THE NEW INTERNATIONAL ECONOMIC ORDER AND THE LAW OF THE SEA

CORRECTIONS & CLARIFICATIONS

Page 5, penultimate line. Instead of "render advisory opinions on the request" read "render advisory opinions at the request."

Page 6, lines 7 - 13. Delete the sentence "Although the negotiating text . . . international sea-bed area" and replace by "The activities to be undertaken by the Autority through the Enterprise include the exploration of the international seabed area and the exploitation of its resources, which are essentially the manganese nodules of the abyss."

Page 8, paragraph 2. - The paragraph "Special dispute settlement procedures... the functions exercised by the Agencies concerned" should be inserted after the subsequent paragraph which ends with the words "...there is also access to the International Court of Justice, in cases where its jurisdiction applies."

Page 9. five lines from bottom. Delete the words: "for the resources of ocean space beyond national jurisdiction."
In last line the words "derived from" should read "derived therefrom."

Page 12, line 9.- Instead of U.N. read United Nations.

Page 22, line 33. Instead of "specially" read "specifically."

Page 23, line 27. Instead of "a flat limit" read "a much stricter limit."

(2)

Page 29, line 32. A new paragraph should begin after note 35 with the words "In short . . ."

Page 29, line 36. Instead of "agreement/special circumstance rule in the case of the continental shelf" read "agreement/median line rule modifiable by special circumstances in the case of the continental shelf." Note 36 should be deleted.

Page 29, line 38. Instead of "has not believed it necessary to propose any delimitation rules" read "has not proposed any delimitation rules."

Page 30, ten lines from bottom. - A new paragraph should begin with the words "While the single negotiating text...."

Page 31. Delete last paragraph (after line 12) and insert the following after the words "...the limits of their national jurisdictional areas is increasing"; "(f) States are increasingly measuring the limits of their national jurisdiction from straight or mixed baseline systems. Thus users of the sea can no longer be assumed always to know the jurisdictional regime applicable to the marine area which they are transiting or in which they are operating and this could give rise to disputes and unintended violations of coastal States' rights and interests. In these circumstances it would appear desirable to include in the future convention articles providing for a specific procedure to be followed by coastal States in bringing to the attention of the international community not only straight baselines but also the limits of all national jurisdictional areas. It is accordingly suggested that coastal States assume the obligation clearly to indicate straight baselines and limits of their territorial sea, contiguous zone, exclusive economic zone and continental shelf on charts, supplemented by a list of geographical coordinates of points, and to deposit these charts with the Secretary General of the International Sea-bed

Authority (or with the Secretary General of the integrative machinery proposed in this paper) who, in turn should have the duty to communicate copies thereof to all member States."

Page 37, line 21. - Instead of "secion" read "section"

Page 40, line 27. - ~~Question~~ Quotation marks should precede the letter (a).

Page 48, line 19. Delete from "Thus the archipelagic State" to end of paragraph (lines 19-43) and replace by the following: "(see supra ~~page~~ page 36-37). Particularly important are the right of innocent passage of foreign vessels through archipelagic waters (112) and the right of archipelagic sealanes passage in sealanes and air routes designated by the archipelagic State and "suitable for the safe, continuous and expeditious passage of foreign ships and aircraft through archipelagic waters" (113). The text contains detailed provisions, on the one hand, on the characteristics and location of the sealanes designated by the coastal State and, on the other hand, on coastal State regulatory rights and the duties of transiting vessels." (114)

Page 48, fourth line from bottom. Instead of "archipelagic" read "archipelago". Delete last two lines on page 48 from "In fact the only world community". . . "to" . . . "overflight."

Page 51, note 8. Delete last three lines following the words "archipelagic sealanes passage" and replace by the following: "which is defined as the exercise in accordance with the provisions of the present convention of the rights of navigation and overflight in the normal mode for the purpose of continuous and expeditious transit through an archipelago between one part of the high seas or an exclusive economic zone and another part of the High Seas or an exclusive economic zone. (Ibidem, Article 124 (3))".

Page 51, note 10. In fifth line, after the words "territory of a continental State" insert "(such as the Aleutian Islands)." In seventh line, after the

3 (A)

Page 36, delete lines 29-31 from ("(ii) the right of the archipelagic State") and replace by the following: "(c) the right of archipelagic sea-lanes passage defined as "the exercise in accordance with the provisions of the present Convention of the rights of navigation and and overflight in the normal mode for the purpose of continuous and expeditious transit through an archipelago between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone." (6) The archipelagic State is recognized the right to designate the sea-lanes and air routes which, however, must be "suitable for the safe, continuous and expeditious passage of foreign ships and aircraft" through archipelagic waters and must include "all nommal passage routes used as routes for international navigation or overflight through the archipelago and, within such routes . . . all normal navigational channels . . . (7)"

Page 51, note 6 should read: "Ibidem, Article 124 (3).

(4)

words "non-continental State" insert "(such as the Bonin Islands)."

Page 52, note 12. Replace lines 3 and 4 by the following: "an article providing that charges may be levied on foreign ships passing through the territorial sea only as payment for specific services rendered to the ship and provisions limiting the exercise by the coastal State . . . ."

Page 53, note 32. In the fourth line, delete the words "of the balance produced by the law of the sea negotiations" and replace by "of the attempt to balance divergent interest at the law of the sea conference."

Page 54, note 41. In last line, instead of "with the exclusive economic zone" read "within the exclusive economic zone."

Page 54, note 45. In penultimate line, instead of "has important implications" read "have important implications."

Page 55, note 57. In second line, instead of "now enjoys" read "enjoy."

Page 56, note 58. In penultimate line, instead of sub-paragraphs ( )" read "sub-paragraphs (e) and (g)," In last line delete "(e) and (g)."

Page 58, note 84. In third line, instead of "Jornunal" read "Journal."

Page 60, note 92. In line seven, the words "these are different" should read "these are sometimes different."

Page 61. Replace note 112 by the following: "Ibid. Article 123. The right of innocent passage may be temporarily suspended if this measure is essential for the protection of the security of the archipelagic State."

Page 61. Replace note 113 by the following: "Ibid. Article 124. If the archipelagic State does not designate sealanes, the right of archipelagic sealanes passage may be exercised through the routes normally used for international navigation."

(5)

Page 61. Replace note 114 by the following: "For details see ibid. Articles 124-129.

Page 63, line 14. After the words "or in the internal waters of a State" insert "or in the archipelagic waters of an archipelago State."

Page 68. Delete paragraph four (lines 35-41) and replace by: "The scope of the proposed international regime is not entirely clear. Lack of clarity derives from the imprecise definition of those activities in the International Seabed Area which are subject to regulation and supervision by the Authority.(38) It is suggested that the scope of the proposed international regime be clarified by defining the term activities to include, in principle, all activities in the Area; any exceptions should be specifically enumerated.

Page 72, line 13. Instead of "sealands" read "sea-lanes".

Page 73. Delete note 38 and replace by: "The term activities is defined as all activities of exploration of the Area and of the exploitation of its resources, as well as other associated activities in the Area including scientific ~~resource exploration and exploitation~~ research. (Article 1 (ii)). It is clear that mineral resource exploration and exploitation are subject to the international regime. The meaning of the words "other associated activities," however, is not obvious, nor is it clear whether all scientific research in the Area is subject to the international regime or only scientific research directly associated with mineral resource exploration and exploitation. Finally the term "resources" contained in the definition would appear to include living resources, yet there is no specific mention of living resource exploitation in Part I of the single negotiating text."

Page 74, line 6. Instead of "merchant and warships" read "merchant vessels and warships."

Page 75, line 23. Instead of "nofity States" read "notify States."

Page 76. Replace last sentence of first paragraph (lines 14 and 15) by the following: "Dumping of wastes and other matter within an as yet unspecified distance from the coast is not permitted without the express approval of the coastal State."

Page 78, line 5. Insert a comma (,) after the Word Convention.

Page 79, line 25. Instead of "forms" read "forums"

Page 79, line 28. Delete the words "or nothing"

Page 79, line 33 and 34. The words "lack an implementation machinery in the Single Negotiating Text, apart from the dispute . . ." should read "lack an implementation machinery, apart from reference to the dispute...."

Page 79, last line. The line should read: "the Single Negotiating Text: at the same time the ....."

Page 80, line 10. The words "responsibility of States that" should read "responsibility of States to ensure that"

Page 80, penultimate line. - Instead of "no significant change of the present . . ." read "no significant change in the present . . ."

Page 82, note 21. In line four instead of "organiaations" read "organizations."

Page 83, note 35. In line four instead of "fron where" read "from which."

Page 85, note 60. Line nine. Instead of "obligation to all States to promote" read "obligation on all States, including land-locked States, to promote"....

Page 87. Delete first four lines of paragraph 3 (first sentence) and replace by following: "Articles relating to activities other than mineral resource exploration and exploitation are both few and general in nature.

Page 89. Delete lines 2-6 and replace by the following: "standards and procedures for . . . a) the prevention of pollution . . . and other hazards to the marine environment, including the coast line, and of interference with the ecological balance of the marine environment, particular attention being paid to the need for protection from the consequences of such activities as drilling, dredging, excavation, disposal of ~~waste~~ wastes, construction and operation or maintenance of pipelines and other devices related to such activities; (b) the protection and conservation of the natural resources of the Area and the prevention of damage to the flora and fauna of the marine environment. (15)"

Page 90, line 11. Instead of "no less" read "not less"

Page 95. Third paragraph, line three; instead of "folows" read "follows"

Page 98, line 12. Instead of "these observations require" read "this observation, requires . . ."

Page 98, lines 16 and 17. Instead of "exploration" read "exploitation."

Page 100, line 29. Instead of "prepared" read "proposed."

Page 100. Delete ~~redundant or new~~ lines 33-49 (remainder of page) and replace by the following: "There are further serious shortcomings of a general nature in Part I of the Single Negotiating Text which require comment. Among these are ambiguities and contradictions with regard to the scope of the competende of the Authority and to the exercise of its functions.(86) A couple of examples may be useful. According to Article 22 (Part I) (i) "Activities in the Area shall be conducted directly by the Authority." (ii) "the Authority may, if it

considers it appropriate . . . . carry out activities in the Area or any stage thereof . . . . through States Parties to this Convention . . . " The meaning of the word activities is not clear: if reference is intended to all activities (including) scientific research) governed by the international regime (Part I, Article 1-13), the provisions of Article 22 would appear to vest excessive powers in the Authority (87) and would contradict the provisions of Article 25 Part III (Marine scientific research) of the single negotiating text. On the other hand the text should be amended, if reference is intended only to mineral resource exploration and exploitation. Another example of serious contradiction may be found in the provisions relating to the Tribunal (Part I, Articles 32-34) which are quite inconsistent with those contained in Part IV of the Single Negotiating Text (document A/ CONF 62/ WP 9): the two texts should be brought into agreement.

A further general comment involves the structure of the Authority. The regime for the international sea-bed Area permits the Authority to exercise . . .

Page 101, line 6. After the word "provision" insert "however".

Page 101, line 11. Replace (note) 87 by 88.

Page 101, After the end of the first paragraph insert the following: "A few further random observations are made."

Page 101. Delete paragraph 5 (lines 27-30).

Page 101, line 38. Instead of "position" read "provision." Replace (note) 88 by 89.

Page 102, last line; delete 89.

Page 103. Delete note 4 and replace by the following: "Ibidem, Article 22 (1). The meaning of this fundamental statement is unclear. The term, Activities in the Area is defined as "all activities of exploration of the Area and of the exploitation of its resources, as well as other associated activities in the Area including scientific research:" (Article 1 (ii)) but the words "other associated activities" are difficult to interpret with precision (should they be read to mean "other activities directly associated with exploration and exploitation of the Area" or "all other activities which may be related to the exploration and exploitation

of the Area") nor is it certain whether the words ("scientific research" are intended to refer to all scientific research or only to resource oriented scientific research.

Finally does the word "resources" in Article 1 (ii) include living resources? There is nothing in the remainder of Part I that would exclude this interpretation, at the same time the text contains no specific mention whatsoever of living resources. Reference to other provisions in the single negotiating text brings further confusion. If the Area and its resources are the common heritage of mankind (Part I, Article 3) and if the Authority is the organization through which States Parties shall administer the Area, manage its resources and control the activities of the Area (Part I, Article 21), it would be logical to expect that all significant activities in the Area whether whether or not resource oriented would not be able effectly to administer the Area. But this is evidently not intended. The intention appears to be to limit the scope of the competence of the Authority to activities which in some way are more or less related to "exploration of the Area and the exploitation of its resources", and to scientific research. These activities must be conducted directly by the Authority (with the exceptions mentioned in Article 22 (2) and (3)). However this requirement in respect of scientific research and of some activities associated with exploration and perhaps also exploitation would appear to contradict a number of provisions in other parts of the single negotiating text including: (a) Part I, Annex I paragraph 3 (a) which obligates the Authority to "regularly . . . open for general survey the sea-bed and ocean floor of such oceanic areas as all determined to be of interest for this purpose." Im this connexion it is specifically mentioned that "general survey may be carried out by any entity which meets the environmental protection regulations of the Authority and enters into a contract with it." (b) Part III (Marine Scientific Research),

would, in principle, be subject at least to supervision by the Authority otherwise the Authority

Article 25 (1) and (2) where all States and appropriate international organizations are recognized the right to conduct marine scientific research in the international sea-bed area subject to submitting information on the research project an unspecified number of days beforehand to the Authority: (c) Part II Article 75 (1) (c) and Article 99 (1) which recognize the freedom to lay submarine pipelines and cables beyond the legal continental shelf, whether or not these are associated with resource exploration and exploitation; (d) Part II, Article 75 (1) (d) which recognizes the freedom to construct artificial islands and other installations permitted under international law beyond the legal continental shelf, whether or not these are associated with resource exploration and exploitation.

It is clear that there is confusion and lack of coordination in the text. It is also possible that the word activities in Article 22 (1) is not used in the strict sense of the definition contained in Article 1 (ii). A careful revision of the text is consequently suggested.

Page 104, line 7. After the words "through the Authority" add "In addition the provision that the Authority shall be the centre for harmonizing and coordinating scientific research (Article 10 (1) appears to disregard the functions of IOC. It would appear desirable to clarify the matter either by providing for the integration of ~~IO C~~ IOC in the Authority or by specifying that the Authority is a centre for harmonizing and coordinating scientific research only in respect to the international sea-bed area. This latter solution, however, would establish two competing international mechanisms for scientific research."

Page 104. note 10. Place a question mark after the words "in this article" (line 7) and delete the remainder of the note (from "all activities involving... to exploitation).

Page 104, note 15. Delete first six lines of note and replace by the following: "U.N. document A/CONF 62/ WP 8/ Part I, Article 12. These provisions are not easily reconcilable with the provisions contained in Part III (Preservation of the marine environment), Article 24. Article 12 in Part I does not specify the entity or entities which must take the "appropriate measures" and mentions activities not always necessarily connected with seabed exploration and exploitation . . . "

Page 105. Delete last four lines of note 15 (lines 20-23) and replace by: "exercise some regulatory powers for the prevention of marine pollution and the protection of the marine environment."

Page 106, note 31. In line 7 instead of "all elected" read "are elected."

Page 107, note 45. Delete first six lines and replace by the following: "It is interesting to observe (Ibidem Articles 53 and 54) that persons appearing in proceedings before the Tribunal as agents counsel, advocates, witnesses or experts are expressly granted comprehensive immunities, including immunity from immigration restrictions, in connection with their travel to and from and their stay at, the place where the proceedings are held."

Page 108, note 51: line 3. Instead of "or to Parts II, III and IV" read "or also to Parts II, III and IV."

Page 110, note 79, line 9. Instead of "a limited number of sites" read "the limited number of sites"

Page 111, note 84. Add after the words "design data." (line 5) "On the other hand, the single negotiating text (Part III, Development and Transfer of Technology, Article 9) also provides that "The international sea-bed Authority shall, within its competence . . . ensure . . . that the technical documentation on the relevant equipment, machinery, devices and processes be made available to all developing countries upon request . . . " It would appear [redacted] desirable to reconcile the apparently contradictory provisions of the text."

Page 111, note 85. Instead of "exports" read "reports."

Page 111, note 86. Delete the note and replace by the following:
"Among the large number of questions not mentioned in the text which require clarification are the powers of the Authority with regard to uses of the sea-bed which are included among the freedoms of the high seas and the potential functions of the Authority, if any, with regard to installations of a military, or potentially military, nature in the Area."

Page 111, note 87. Delete the note and replace by the following:
"The provisions contained in Article 22 (1) are inappropriate at least with regard to scientific research and to activities which do not entail resource exploitation."

Page 111, note 88. Delete the note and replace by the following:
"UN document A/CONF 62/ WP 8/ Part I. Article 28 (xii). The single negotiating text (Ibid., Article 31 (2) (iii) states that the Technical Commission shall "make recommendations to the Council with regard to the carrying out of the Authority's functions with respect to scientific research and the transfer of technology" but surprisingly omits specifically to empower the Assembly or the Council to deal with these subjects."

~~Page~~

Page 111, note 89. Delete note and replace by the following:
"UN document A/CONF 62/ WP 8/ Part I, Annex I, paragraph 3 (6)."

Page 212, line 9. Instead of "$40,000 million" read "$ 40 billion"

Page 212, line 12. Instead of "comprized" read "comprised".

Page 213, third paragraph, line 2. Instead of "sea water is about" read "sea water has in recent years been about"

Page 213, sixth paragraph, line 4. Instead of "incluce" read "include".

Page 213, seventh paragraph, line 4. Instead of "unliekly" read "unlikely."

Page 215, note 3, line 3. Instead of "600 million metric tons" read "10 million metric tons"

(13)

Page 216, fifth paragraph, line 3. Instead of "build ant tested" read "built and tested"

Page 218, line 4. Instead of "navigagion" read "navigation".

Page 219, paragraph 2, line 1. Instead of "area" read "areas"

Page 219, paragraph 5, line 4. Instead of "constituted of" read "constituted by."

Page 219, paragraph 5, line 7. Instead of "invironmental" read "environmental".

Page 221, Table 4. Instead of "1965-1974" read "1965-1974"

Box 4716
Santa Barbara, California 93103

Pacem in Maribus

January 20, 1976

We are pleased to enclose herewith a copy of our study, *The New International Economic Order and the Law of the Sea.*

The study attempts a detailed analysis of the Informal Single Negotiating Text and tries to show how a Convention, based on this Text, with due amendments, could be integrated into the wider effort to build a New International Economic Order for the oceans as part of, and possible model for, a New International Economic Order in general.

The study developed out of, and in cooperation with, the Project RIO (Reviewing the International Order). It has been financed, as was RIO, by the Netherlands Minister for Development Cooperation, Mr. Jan Pronk.

We would be grateful for your comments.

With all good wishes,

Sincerely,

Arvid Pardo Elisabeth Mann Borgese

Encl: *The New International Economic Order and the Law of the Sea*

The Center for the Study of Democratic Institutions / The Fund for the Republic, Inc.

Arvida

Could you sign this

and send IMMEDIATELY

to Van Ettinger?

Thanks

P.S. no use attracting attention to the typos in this circular. Rather prepare errata corrige.

Box 4068, Santa Barbara, California 93103 / Telephone: (805) 969-3281 / Cable: CENTER SANTABARBARA (CALIF)

THE NEW INTERNATIONAL ECONOMIC ORDER AND THE LAW OF THE SEA

Elisabeth Mann Borgese

After the turmoils of two World Wars during the first half of this century, the second half seems to be characterized by a profound transformation of international relations. This process has two components:

> -- the technological revolution which has created activities whose consequences far transcend the boundaries of national jurisdiction, which make of this planet a small and interdependent place, and which make it obligatory for us to rethink time-hallowed concepts, such as property or sovereignty, and
>
> -- the emergence of the new nations in Africa, Asia and Latin America, changing the political and economic equilibrium of the international community and making new demands on international law and international organization.

These changes, obviously, affect the activities of States both on land and in the oceans. Due to peculiar circumstances, however, the revolution in international relations began in the oceans. Its seat is the Third United Nations Conference on the Law of the Sea.

The Conference goes back to the initiative of Malta in 1967 when Ambassador Arvid Pardo proposed that the oceans and their resources, beyond the limits of national jurisdiction, be declared the common heritage of mankind, that the General Assembly adopt a Declaration of Principles governing the peaceful uses of the deep seabed, and that this Conference be called to embody the Principles in a comprehensive treaty and the necessary institutional framework.

After six years of preparatory work, the Conference embarked, in December, 1973, on the momentous task of giving a new order to the oceans, as part of, and conceivably model for, a new order for the world. Four substantial sessions have been held since then: Caracas, summer 1974; Geneva, summer, 1975; New York, spring, 1976; and New York, summer, 1976. Probably there will have to be two more substantial sessions before the great work can be concluded.

The search for the new international order on land, in the meantime, went other ways. What Malta did for the oceans, Algiers

and Mexico did for the land. It was on the initiative of Algiers that the Sixth, and then the Seventh Special Session of the General Assembly of the United Nations was called (1974,1975) which adopted a Declaration on the Establishment of a New International Economic Order and a Programme of Action. It was Mexico who was responsible for the drafting and adoption of the Charter of Economic Rights and Duties of States in 1974. The quest for a new international economic order has been pursued by various organs and institutions since then, among which one should mention, in particular, UNCTAD (Nairobi, 1976), the Fifth Conference of Heads of State or Government of Non-Aligned Countries (Colombo, 1976), ILO (1976) as well as a great number of efforts at the nongovernmental level (RIO, 1976).

It is unfortunate, it is irrational, that the two branches of this one great historical development, instead of interlinking and reinforcing each other, have somehow managed to drift apart, even to contradict each other.

The Conference on the Law of the Sea has done very little in the direction of building a new international economic order. The suggestion that it should do so is brushed aside, especially by the delegations of the developed countries as an intrusion or a damaging distraction. On the other hand, the law of the sea and ocean management has almost totally disappeared from the declarations and programmes of actions adopted by the other fora engaged in building the new international order on land. The two developments are moving as it were, on separate and often divergent tracks. This is tragic, both for the new international economic order and the law of the sea.

There are several reasons:

--first, the law of the sea appears to be a highly specialized and rather complicated matter, an exercise for lawyers mostly, and most people engaged in the general effort of building the new economic order simply have not done their "homework" in the law of the sea.

--second, the bureaucratic division of labor within States is such that it is difficult to integrate policies. This compartmentalization is so entrenched that even within the marine sector of many Governments it is difficult to form a unified policy, and the divergent interests of shipping, mining, fishing, the marine sciences, navigation, and the military are hard to harmonize. Few countries have made as much as a beginning to harmonize the marine sector as a whole with the other sectors of international economic policy.

--third, the marine revolution, that is, the penetration of the industrial revolution into the oceans, is of such recent date that its far-flung implications are not yet generally understood.

> --the fourth reason for the separation between the building of the new international economic order and the making of the law of the sea, however, is the most serious, and the most tragic one: it is that the law of the sea has become a very controversial, divisive issue. Such as it has developed over the past few years, it threatens to divide developing nations coastal from landlocked States, mineral importing from mineral exporting States, Latin American from African States. Yet it is these States, those who most need a change in the structure of international relations, on whom both the building of the new international economic order and the making of the law of the sea depend.

The Law of the Sea is that part of international law today that is most vehemently in flux. That is where the action is. That is where new concepts such as that of the Common Heritage of Mankind, with a potentially revolutionary impact, are developing and where time-honored concepts, such as those of property and sovereignty, are being transformed and modernized. Every issue that has to be dealt with by the makers of the new international economic order reflects itself, as it were, in the oceans. Here are some examples of the interaction:

Food. Few of the projections for increasing the world food production to cope with the rising spectre of starvation and malnutrition take into account the potential of the oceans. Presently, commercial fisheries contribute only a small percentage of the world food supply, and this percentage is decreasing rather than increasing due to overfishing, mismanagement, and pollution. Hence it is thought to be safe, in general, to ignore the potential of the oceans in the projections. Yet, under a renewed law of the sea, and with proper management and conservation measures and the availability of new technologies, food from the oceans could be multiplied: especially considering the potential of so-called unconventional living resources, that is, plant and animal species that have not been exploited by traditional fisheries but which can be exploited now and converted into food for human consumption; considering also the potential of maricultures of all kinds. The ancient Polynesians had a unified concept of food production, ranging from dry land to wetland into the seas. Their agriculture and their mariculture moved on the same level. We Occidentals and moderns have fragmented this concept, as we have fragmented so many other concepts. To make things worse, we have galloped with the agricultural leg into an industrial and scientific age while remaining, with the maricultural leg, in the primitive hunting stage. We have to learn to walk with both legs again, and to reunify the concept. This will be of enormous ecological importance. The ecological impact of cultivating the oceans may be far less destructive than the ecological impact of, for instance, deforesting the tropical rain forests to increase food production. Also, the international character of the resource facilitates international participation in production and international distribution according to needs. Ocean management thus may be pathbreaking for new forms of international cooperation in food production and distribution.

Energy. The real and lasting significance of the so-called energy crisis, as we all know, is that we are transiting from a fossil-fuel-based economy to an economy based on nonconventional renewable energy resources. The great question before us is: How does this energy revolution relate to the other great ongoing revolution, that is, the revolution in international relations, the restructuring of the relations between developing and industrialized nations? Will the energy revolution, like the preceding phases of the technological revolution, benefit only the industrialized nations thus widening the gap between poor and rich nations?

The energy revolution is ocean-oriented. The oceans are playing an enormous and rapidly increasing role in the production, transportation, storage, and distribution of energy as well as in the disposal of energy waste products. This applies both to conventional and unconventional energy resources. The potential of unconventional energy resources -- tides, waves, currents, thermogradients, chemical and biological processes -- is enormous.

The oceans are, physically, a great equalizer, moderating the climates, breaking the harshness of continental seasonal contrasts. Ocean management, conceived as an element of the new international economic order, can make of the oceans a great equalizer also in economic and political terms, mitigating the harshness of the land-based inequalities between nations.

Transnational Enterprises. Nowhere are we faced with the challenge and necessity of creating a new institutional framework for the operations of the transnational enterprises and consortia as concretely as we are in the oceans. The international mining consortia have to be structured into a new framework of international cooperation which must enable them to operate effectively while assuring to the international community control through participation. This is indeed the heart of the job now before the First Committee of the Law of the Sea Conference, which may be nearing a breakthrough on this matter. To this we shall return in the next section.

International Trade, which, to a large extent, is shipborne; the management of science and technology, on which the rational exploration and exploitation of ocean space and resources depends; environmental policy, which is vital for all uses of the seas; regional economic integration -- one could go through each one of the issue areas on the programmes of actions and declarations of principles of the various fora engaged in the building of the new international economic order and show the interaction between the making of the new law of the sea and the building of the new international economic order.

There are instances where the Law of the Sea Conference can and must pioneer in creating new forms of participation and cooperation in the management of the common heritage of mankind, forms which, if successful in ocean management, can then be adapted to other areas of international economic cooperation. There are also instances in which the Law of the Sea Conference can only succeed in solving its own problems by taking them out of the narrow context of the law of the sea and inserting them into the wider one of building a new international economic order.

An example for the first type of situation is the International Seabed Authority and its Enterprise. An example for the second type of situation is the issue of the landlocked versus the coastal States.

With regard to the International Seabed Authority and its Enterprise, it is clear that as far as the Single Negotiating Text is concerned, the First Committee has come to a deadlock. In somewhat blunt terms, the alternatives before us are one that is unworkable because it is unacceptable and another that is unacceptable because it is unworkable.

The position of the industrialized States who insist on free access to the resources of the area under the jurisdiction of the Authority, under a so-called "contract" from the Authority, which the Authority can in no way refuse, means simply a return to the "licensing system," that reduces the Authority to a weak pro forma entity and relegates the concept of the common heritage of mankind to the realm of rhetorics and myth. It does not appear that this alternative is acceptable to the majority of States. It is therefore not a workable option.

On the other hand, the position of the majority of developing States advocating the Enterprise system in its present form is not viable: it is not workable and, therefore, not acceptable.

One of the great challenges in building the Authority is to find a new synthesis, as it were, between economic and political processes. Such as the Authority is constructed now in the Revised Single Negotiating Text, however, these two processes appear confused. The Authority is a political body, but it has institutionalized, in its decision-making organs, interest groups: poor and rich States, producers and consumers. The Enterprise, on the other hand, which should be an economic, operational entity, is instead largely a political body, duplicating the structure of the Authority itself. Like the Authority, it is non-operational and depends on "contracts" with States and companies. The Enterprise is a very costly and unwieldy entity, not likely to be very effective.

But suppose even that it were much better than it is now. The fact is that it is not acceptable as the sole manager of the common heritage of mankind either to the socialist States or to the free-enterprise States: it is not acceptable to any of the States which have the technology and the capital necessary to start operations on the seabed.

Hence the search for a compromise. But can there be a compromise between an unacceptable and an unworkable alternative? Such a compromise probably would be both unworkable and unacceptable.

This is in fact just what the "parallel system" is. The "parallel system," proposed by the United States and other industrialized nations, under which both the Authority's Enterprise and States and their companies would operate on equal terms under the Authority, not only puts the Enterprise into a position of competition which it simply cannot sustain, it also makes it unnecessary. For if the States and Companies who have the technology and the means are free to mine all the minerals they need for their own use and for international trade, where is the incentive for the international community to pour aid into an artificial "Enterprise"? Secretary of State Kissinger's offer to "finance the Enterprise" in return for the acceptance of free access to States and their companies means, in simple terms, to try to buy such free access -- which, of course, may be worth quite a lot. It also means to offer to pay with public funds for private profits. But that is not all. The "parallel system" completely changes the significance of the Authority's Enterprise.

The Authority's Enterprise was to embody a new form of active, participatory cooperation between industrialized and developing countries. Sharing in the common heritage of mankind was to replace the humiliating concept of foreign aid. This was to be a breakthrough. This was to be the historic significance of the Enterprise.

Now, by a sleight of hand, we are faced with a completely different concept. The industrialized States and their companies "do their own thing." They take what they need or want on the basis of "free access," provided merely with a "contract" which the Authority cannot refuse. The Authority's Enterprise becomes the status symbol of the poor. It depends, once more, on aid from the rich nations and grant-giving institutions. Do the poor nations really need this kind of aid? There might even be more useful ways to spend such aid money than deep seabed mining which, in development terms, is certainly not the thing developing nations need most.

Thus the "parallel system" in any form or fashion or disguise is unacceptable and unworkable.

This means that on this one point we really need a fresh start, a breakthrough. Both alternatives have to be abandoned.

Here the question arises: What is an Enterprise? Is it a building? Must it be a fixed structure that needs to be maintained even when it is not operational? Or can it be conceived as something functional, operational, that ceases when its function or operation ceases? Perhaps the second concept is more practical, more economical. An Enterprise, in this case, would be established only in the

context of precise projects of exploration and exploitation. There would not be only one Enterprise but, between now and 1985 there might be a dozen. They need not be restricted to mineral mining, furthermore, but if and when the occasion arises, they might engage in other marine activities. The structure and function of the Authority's Enterprises, according to this concept, might be described approximately as follows:

1. Enterprises operating in the Area must operate under a charter from the Authority.

2. Enterprises under a charter from the Authority are governed by a Board whose members are appointed in the following manner:

   a. At least half plus one of the members are appointed by the Assembly of the Authority upon the recommendation of the Council in accordance with Article 28 (2)(iii) [of the Single Negotiating Text]. In its appointments, the Assembly shall give special regard to the participation of developing countries and of organizations representing consumers and labor.

   b. Up to one-half minus one of the members are appointed by States Parties or State enterprises or persons natural or juridical which possess the nationality of States parties or are effectively controlled by them or their nationals, or any group of the foregoing, in proportion to their investment in the Enterprise.

3. The Authority must provide at least 51% of the investment capital for any Enterprise operating under a charter from the Authority.

4. Profits shall be apportioned between the Authority and the others in proportion to their investment, i.e., the Authority gets at least 51% of everything.[1]

5. Enterprises shall have international legal personality and such legal capacity as may be necessary for the performance of their functions and the fulfilment of their purposes. Enterprises shall function in accordance with their Statutes.[2]

6. Enterprises shall have their principal seat at the seat of the Authority or at any of the regional centers or offices[3] established by the Authority.

The advantages of this system would be several:[4]

First, the proposed system would effectively separate business from politics. The Enterprises would really be Enterprises, not political bodies. They would represent interest groups, investors and producers, in proportion to their investment; consumers, developing nations, management, labor. Thus the representation of interest groups in the Authority's Council could be avoided. Representation on the Authority's Council might be based simply on the criterion of regional balance. The Council would be a political organ -- not half business, half politics.

Second, all production in the Area would be effectively brought under the control and management of the Authority, which would control decision-making and investment in all Enterprises and would get over half of the profits on all production. The proposal introduces a unified system which, however, is quite flexible. It includes the possibility -- if and when the Authority has the capital, the technology, and the managerial capacity and deems it desirable -- of an Enterprise or Enterprises 100 per cent financed and controlled by the Authority. Although it is indeed not likely that the Authority will establish such an Enterprise, at least for the next 25 years, this point is of crucial importance to make the system acceptable to the developing States. The advantage of the proposed system to the developing States is that if they do not choose to establish a hundred per cent Authority-owned and controlled Enterprise for the time being, activities do not switch thereby to the other track of a "parallel system," railroading a licensing system, but that they remain within a unified system within which the Authority controls and co-manageseverything on a sliding scale ranging from 51% to 100% control.

Third, the problem of how to finance the "Enterprise" would be solved: half of the capital and technical know-how would in fact come automatically with the consortia and State enterprises applying for a charter; this, in turn, together with the fact that the resource is the common heritage of mankind, vested in the Authority (value of the nodules in situ) would be a sufficient guarantee for the World Bank and other institutions to advance the remaining needed capital.

Fourth, the proposed system goes a long way towards bringing multinational corporations under public international control, a need keenly felt by the international community. The pattern of participational cooperation between rich and poor nations it provides could be applied to all kinds of other enterprises later on.

So it would be a really significant, pathbreaking step in the direction of building a new international economic order.

During the final meeting of the Fifth Session of the Law of the Sea Conference, Nigeria introduced a proposal in the First Committee. As Chairman Engo described it in his final report to the Conference[5] Nigeria suggested "in effect a joint venture system applying to all activities of exploration and exploitation in the Area; this...would avoid the problem of the types of relationships proposed between the Authority on the one hand and States and private parties on the other."

The Nigerian proposal, which consists of thirteen paragraphs, provides that States Parties, persons natural or juridical, have a right to enter into a joint venture with the Seabed Authority and that the Seabed Authority shall be an effective partner to the joint venture. This proposal, it has been reported, met with the approval of Secretary of State Kissinger. Thus there appears to be the possibility of a breakthrough. The concession the industrialized States would have to make would be to accept the however theoretical possibility of the Authority's establishing a 100 per cent Authority-owned and controlled Enterprise. The concession the developing States would have to make would be to re-think their own concept of the Enterprise and to accept to transform it from a rigid, structural concept to a functional, operational one.

If a breakthrough on this point could be made during the next session of the Conference, it is quite possible that the work of the First Committee could be successfully concluded within the year. A breakthrough in the First Committee, furthermore, would be a breakthrough for the Conference as a whole. One of the points that became clear during the last session was that the success or failure of the First Committee will determine the success or failure of the Conference.

Let us now look at the second type of situation: where the Conference is not so much in a position to lead in the building of the new international economic order but depends on its being built by other forums: where it can solve its own problems only in the wider context of the development of the new international economic order.

In this wider context it is quite possible that the hopeless confrontation between landlocked and geographically disadvantaged nations on the one hand and coastal States on the other, which characterizes and endangers the present stage of negotiations at the Conference, will completely change its nature over the next ten to twenty-five years. To achieve this, a slightly different perspective is needed. Obviously it is very difficult, if possible at all, to resolve this conflict within the narrowly circumscribed framework of the Conference, within which one group makes only demands (the landlocked States) and the other group (the coastal

States) is supposed to make only concessions. If, however, the conflict is taken out of this narrow framework and inserted into the wider context of the New International Economic Order, the problem becomes soluble. One of the points on the programme of action of the New International Economic Order is regional economic integration; and within such a framework, wherein all States of the region benefit from, and make concessions to, the realization of a common economic policy, landlocked States have the same rights in all economic activities as all other members of the Economic Community. In the EEC which, in spite of all its difficulties, is the most advanced example of economic regional integration, the citizens of any State, including landlocked States (there is only Luxembourg) have the right to fish in the waters under the jurisdiction of any other member State. "The Community has established a common policy in the fisheries sector, which includes a common organization of the market in fisheries products and the application of common rules with respect to fishing in maritime waters under the sovereignty or jurisdiction of member States. Discussions are now being held within the Community on the future of the common fisheries policy in the light of the creation of 200-mile zones. The Community is in particular examining the arrangements to be made, on a Community basis, in order to ensure the pooling, sharing, conservation and exploitation of the biological resources of the single area formed by the future economic zones of the member States."[6]

With regard to the continental shelf, landlocked and geographically disadvantaged States, at least conceptually, have no special problems. Under the provisions of freedom of establishment there can be no discrimination against the enterprises of any member country on the continental shelf of any other. Obviously, a number of problems, especially with regard to offshore oil, remain to be solved.[7]

There is, on the other hand, no problem with regard to free transit which is assured in the Treaty of Rome, and the Community "does have a potential field of activity by virtue of powers which it may take in relation to 'sea transport' (Art. 84 (2)), although it has not yet acted under the provisions of this Article."[8]

This, obviously, is the way to go, but it can only be done in the wider framework of building a new international order by means of regional economic integration among other things, as foreseen by the Plan of Action.

Regional economic communities, customs unions and common markets exist in Africa, in Latin American and they are going to play an increasingly important role. The EEC has already decided to become a Party to the Law of the Sea Convention,[9] and other regional organizations will undoubtedly follow this example. Instead of trying to solve all problems of the relationship between landlocked and coastal nations globally, the Law of the Sea Conference could therefore rather recommend to these regional organizations to solve them within a geographically more specific and economically more comprehensive context within which they are far easier to solve.

To fully integrate the work of the Law of the Sea Conference into the work of building the New International Economic Order does not mean, by any means, to distract the Law of the Sea Conference from its own urgent tasks or to ask it to try to solve all the world's problems and thereby to resolve nothing. It is a conceptual problem: it is a question of direction, of goal and purpose. In some areas the Law of the Sea Conference may indeed lead in the process of building the new order: it may be pattern-setting. In other areas, where it depends on the building of this order by other means and fora, the very recognition of this fact may facilitate compromises at the Law of the Sea Conference. In both cases the joining of the issues would enhance both the building of the new international economic order and the making of the law of the sea: they potentiate each other. The disjoining of the issues, instead, is fatal both for the new international economic order and for the law of the sea.

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[1]See Pardo and Borgese, The New International Economic Order and the Law of the Sea, second edition, Malta, International Ocean Institute, October, 1976. In this study we have examined in some detail the questions of investment, operational costs, and revenues for the Authority. The total investment for all Enterprises projected until 1985 would be of the order of one billion dollars, of which the Authority would have to provide 51 per cent because, obviously, the only way to control the production in the Area is to control investment and to control decision-making. Five hundred million dollars could be obtained from the World Bank alone under the circumstances here envisaged. Or it could be obtained partly from the World Bank, partly from some other sources. It certainly is not a financial problem. It is a political problem. The revenue to the Authority, under this system, would be, by 1985, well over half a billion dollars. That is a respectable amount. But it is not so much the money that constitutes the advantage of this proposed system. Even if the revenue were smaller -- and it is of course very difficult to project these revenues in the light of present uncertainties: any of these projections depends on the assumptions on which it is based -- the other advantages would remain.

[2]See, e.g., the Statute for European Companies. The Statute of the Enterprise will have to be considerably more complex than the one now proposed in the Revised Single Negotiating Text. It will have to contain an enforceable code of conduct for multinational companies as well as detailed provisions for technology transfer, besides describing the structure of the (joint venture) Enterprise, voting procedures, financial arrangements, etc.

[3]Regional centers or offices are provided for in the Revised Single Negotiating Text, Part I, Article 20(4).

[4]In his paper "Seabed Mining: Establishment of an Enterprise," presented at Pacem in Maribus VII in Algiers, October 25-28, 1976, Ambassador C. W. Pinto of Sri Lanka had the following comment, "Finally, in the context of contractor or partner financing as contrasted with financing of the Enterprise itself, it has been suggested that instead of concentrating on efforts to bring into being and finance an autonomous operational arm like the Enterprise, one might contemplate mining under a uniform system of equity joint ventures. Where an applicant was accepted by the Authority for participation with it in seabed mining, the Authority and the other entity would bring into being through procedures to be provided for under the Treaty, a new enterprise, a new international personality which would itself then be authorized to borrow or by other agreed means obtain the necessary financing. Thus neither the Authority nor any of its organs nor, indeed, the joint venture partner would be directly involved in the question of financing. Under this system there woud be no need for a single organ called the Enterprise. On the other hand, the system would spawn several "Enterprises" -- as many enterprises in fact as there were seabed mining ventures. This system certainly offers many advantages and should be considered in greater depth."

[5]U.N. document A/CONF. 62/L.16, 16 September 1976.

[6]European Community, Background/UN, No. 1/1976, August 5, 1976.

[7]Daniel Vignes, "The EEC and the Law of the Sea," in Churchill, Simmonds, and Welch, ed., New Directions in the Law of the Sea, Vol. III, London and New York: The British Institute of International Comparative Law and Oceana Publications, Inc., 1976.

[8]Ibidem.

[9]European Community, Background/UN, No. 1/1976, August 5, 1976.