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REFERENCE:

- 1 -

Yesterday I have given you an overview of the whole study in its three parts: The general overview of the state of the art of seabed exploration and mining technology, and the investments made in this sector, and here, let me underline two points in particular:

1. The investments are rather imposing: \$100 million a year at the low point of recession and poor metal markets. In other words: the money for the industry is available. The problem is to give to states and state companies -- who are the principal actors -- incentives to invest some of this funding in international joint ventures. If we look at the way in which research and development in high technology nowadays is carried out in general, this should not present any unsurmountable obstacle. This is the way things are done today in high tech, and there is no reason why it should not be done this way in seabed mining technology which is high technology and is dependent on other high technologies. So: the money is there.

2. I want to underline once more the fundamental importance of scientific research and research and development in any high tech industrial venture. It is,

above all, technological innovation, based on research and development, that makes an enterprise competitive on the world market today. An enterprise that lacks a strong R&D department is not competitive.

3. R&D is what is happening today, and if the Enterprise does not join in this activity, it fails its mandate, that is, to keep pace with the activities of the pioneer investors and other potential ocean miners. A joint venture on research and development is today a totally realistic proposition, without uncertainties. If we want to establish it by 1992, when we expect the Convention to come into force, we ought to begin today to give directions to the Prep.Com. and to try to work out a system that is attractive to the Pioneers and other investors. R&D does not wait. It is going on now, and if the Enterprise does not join it, it has lost the race before beginning it.

4. A word about technology transfer which was implicit in what I said yesterday, but I did not spell it out: technology is not what it used to be. Therefore technology transfer is not what it used to be. Technology today is not a piece of hardware. Technology

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3

REFERENCE:

today primarily is information: knowledge. Therefore it cannot be bought, on the open market or otherwise. Technology today must be learned, not bought. therefore: the fundamental importance of training, the development of human resources. - a couple of years ago, in Jamaica, I remember the Delegate of the Netherlands pointed out that, considering the amount of information, of training, of service and maintenance and development that goes into any act of "technology transfer" any such act is really already a joint venture. Some economists have pointed out that in today's technology "market" there are no longer "producers" and "consumers": to be a "consumer" who have to be yourself partly a "producer" a "producer of knowledge. These economists have coined a new word covering both "producer" and "consumer" and that "prosumer." We are all "prosumers" in today's world of high technology. As they introduce a new technology, consumers no less than producers must be able not only to use it but to develop the next generation of the technology in question. Otherwise, again, they have lost the race before starting it. I myself have long since come to the conclusion that the very concept of "technology transfer" is obsolete in this new world of

technology. And this, I think, is the basic reason for its dismal failure in past and ongoing negotiations on technology transfer. What we need today is not "technology transfer" it is joint development of technology. it is technology co-development. I was delighted to find this very term in Mr. Mr.Gorbachev's book Perestroika.

Dear colleagues, what I have said points to the fact that the provisions on technology transfer in our convention are inadequate and based on antiquated industrial concepts, but that need not at all discourage us. It does not mean that we have to "amend the text." Joint Venture agreements, according to the letter and spirit of the Convention, leave us free to deal with technology transfer in the terms of the joint venture agreement itself. This means, we can update, we can modernise, we can quite legitimately, and without changing any thing, introduce the more modern, more dynamic concept of joint technology development or technology co-development.

Let me now say a few words about the ownership rights or intellectual property with regard to high



R1

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R

REFERENCE:

5

technology.

"Intellectual" "property", to my mind, is a contradiction in terms. If it is "intellectual", if it is "knowledge" it cannot be owned in the traditional, let us say Roman-Law sense. It also has the property that it ~~does~~ not diminish by being shared. Knowledge is a Common Heritage of Mankind. It has been long agreed that science is as common heritage of mankind. But what we see happening in our days, under our eyes, is that technology is increasingly becoming common heritage of mankind: and this is one of the reasons that we see, all over the world this rush towards joint R&D -- the other reason being that R&D in high technology is so expensive and so high risk that it is necessary to join in order to reduce costs and share risks.

Knowledge cannot be stopped by boundaries or by rules and regulations. Current attempts to tighten intellectual property laws are bound to fail.

The other day I read an article in an American legal journal which I found rather amusing. The author, an American, pointed out that intellectual property today is being stolen, pirated to the tunes of billions of dollars annually. He raised a stern finger and said: People in developing countries: don't do that. It will



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6

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boomerang. You will make pariahs of yourself. You will exclude yourself from civilized society.

Then, being a good scholar, the author presented a table of countries that, in his language, were "low-com" countries, that is, they had a low commitment to intellectual property. Now, I don't want to mention any names. Do you know which countries these were? They were all the countries that built up a modern high-tech industrial system during the last twenty years! So that the quite unvoluntary message of this article was: friends: forget about intellectual property. Learn, and use what you have learned.

Incidentally, since learning: information: the human element is the the basis of modern technology, much more than hardware or capital, I would venture to say that developing countries have a much better chance to join this new phase of the industrial revolution than the previous one which was capital intensive and hard-ware oriented. Because human resources is what developing countries have, and they can be developed just as fast as anybody else's.

Thus, what I want to suggest is that technology transfer, or joint technology development ought to be brought quickly under an orderly and fair common

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heritage system; or so-called intellectual property will continue to be pirated at a steadily increasing rate.

Technology developed jointly is owned jointly, and how this can be expressed in legal terms, is illustrated in the final section of our study. I would like to draw your attention, e.g., to...

Questions.

4. Yesterday, the Chairman of the Second Special Commission made an eloquent plea for a joint venture system which, he said, would have been preferable to the parallel system that was imposed on us by Mr. Kissinger.

I happen to agree with the Chairman. We have been urging a joint venture system since 1968!

What makes the joint venture system preferable over the "parallel system" is that the parallel system sets established industry and the Enterprise up as rivals and competitors, and this has caused us tremendous problems, particularly with regard to the financial arrangements and technology transfer.

Under separate cover, I am mailing you a copy of the report. I would be glad to provide you with a copy of the report if you would like to see it. I would be glad to provide you with a copy of the report if you would like to see it. I would be glad to provide you with a copy of the report if you would like to see it.

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Under separate cover I am mailing a copy of a page study on
development and the law of the sea, of which I have now completed
a first draft. I would be most grateful for your criticism and
suggestions.

Warmest regards,

Elizabeth Jane Ferguson

July, and please send them a copy of Ferguson's and the law of
the sea. The last copies I got were very pale. I hope the next

joint venture system, instead puts the Enterprise and
established industry into a relationship of cooperation
based on mutual interest. It is far more cost-
effective.

The parallel system is enshrined in the Convention
and, obviously, we cannot change it. But the Convention
offers options: contractors on the one hand; an
independently operating Enterprise, on the other -- or
joint ventures. It is my prediction that the most cost-
effective and mutually most advantageous system will
prevail, and there is now general agreement that this
will be, at least in the initial phase, the joint
venture system. Quite conceivably, the parallel system
as it was envisaged in the 'seventies will never be
applied. But it does not do any harm to have it in the
text of the Convention, until such time as the
Convention will be reviewed and revised.

Of course, joint ventures also have their
problems, especially if they are entered into by
partners of unequal financial and technological
capacity. The stronger partner will gain more than the
weaker one. The more you are able to put into a joint
venture, the more you will be able to get out of
it. What you put in is equity, management skills and

*Technological Capacity; and the more you put into it
the more you will get out.*

*The German model suggest an equity joint
venture in which the Enterprise and its partners have*



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REFERENCE:

9
 an equal interest. This would be at variance with the Secretariat Model which suggests a contractual joint venture without legal personality.

~~The German Model emphasizes~~
 the author, to appear to prefer an equity over a contractual joint venture, especially in the case of an R and D joint venture, which is not given consideration in the Secretariat Model.

The German Model emphasizes that the ~~firm~~ equity of the Enterprise should be equal to that of its partners which also means, in accordance with generally accepted commercial principles, that both partners would have equal decision-making power on the Joint Venture Committee; and, at a later stage, an equal share of revenue — ~~be that~~
~~in the~~

if the partners are more — as should be the case in a joint venture between the Enterprise and the Pioneer investor, equity sharing could be interpreted in two ways: The Enterprise could invest 50%, and the other parties jointly, the remaining 50%, which they could share in any proportion they wanted. Or, each partner, including the Enterprise, would take an equal share which then might be something between 10% and 15%. I think that is the solution that would be preferred by some of the ~~and the Enterprise would be co-owner of all testaments~~

and Regional Centers will be very important in order to increase the number of scientific employees

Pioneer Investor. If the total investment in the R and D by the joint venture were to be \$200 million over a five year period, the amount to be ~~paid~~ invested by the Enterprise would be modest indeed; about \$10 million a year. The savings for the pioneer would be enormous.

\$100,000,000 is an adequate sum for this coming phase of exploration, research and development; but additional investments could be generated through the Eureka method. Scientists and engineers from developing countries would have to be included in all R and D projects. Their participation, as equal partners would be covered through the investment participations of the Enterprise, and the Enterprise would be a co-owner of all technologies thus developed. Needless to add, a training-scheme including not only the pioneer investor but national governments, development cooperation institutions

Another important issue in a joint venture which might give advantages to one or the other party is the issue of management prerogatives. In many joint ventures between stronger and weaker partners, the stronger partner reserves to himself the management prerogative and thus secures his advantage. The German model, again offers an interesting solution in a Joint Venture Board or Committee, in which ~~half~~ the

which would have to respond to some extent their priorities improve of science - technology



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- 11 -

REFERENCE:

Directors would be appointed ^{partly} by the Enterprise, ~~the other half~~ partly by the Pioneer Investor, the first Chairman of the Board would be appointed by the ~~the~~ member representing the Enterprise, the first Executive Director or Head of Management ~~Secretary General~~ would be appointed by the ~~the~~ member representing the Pioneers, considering their far greater expertise in the development and management of seabed mining technology. Periodically — at intervals to be determined, this situation would be reversed, and Enterprise and Pioneer partners would ~~the~~ appoint the Chairman of a Board and the Executive Director alternately.

I have indicated yesterday the interesting and foresightful provision, in the German Model, with regard to the exploration of deep-sea minerals other than manganese nodules: a provision fully in keeping with the letter and spirit of the Convention; for these resources, Mr. Chairman, are part of the Common Heritage of Mankind.

Mr. Chairman, if the Enterprise is to keep pace with the other entities, if indeed it is to engage

in joint exploration, research and training with them, timely steps must be taken to lift any ban on the exploration of these minerals. The exploration of the seabed is an integrated process, and if the Enterprise is excluded from the activities of its partners in this respect, it the Enterprise will fall hopelessly behind.

One more feature in the German Model, Mr. Chairman -- a model which, as you realize, yields a lot of very concrete and useful ideas -- one more feature that I would like to mention is the provision for ~~stipulate~~ the settlement of disputes between the partners of the Joint Venture through an arbitral tribunal, of three arbitrators, one appointed by each party, the two of them to appoint the third, who shall be the Chairman of this tribunal. And if they fail to agree on their appointment, he is to be appointed by the President of the ICJ -- or the Int. T.L.O.S.

Mr. President, This kind of Model comes from the West. It comes from an industrialized Country. Even more, it comes from a non-signatory one of them who to ~~so~~ ^{meets} ~~meets~~ ^{major} ~~objection~~ ^{objection} to Part XI. Since it comes from the east a Country



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I think we can safely assume that such a joint venture would be acceptable to the industrialized countries of the West.

From the other models we studied, we have taken other features: Although this model needs some restraints \$1, too can make a contribution; Inter-ocean model certainly would benefit...

From Inter-ocean Model we have taken

the Audit Committee:

(1984)

From JEFERAD, we have taken

the basic idea of a Joint Enterprise For Exploration, Research and Development, the emphasis on the fundamental importance of Research and Development, and the mode of financing it.

From the Colombian proposal for a Joint suu generis international enterprise we have taken the concept of continuity across the ^{caesura} ~~side~~ of the coming into force of the Convention; Negotiations we assume, would be acceptable to our colleagues for the establishment of an interim regime for exploration, research and development and the development of human resources can be undertaken now - Mr. President, they are indeed already going on, and the basis is already laid in the understanding

on pioneer obligations.

What we have added in this study is to provide a model agenda for R and D for this interim institution, just to make things visible and concrete for you while of course making it perfectly clear that this agenda is merely illustrative. Most certainly, the Pioneer Governors are perfectly capable of making their own R and D programme, and they do not need us for that.

Now, let me draw your attention to another very very important aspect.

We have heard this afternoon an eloquent plea from your Sec. Gen, my great friend Frank Njenge, for 15 early ratifications and coming into force of the Convention. He has given us two years for gathering the remaining 15 ratifications.

It is a more demanding task master: I would urge and ^{even smallest among you} beseege you to produce more handful of ratifications within the next 6 months, to maintain the integrity of the Convention and stop the process of erosion that can already be observed here and there. Frank Njenge has also warned



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REFERENCE:

15

against any attempt to amend the Convention before it comes into force, whether through a protocol or any other way.

Mr. Chairman, any attempt to go that way ~~was~~ might unravel the whole weave. We start with a few little ~~problem~~ issues, like those listed by on which, we are told, it would be easy to find an agreement. -- and we end up in UNCLOS IV which might fail, like UNCLOS II. We might never get it together again. Forget about the Common Heritage.

No we cannot, we must not undermine the Convention ~~at~~ by opening it to amendment.

Nor would it be necessary. There we have an alternative strategy.

If we proceed with arrangements for a joint venture of the kind described, with the pioneer investors, ~~we are~~ who will be 5 and may be 6 or 7 shortly -- why not encourage, with some persuasion and incentives -- one or two of the consortia which have not yet made use of their right to apply for registration but could do so, with one of the Signatory States acting as certifying State?

This really, might open the dialogue with ^{some of} the *mousignobas* and, unobtrusively, and without alarming bureaucratic and diplomatic circles, give them an opportunity to participate legitimately in the making of the interim regime of R-D, exploration and development of human resource, what we can build without changing a comma of the Convention.

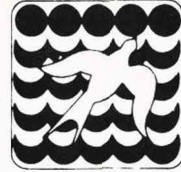
This, Mr. President would be the strategy I would suggest: speedy ratification and the establishment of an interim regime, based on the understanding as Pioneer obligations, propemely developed in the direction illustrated in our study and acceptable and directly useful to all.

could this
be the
Chinese
person you
wanted?
J.O.



Dalhousie University

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I.O.I. - Malta

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→ To: Judy Olsen
FAX No: 1 902 494 1216

From: Elisabeth Mann Borgese
FAX No.: 1 902 868 2818

Date: August 18, 1990

Subject: Perestroika

Dear Judy,

first of all, the news is that Finland was a smashing success. It really was beautiful, and there will be spin-offs.

Secondly, here is some urgent business for you.

In the recent files there must be a long fax from Jan van Ettinger that contains an up-to-date list, with addresses, phones, faxes, etc., of all the people who participated in the Perestroika meeting in Amsterdam.

Now, all these people should get the following urgent message:

Dear (all by first names):

First of all, let me thank you again for participating in, and contributing so efficiently to, the workshop on "Common Action" in Amsterdam. I really thought it was an excellent and quite productive meeting.

You will recall that we agreed to hold our second meeting on October 5-8. Looking at the results of the first meeting, however, it is clear to us now that we need more time to refine the contents, develop our membership list, and organise funding. We therefore propose to postpone the meeting to late November or early December. I would be grateful if you would give me some indication of your availability and non-availability around those dates.

Under separate cover I am mailing a copy of a "case study on Perestroika and the Law of the Sea" of which I have now completed a first draft. I would be most grateful for your criticism and suggestions.
Pearson Institute, 1321 Edward Street, Halifax, Nova Scotia, Canada, B3H 3H5
Telephone: (902) 494-2034, Telex: 019 21 863 DALUNIVLIB, Fax: 902 494 1216

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Warmest regards,

Elisabeth Mann Borgese

Judy, and please send them a copy of Perestroika and the Law of the Sea. The last copies I got were very pale. I hope the next printing is better!

I can be reached by phone (early morning and late evening!) at 212 245 6505. My love all around. As ever,

Elv

The parallel system described in the Convention and, obviously, we cannot change it, but the Convention offers options: contractors on the one hand -- or independently operating enterprises, on the other -- or joint ventures. It is my prediction that the most cost-effective and mutually most advantageous system will prevail, and there is now general agreement that this will be, at least in the initial phase, the joint venture system. Quite conceivably, the parallel system as it was envisaged in the Convention will never be applied, but it does not do any harm to have it in the text of the Convention, until such time as the Convention will be reviewed and revised.

Of course, joint ventures also have their problems, especially if they are entered into by partners of unequal financial and technological capacity. The stronger partner will gain more than the weaker one. The more you are able to put into a joint venture, the more you will be able to get out of it. What you put in is equity, management skills and

*The Convention would suggest in my view
Whether it is a European one or a Pacific one*