concept my break about the hyper in per real per is upping

The Conference, instead, should take its time: rejecting of 10 the time necessary to consumate the great change that are roun long. is needed, and that is in the making, in the structure Others like of international relations and in the relations between rich and poor nations. This requires a re-consideration of the whole concept of the seabed regime beyond the limits of national jurisdiction. The adoption of the economic gone is changing its meaning. It must be re-adapted it will oreale mar to the new circumstances. This can be done, not by problems, for more abandoning the shriveled concept of the common heritage netions, Man ,7 of mankind, but by receiving it. The moment has come to les revolue. enlarge it, by extending it from the seabed to oceanspace beyond the limits of national jurisdiction. An quick volutions , ocean-space authority is needed to regulate and manage

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all uses, old and new, of ocean-space and resources, and their interactions, as well as the interactions of these uses in international ocean-space with that in national ocean space. Some delegations are already pushing in this direction: Bangladesh; Venezuela, But gelly read to it is an arduous task. It will take time.



Box 4716 Santa Barbara, California 93103

August 14, 1974.

Dear Duke:

I am preparing three things for you: an "aide-memoir" setting forth the reasons why the Seabed Authority must have enlarged competences and functions; this you will get tomorrow.

The second is a statement as to how the terms of reference for the First Committee ought to be changed. I think the new terms of reference should be, approximately:

To consider an international regime for ocean space, comprising the surface, water column, the seabed and subsoil thereof; and appropriate international machinery to give effect to this regime --

it being understood that with regard to the <u>principles</u> of this regime there is little to add to what has already been achieved by the First Committee concerning the <u>seabed</u>. The principal change is that "the area" how would mean "ocean space" which would become the Common Heritage of Mankind, and that the functions of the regime would be enlarged appropriately;

it being understood, furthermore, that with regard to the <u>machinery</u> all the work accomplished by the First Committee, and especially the agreement reached by the 77 on Article 9, remains valid, and becomes economically and politically more effective, in the enlarged context.

The third thing I wanted to prepare for you -- which is really the first, and most urgent, is to have some procedural reasons for the calling of the joint session between the First and Second Committee.

And here it is clear that subject matters in the two Gommittees are overlapping and cannot, in the long run, be dealt with meaningfully in separation; since such

> International Ocean Institute The Royal University of Malta • Msida, Malta



Box 4716 Santa Barbara, California 93103

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separation is bound to engender duplications of efforts as well as contradictions. Here are a few examples of subjects that must be discussed jointly between the two. Committees:

(1) <u>Dispute settlement procedure</u>. Is there to be one dispute settlement system for disputes arising from seabed mineral mining and a separate one for issues arising from other areas of the law of the sea? Who decides under which system a particular dispute would fall? Is it more likely that there will be <u>one</u> system for all issues arising under the new law of the sea? Is it meaningful to attach a broadly competent dispute settlement system to a seabed machinery? Can a dispute settlement system function effectively if it is not attached to an effective machinery?

(2) <u>Criteria for the delimitation of the international area.</u> This, obviously, is essential for the economic implications of mineral mining from the international sea-bed area, but it is also discussed in the Second Committee.

(3) To reach the international seabed one has to go through the superjacent water: How can the concept of the High Seas be reconciled with the concept of the Sea-bed as the Common Heritage of Mankind? Are mining ships to operate under the principle of the freedom of the High Seas, or are they under the jurisdiction of the sea-bed authority? What <u>competences</u>, in the <u>suprajacent waters</u>, are needed for the sea-bed authority to enforce production controls, safety and anti-pollution standards for mining ships, as well as customs provisions with regard to mined minerals? On the other hand, what about the jurisdiction over submarines which may be stationed temporarily on the international seabed?

(4) The Second Committee has repeatedly referred to the freedom of laying cables and pipelines in the international area.



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How can this be reconciled with the authority over the international seabed area and its resources?

(5) How are the <u>living resources of the seabed</u> to be defined: How are they to be distinguished from the living resources to be dealt with by the Second Committee? Which ones are subject to the jurisdiction of the Seabed Authority, which ones are subject to the competence of intergovernmental fisheries commissions? What happens where there are overlapping food chains? This is not so much an economic question since the living resources of the seabed are not very considerable, but it certainly is a legal question. One should also take into consideration that there are shallows in the international area, and that living seabed resources could be developed in such areas.

To have a first meeting, pointing to the existence of such issues and to the fact that the present terms of reference are obsolete, would certainly be useful. Delegations could then take the question up with their Governments, and the terms of reference might be adjusted before the next Session.

Needless to say, it should be pointed out that there are similar overlaps between the Second and Third Committees, as well as, and quite particularly, between the Third and the First. The whole question of scientific research must be discussed jointly, since it is meaningless to divide "water-column research" from "seabed research," and the regulation of scientific reaearch separate from the machinery. Also with regard to pollution



Box 4716 Santa Barbara, California 93103

> controls, obviously, the ocean system must be treated as a whole. Ferhaps there won't be time now for all these joint meetings, but at least the need should be expressed now.

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More tomorrow. All the best,

Yours,

Elisabeth Mann Borgese.

P. S. a seventh point of overlap between the First and Second Committee -- of great importance -- is <u>regional organization</u>. The uses of regional ocean space are too intense to allow for multiple regimes in one area. Transnational problems such as fisheries conservation and development, pollution control, transfer of scientific know-how and technology, will increasingly be dealt with by one regional organization for each area, which must be set up in such a way that it can <u>complement</u> integrated coastal management under national jurisdiction. If regional systems deal also with questions arising from mineral mining, there will be incompatibilities **kgiwage** and contradictions between multi-functional regional organizations and a single-function international seabed regime. But this, perhaps belongs into the "aid-memoir" for tomorrow.

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Secretarial's Report on Ocean Miniered Resources

Patrick Martin (105 (Mo))

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