UNCLOS III, EIGHTH SESSION

Volume I of the Ocean Yearbook reproduced the Informal Composite Negotiating Text (ICNT)[1] as well as an analysis of the major issues it raised.[2] The ICNT was released after the Sixth Session of the Conference and represented a major breakthrough in the course of these long and difficult negotiations.

The Seventh Session (Geneva, March 28 - May 19: New York, August 23 - September 15), reviewing the Text, agreed on a list of seven "hard core" issues[3] crucial to the success of the Conference, and established seven negotiating groups (NG 1-7) to deal with them. While not reaching consensus on any of these issues, the Conference, during the Seventh Session, initiated a great deal of useful technical work, especially with regard to the first three (questions relating to the International Sea-bed Authority and its system of production). With regard to production limitation, an elaborate agreement was reached which was acceptable to the largest producer country (Canada) and the largest consumer country (USA) but not to many other countries. Major difficulties with the formula surfaced during the second half of the Eighth Session. Detailed schemes were produced on financial arrangements between the Authority and contracting parties and on the question of technology transfer: issues a solution of which is essential if the Enterprise (the operational arm of the Authority) is to be enabled to start when commercial production begins and to compete with established industry. These questions remained intractable.

The Eighth Session (Geneva, March 19 - April 27: New York, July 19 - August 24, 1979) continued negotiations in the seven negotiating groups. A "Group of 21, representing an almost equal number of developing and developed countries, was established during the fourth week to deal comprehensively with all

questions relating to the Seabed Authority and to report to the First Committee. The three main Conference Committees continued their work. A new text (ICNT/Rev.1) was released between the two parts of the Eighth Session. This served as basis of discussion for the second part of the Session whose purpose was to "formalize" the text, i.e., to adopt it officially as a Draft Convention. This goal was not reached, and nonew Draft was agreed upon. However, a strict schedule was adopted for 1980: There are to be two five-week sessions, in March/April and July/August, in 1980. Formalization is to be completed by the end of the first period, at which time formal amendments will be introduced. More amendments may be introduced on the first day of the resumed Ninth Session in July. Voting on the amendments is to be completed by the end of the second period, opening the way for the solemn signing of the Convention in Caracas late in 1980 or early in 1981 , and thus bringing to a conclusion this unique exercise in the codification and progressive development of international law. Meanwhile, the Conference has begun to look beyond the end its mandate and towards the continuation of the development of the law of the sea and the institutions required to enact it. On the initiative of Portugal and Peru, a proposal was introduced during the Eighth Session to include in the "final clauses" of the Convention provisions forsuch a continuation.

In this volume of the Ocean Yearbook a number of documents are reproduced which convey the essence of the work of the Eighth Session. To begin with, a message received by the Conference from U.N. Secretary-General Kurt Waldheim is reproduced. It stresses, once more, the unique importance and responsibility of the Conference. This is followed by a document, drafted by a group of eminent jurists from Third-World countries and circulated by the Group of 77, protesting the illegality of unilateral action with regard to mining in the international seabed area -- an issue that has been hanging over the Conference like a Sword of Damocres. These two documents give a flavor of the political context in which the Session took place.

Next comes a detailed report on the negotiations, released by the Secretariat (SEA/360, 30 April 1979), followed by the Reports of the Chairmen of the three main Committees on which the revision of the Text is based. In addition some material is included apt to shed some new light on some of the difficulties of the hard-core issues: the question of the outer limits of the continental shelf and of revenue sharing and the system of production of the Seabed Authority.

In connection with the first, a document is included which was released by the Inter-Governmental Oceanographic Commission (IOC) on the extreme difficulties of producing a map on the basis of the criteria of the so-called Irish formula. Similar arguments were advanced, during the Conference, by the Delegation of the USSR, which produced a set of maps showing the ambiguities of this formula whose adoption, in the opinion of the Soviet experts, would give rise to many uncertainties and conflicts.

On revenue sharing, a proposal by the Delegation of Nepal is included. Whereas the ICNT provides for a system of contributions or taxes on the extraction of nonliving resources from the continental margin beyond the 200-mile limit of the Economic Zone, where national jurisdiction extends beyond that limit, the Nepalese proposal applies this system to the Economic Zone as well. From a legal point of view really no objection can be raised against the Nepalese proposal by any one who accepts the provisions now in the ICNT on revenue sharing on the continental shelf beyond 200 miles, since the legal status of the continental shelf and that of the economic zone are the same. There are, nevertheless, fundamental political difficulties, and problems of timing. This is a proposals that shows that the original spark of the great Conference is not dead. It is a proposal whose time will come. It is remarkable that, already at this time, the proposal found as many as fifteen co-sponsors!

One should mention, in this context, also a Resolution introduced by the Delegation of Austria urging coastal States to make arrangements with landlocked States for their participation in the exploitation of nonliving resources of the continental shelf. The adoption of such a resolution would go some way in redressing the inequities engendered by the Text.

With regard to the production system of the International Seabed Authority, the Delegation of the Netherlands introduced, during the last week of the Spring session, a proposal for a form of unitary joint venture system which conceivably might break the deadlock on the negotiations concerning the so-called "parallel system." The text of the Netherlands's proposal (referred to also in Document SEA/360) is reproduced in this volume, together with the response by the Delegation of Austria, stressing the basic advantages of the Netherlands' proposal. The proposal was supported by various developing countries. The Soviet Union declared its readiness to discuss the proposal, provided it was adopted by the Group of 77 and provided it was elaborated in such a way as not to be prejudicial in favor of private companies in the capitalist countries and against the principles and interests of the socialist States. The Group of 77, however, had not yet taken a position by the time the resumed Session came to an end. The EEC, USA, and Japan stated their opposition against any form of unitary system. The proposal is still being studied by the Group of 77. Should the Group adopt it by the time the Ninth Session gets under way, a major breakthrough could be expected.

A detailed analysis of the revised ICNT or, hopefully, of the formalized Draft Convention, will be published in Vol. III of the Ocean Yearbook.

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1. A/CONF.62/WP. 10, 15 July 1977.

2. Arvid Pardo, The Evolving Law of the Sea. OY, Vol. I, pp. 9 - 34.

3. The seven core issues are: 1. System of exploration and exploitation of the International Seabed Authority: 2. Financial arrangements; 3. Organs of the Authority their composition, powers and functions; 4. Right of access of land-locked States and certain developing coastal States in a subregion or region to the living resources of the economic zone: 5. the question of the settlement of disputes relating to the exercise of the sovereign rights of coastal States in the exclusive economic zone; 6. Definition of the outer limits of the Continental Shelf and the question of Payments and contributions with respect to the exploitation of the continental shelf beyond 200 miles (Question of revenue sharing). 7. Delimitation of maritime boundaries between adjacent and opposite States and settlement of disputes thereon.

30. _op.cit._ Report of Meeting of Experts on Pollutants from Land-Based sources. Geneva, 19 - 24 September 1977.

31. Final Act of the Kuwait Regional Conference of Plenipotentiaries on the Protection and Development of the Marine Environment and the Coastal Areas (Kuwait, 15-23 April 1978) (UNEP, 1978).

32. _Ibid_. Kuwait Regional Convention for Co-operation on the protection of the Marine Environment from Pollution, pp. 28 - 48

33. _Ibid_. Protocol concerning Regional Co-operation in combating Pollution by oil and other harmful substances in cases of emergency, pp. 49 - 60.

34. _Ibid_. Action Plan for the protection and development of the Marine Environment and the Coastal Areas of Bahrain, Iran, Iraq, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates. pp. 13 - 27.

THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA

General Assembly Resolutions relating to the law of the sea

Resolution No.	Title		Date of adoption
2340 (XXII)	Examination of the question of the reservation exclusively for peaceful purposes of the sea-bed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction, and the use of their resources in the interests of mankind	1639th plenary meeting,	18 December 1967
2413 (XXIII)	Exploitation and conservation of living marine resources	1745th plenary meeting,	17 December 1968
2414 (XXIII)	International co-operation on questions related to the oceans	1745th plenary meeting,	17 December 1968
2467 (XXIII)	Examination of the question of the reservation exclusively for peaceful purposes of the sea-bed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction, and the use of their resources in the interests of mankind	1752nd plenary meeting,	21 December 1968
2560 (XXIV)	Marine science	1832nd plenary meeting,	13 December 1969
2566 (XXIV)	Promoting effective measures for the prevention and control of marine pollution	1832nd plenary meeting,	13 December 1969
2574 (XXIV)	Question of the reservation exclusively for peaceful purposes of the sea-bed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction, and the use of their resources in the interests of mankind		
	Resolution A	1833rd plenary meeting,	15 December 1969
	Resolution B	" " "	
	Resolution C	" " "	
	Resolution D	" " "	
2580 (XXIV)	Co-ordination of marine activities	1834th plenary meeting,	15 December 1969
2660 (XXV)	Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-bed and the Ocean Floor and in the Subsoil Thereof	1919th plenary meeting,	7 December 1970
2749 (XXV)	Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction	1933rd plenary meeting,	17 December 1970

2750 (XXV)	Reservation exclusively for peaceful purposes of the sea-bed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction and use of their resources in the interests of mankind, and convening of a conference on the law of the sea		
	Resolution A	1933rd plenary meeting,	17 December 1970
	Resolution B	" " "	
	Resolution C	" " "	
2832 (XXVI)	Declaration of the Indian Ocean as a zone of peace	2022nd plenary meeting,	16 December 1971
2846 (XXVI)	Question of the creation of an intergovernmental sea service	2026th plenary meeting,	20 December 1971
2850 (XXVI)	United Nations Conference on the Human Environment	2026th plenary meeting,	20 December 1971
2881 (XXVI)	Reservation exclusively for peaceful purposes of the sea-bed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction and use of their resources in the interests of mankind, and convening of a conference on the law of the sea	2029th plenary meeting,	21 December 1971
3029 (XXVII)	Reservation exclusively for peaceful purposes of the sea-bed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction and use of their resources in the interests of mankind, and convening of a conference on the law of the sea		
	Resolution A	2114th plenary meeting,	18 December 1972
	Resolution B	" " "	
	Resolution C	" " "	
3067 (XXVIII)	Reservation exclusively for peaceful purposes of the sea-bed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction and use of their resources in the interests of mankind, and convening of the Third United Nations Conference on the Law of the Sea	2169th plenary meeting,	16 November 1973
3133 (XXVIII)	Protection of the marine environment	2199th plenary meeting,	13 December 1973
3171 (XXVIII)	Permanent sovereignty over natural resources	2203rd plenary meeting,	17 December 1973

Resolution	Title	Meeting	Date
3201 (S-VI)	Declaration on the Establishment of a New International Economic Order (A/9556) Sixth Special Session	2229th plenary meeting,	1 May 1974
3202 (S-VI)	Programme of Action on the Establishment of a New International Economic Order (A/9556) Sixth Special Session	2229th plenary meeting,	1 May 1974
A/RES/3311 (XXIX)	Special measures related to the particular needs of the land-locked developing countries	2319th plenary meeting,	14 December 1974
A/RES/3334 (XXIX)	Third United Nations Conference on the Law of the Sea (convening of the third session at Geneva, Switzerland from 17 March to 10 May 1975)	2323rd plenary meeting,	17 December 1974
A/RES/3483 (XXX)	Third United Nations Conference on the Law of the Sea (convening of the fourth session from 15 March to 7 May 1976 in New York and the convening of a fifth session in 1976 if such decision is taken by the Conference)	2439th plenary meeting,	12 December 1975
A/RES/31/63	Third United Nations Conference on the Law of the Sea (convening of the sixth session in New York, from 23 May to 8 July with a possible extension to 15 July 1977)	96th plenary meeting,	10 December 1976
A/RES/32/194	Third United Nations Conference on the Law of the Sea (convening of the seventh session at Geneva, Switzerland from 28 March to 12 May 1978, with a possible extension to 19 May)	108th plenary meeting,	20 December 1977
A/RES/33/17	Third United Nations Conference on the Law of the Sea (convening of the eighth session at Geneva, Switzerland from 19 March to 27 April 1979)	51st plenary meeting,	10 November 1978

Union. The program is coordinated by the Joint Oceanographic Institutions for Deep Earth Sampling (JOIDES), and its U. S. component is funded by the National Science Foundation.

27. Presidential Proclamation Claiming Jurisdiction over Resources of the Continental Shelf, Federal Register 10 (1945), 12303.

28. Presidential Proclamation with Respect to Coastal Fisheries in Certain Areas of the High Seas, Federal Register 10 (1945), 12304.

29. E. Ferrero, "The Latin American position on legal aspects of maritime júrisdiction and oceanic research," in Freedom of Oceanic Research, ed. W. S. Wooster (New York: Crane, Russak, 1973), pp. 111-112.

30. These were (1) Convention on the Territorial Sea and the Contiguous Zone, (2) Convention on the High Seas, (3) Convention on Fishing and Conservation of the Living Resources of the High Seas, and (4) Convention on the Continental Shelf.

31. Convention on the Continental Shelf, Article 1.

32. Convention on the Continental Shelf, Article 2(1).

33. Convention on the Continental Shelf, Article 5(8).

34. J.A.T.Kildow, "Nature of the present restrictions on oceanic research," in Freedom of Oceanic Research, ed. W.S. Wooster (New York: Crane, Russak, 1973).

35. United Nations Third Conference on the Law of the Sea. Informal Composite Negotiating Text. Doc. A/CONF.62/WP.10 of 15 July 1977.

36. Ocean Policy Committee, Procedures for Marine Scientific Activities in a Changing Environment, (Washington: National Academy of Sciences, 1978).

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MEMORANDUM

on

MARINE RESOURCES, OCEAN MANAGEMENT, THE LAW OF THE SEA

and

THE NEW INTERNATIONAL ECONOMIC ORDER

On August 21, the Third United Nations Conference on the Law of the Sea will resume its Seventh Session.

This extraordinary prolungation of the Session was decided by the Conference because negotiations are felt to have reached a crucial stage: success or failure of the Conference appear to be imminent.

At this stage, every nation, every group of nations may play a crucial role. Third-World countries in general, and the African nations in particular have very much to gain, or to lose at this point.

The nations of Africa have developed, through regional conferences and seminars, as well as at the Conference itself, a highly constructive and forward-looking policy with regard to at least four fundamental points:

(1) With regard to the delimitation of ocean space under national jurisdiction, many African nations have taken the position that the boundary of the continental shelf should coincide with that of the economic zone, 200 miles from clearly defined baselines. This is a clear, unambiguous and simple principle, assuring territorial stability to coastal States as well as to the international area and thus reducing conflict;

(2) on the issue of possible regional mergers of economic zones, which holds the only promise for a solution of the problems of establishing a rational system of resource management and of technology transfer;

(3) on the issue of the landlocked and geographically disadvantaged States, which can be solved only in a regional context;

(4) on the establishment of a strong International Seabed Authority with a unitary system of exploitation, which is the only kind through which developing States can benefit from the Common Heritage of Mankind.

Often, however, this policy is compromised, in an atmosphere of increasing scepticism with regard to the possibility of establishing a New International Economic Order, and of disregarding the fundamental links between the Law of the Sea, Ocean management, and the establishment of such an order.

Ths purpose of this memorandum is to show that the issues of ocean management and the law of the sea are of fundamental importance: not only in themselves, but for the building of a new international economic order. In no other forum of international negotiations are so many "world issues" at stake. The oceans are our great laboratory. It is at the Law of the Sea Conference that

a breakthrough can be made. It is there that a setback may be suffered from which Third-World countries may not recover for many years.

In conclusion this memorandum contains a few policy recommandations, consistent with African policy and interests as well as with the concepts set forth in this memorandum.

The great importance of the oceans for international development and cooperation lies in two areas:

. resource development and redistribution;

. development of new institutional forms of international cooperation and organization.

In both areas, ocean management can make a vital contribution to the building of a New International Economic Order.

I. Resource Development and Redistribution

1. Living Resources

Food from the oceans has never constituted more than a small percentage -- never more than 3 percent -- of world food. During the last decades, furthermore, there have been signs of stagnation and exhaustion in marine fisheries, and the estimates for the "maximum" or "optimum" sustainable yield on a world scale, made only ten years ago, had to be reduced drastically. It is understandable, therefore, that development plans, designed to meet the rising food requirements for the eighties and beyond, tend to overlook the food potential of marine resources. It should be kept in mind, however, that

(a) it is, in particular, the populations of the poorest countries which depend most heavily on fish for the satisfaction of their protein requirements. People in the rich nations fill their animal protein requirements by eating meat and drinking milk: Two thirds of the world's meat and milk production is consumed by less than one quarter of the world's population. The other three quarters depend on fish for the greater part of their animal protein.

(b) The present <u>laissez faire</u> system of production and distribution is highly inequitable. Over 75 percent of the world's total catches are fished by fourteen nations. Exhaustion of commercial stocks, economic irrationality, and iniquity in distribution are caused by mismanagement or lack of management. A New International Economic Order, bringing the world fisheries under a rational equitable system of management, could contribute considerably to alleviate hunger among the poorest part of the world population.

(c) There are large, untapped "unconventional" resources -- e.g., the krill of the Antarctic Ocean, potentially a <u>multiple</u> of the present world fish catch, which should be brought under a common-heritage system of international management <u>now</u>, for the benefit of peoples most in need of animal protein. Action on this matter is urgent to prevent the Antarctic Treaty powers to present the world with a fait accompli.

(d) Neither the problem of distribution nor that of managing the "unconventional" resources of the Southern Ocean, can be solved merely by the establishment of exclusive economic zones or, as a recent FAO study calls it, "the wholly misplaced faith in the extension of jurisdictions." Fish continue to migrate

even after they are caught, that study points out: they migrate from the poor to the rich. The actual structure of trade flows, of capital and of technology is such that, no matter who "owns" the resource, the poor will continue to fish for the rich, who will continue to be the principal beneficiaries. What is needed is not so much a rearrangement of the geography of jurisdiction but a structural change in international relations through the establishment of effective global and regional fisheries management systems with the full participation of developing countries.

(e) Whether we are aware of it or not, a major transformation in our uses of the oceans is in course. In its use of living aquatic resources, mankind is passing from a hunting stage to a culture stage. The advent of aquaculture may be a development as important, in anthropolotical terms, as the advent of agriculture ten thousand years ago. Aquaculture, that is, the farming of seaweeds, molluscs, crustaceans and fin fish in fresh, brackish, and sea water, has a long tradition and a broad social and economic infrastructure in some parts of the world. In recent years, its systematic and scientific application has expanded to other parts, and production has increased dramatically: more than doubling in the half decade from 1970 to 1975 (from 2.6 million to 6 million tons). A five-fold, even ten-fold increase would be possible even with existing technologies. This expansion would have the following advantages:

(i) There are physical limits to the expansion of agricultural land, especially considering the crucial ecological importance of tropical rain forests. There are no physical limits to the expansion of aquaculture.

(ii) Aquaculture is less vulnerable to climatic irregularities, such as excessive heat or cold or droughts, than is agriculture.

(iii) While agriculture is two-dimensional, yielding one crop per area at a time, aquaculture is three-dimensional, giving the possibility of polycultures and multiple crops.

(iv) Fish are more efficient nutrient converters than land animals. It is cheaper, in capital and labor, to produce a ton of protein from aquatic resources than from terrestrial stocks.

(v) A shift of emphasis from extraction to production of living aquatic resources would basically change the problem of the rights of landlocked and geographically disadvantaged States to participate in the exploitation of living resources in the economic zones of coastal States: rather than competing for a scarce resource, these States would cooperate, through regional enterprises, in producing a resource: no State would have to "give up" anything.

There is only one country in the world that has fully integrated the development of its aquatic resources into its general development plan,and that is the Peoples Republic of China. In China, aquaculture is conceived as an integral part of agriculture. Agriculture, irrigation, aquaculture, and navigation are seen to have a common matrix in water management, and water management thus

is given a top priority in national planning. The results of this policy, in two brief decades, have been astonishing: for agriculture, for navigation, and for aquaculture. Suffice it to mention that China alone produces today almost half of all the world's aquaculture products and that fish and aquatic plants make a vital contribution to people's nutrition. There is a great deal the world community could learn from the Chinese experience with a unitary, land- and water-based concept of development strategy. China's economy, of course, is primarily an inward-oriented economy. Its water management extends to its rivers, lakes, ponds, canals and reservoirs, whose surface has been increased a hundredfold over the last two decades. China has not applied the same energies to ocean management which, perforce, is the domaine of international action and responsibility.

The oceans are the lakes and rivers of the international community. Water conservancy and management policies at the world level, integrating the uses of the oceans and conceiving aquaculture as an integral part of agriculture, could, over the next decades, reach similarly spectacular results. Here is a great new opportunity for development strategy. (In this connection one should not overlook the enormous importance of the oceans as a source of fresh water.)

2. Minerals and Metals

The mining of the seabed for metals and minerals has some antecedents. The extraction of sea-salt has a very long tradition; the tunnelling for coal, the mining of diamonds, of sand and gravel, and the mining of the continental shelves for calcium carbonate, titanium and gold placers, phosphorites, iron and zink, has been going on throughout this century and even before. But this type of production was rather marginal within world production as a whole. In 1970 the total value of worldwide production from the sea was estimated as U.S.$ 1 billion.

In the seventies, however, the "marine revolution," that is, the extension of the industrial revolution into ocean space, has progressed rapidly, and ocean mining may become a vitally important factor in world economics.

Three developments merit particular attention:

(a) The metalliferous brines in the middle of the Red Sea -- where one pool alone, the so-called Atlantic II Deep, contains 1.5 billion dollars worth of copper, zink, silver and gold. These brines are presently being explored by an international joint venture of the Sudan, Saudi Arabia, and the Federal Republic of Germany;

(b) The polymetallic nodules, rich in nickel, copper, cobald and manganese, spread over the deep ocean floor of the mid-Atlantic, Pacific, and Indian Ocean. 1.5 trillion tons are supposed to be spread in the Pacific alone. There are, at present, half a dozen big international consortia ready to go into action. The investments already made are very large, and bigger ones are yet to come if the industry is to pass successfully from the stage of research and development to full-scale commercial production at the rate of raising and processing perhaps ten million tons of nodules

annually in the 80s, generating a revenue of roughly a billion dollars a year. Current research, in connection with nodule development, on new uses of manganese may have a considerable impact on the economies of some African countries and on industrial restructuring.

(c) Beyond mining the ocean floor, there appears, on a somewhat more remote horizon, the technological possibility of mining the ocean waters: the "liquid mine." The ocean water, as we know, contains at least ten million tons of gold, 2 billion tons of uranium, and at least 60 other valuable minerals and metals in unbelievable quantities. These, however, are so diffused in huge quantities of water that no amount of conventional energy would be sufficient to concentrate and extract them. Now, however, it has been discovered that certain marine animals and plants can be used to do the extracting. Thus algologists are presently working on experimental "uranium farms" where uranium is concentrated by algae and extracted from them, with a secondary production of methane and fertilizer. By the end of the century, one may thus look forward to an interesting synthesis of marine "farming" and marine "mining."

All this may amount to a veritable revolution in the mining industry. Whether it takes ten or twenty-five years more or less to complete is hard to predict, and irrelevant. This revolution cannot be stopped, it must be joined. Landbased producers, who should fail to join it now, would simply be left out: they would be marginated. If, on the other hand, this revolution were considered within the framework of a NIEO, and sufficient scope were given to international cooperative enterprises on the basis of the common heritage principle, the shift from national land mining to international ocean mining would not constitute harmful competition with land-based producers among developing countries: Quite on the contrary: it might contribute enormously to the development and genuine economic emancipation of developing countries, many of which are held back, and are holding themselves back, in the bonds of a post-colonial extraction economy which, as post-World-War II history clearly shows, is not conducive to development. Internationalized ocean mining, while creating considerable funds for international development, will free these countries and assist them to diversify their economies and to industrialiye. It will offer unprecedented short-cuts to technology transfer. For the full participation of developing countries in international ocean mining, it is essential, however, that early attention be given to the training of ocean mining experts from developing countries. Without this -- with or without International Seabed Authority -- the common heritage of mankind would be appropriated by the industrialized States and their companies, further increasing the development gap, both in economic and technological terms.

II. New Institutional Forms of International Cooperation

The emerging ocean regime could make a major contribution to the building of a New International Economic order in four areas, by providing an institutional framework for

. international resource management systems;

. a structured relationship between TNEs and the international community;

. a system of international taxation, engendering funds for international development and greater automaticity in resource transfers;

. the restructuring and integration of the U.N. system of organizations.

1. International resource management systems

Until now, extensive technical and political work has been done with regard to only one international resource management system, and that is the International Seabed Authority which is to manage the mining of polymetallic nodules from the deep seabed. This Authority, laboriously constructed by the U.N. Conference on the Law of the Sea, thus will have a unique importance as a model for other international resource management systems which must necessarily be created in the framework of a New International Economic Order.

The establishment of an international resource managing system is without precedent in the history of international organization. It is a break-through. It is not surprising, therefore, that the technical and political difficulties are enormous, and that the Law of the Sea Conference has not yet succeeded in solving them. The present deadlock, resulting from the ill-conceived "parallel-system" approach, might conceivably be broken if the Conference decided to fall back on an alternative on which developing countries spent much time during the preparatory period of the Conference, and which was then re-introduced by Nigeria in 1976 and elaborated by Austria in a statement by Ambassador Wolf (See Note by the Secretariat, 28 April 1977, Enclosure 6, and informal working papers). The proposal can be summarized as follows:

The approach is based on a structured cooperation between the private sector and the international management system, following the pattern, well accepted by Industry (a recent private meeting of the Consortia in Geneva looked at this alternative with a quite open mind) of equity joint ventures: Any State or State-sponsored or -designated company would have access to the international area, under the condition that it form a new Enterprise, to which the International Seabed Authority contributes at least half the capital investment (including the value of the nodules which are the common heritage of mankind)and appoints at least half the members of the Board of Governors (from developing countries and industrialized countries without a seabed-mining capacity of their own), while the remaining capital is provided by States or companies, who appoint also the remaining members of the Board of Governors,

in proportion to their investment. Product, and profit, are divided in proportion to investment.

This approach would solve some of the thorniest problems still before the Conference: the problem of technology transfer, and that of financing the international resource management system which cannot possibly get off the ground if, instead of cooperating with the State and private sector, this system is so structured that it must compete with it.

2. Transnational Corporations and the International Community

At the same time, an enterprise system such as outlined here, could make a second major contribution to the building of a new international economic order. It could provide a model for bringing the TNEs into a structured relationship with the international community. While incorporating applicable parts of existing codes of conduct, this would be a considerable step forward: incorporating also features of the European Companies as proposed by the EEC and responding to the need for a democratization of decision-making, and representation, on the boards, of other than purely financial interests (the Authority appointed Board members could include representatives of labor and of consumers).

Considered from this angle, the applicability of this model could be very wide: as wide as the range of the TNEs -- the wider the better for the NIEO.

The role of African States could be quite crucial on this issue which still is wide open. African Delegations have been most eloquent in condemning the "parallel system" presently under discussion. With the exception of Nigeria in 1976, they have failed to introduce constructive counterproposals -- which is the only way in which the unacceptable "parallel system" can be defeated.

3. International taxation

In 1970 the International Ocean Institute published a plan for the establishment of an Ocean Development Tax: that is, a small levy -- e.g., one percent -- on all major uses of the oceans, be it the production of offshore oil and gas, commercial fish production,navigation, or the use of cables and pipelines. Such a tax should be collected by States and paid to the international ocean organizations, or,in other words, States' contributions would be assessed on the basis of their uses of the oceans. The tax would be based on a functional criterion (the use of the oceans, anywhere), not on territorial criteria (there would be no distinction between areas under national jurisdiction and international areas).

During the last decade, the idea of an international tax of this sort has cropped up again and again. First, Canada espoused it in the Seabed Committee with regard to minerals only. While the Law of the Sea Conference, in the Composite Text, has given a territorial aspect to the proposal and restricted it to the continental margin beyond the 200 mile limit of the exclusive economic zone (there will be no revenue for the foreseeable future), the U.N. Environment Programme (UNEP) has more

recently embarked on a study of the modalities of collecting an international tax in connection with the desertification problem. On the nongovernmental level, the RIO report advocates international taxation as a means to achieve automaticity of transfers and redistribution of international income.

During the Seventh Session of the Law of the Sea Conference, the Delegation of Nepal introduced a proposal for revenue sharing and the establishment of a Common Heritage Fund. According to this proposal, the Fund's income would consist of (1) the revenues earmarked by the International Seabed Authority for it; (2) the revenues due from the exclusive economic zones of States members; and (3) the revenues from the continental margin beyond the 200 mile limit of the economic zone. The biggest item would obviously be the second, that is, "a share of the net revenues from the mineral exploitation of the seabed and subsoil of the exclusive economic zone" as further specified in the proposal. This means, above all, an international tax on offshore oil, which would run into billions of dollars.

Not only would such a tax assure the automaticity of transfers that development strategy has been striving for during the last two decades: it also would create a more workable financial balance within the international resource management system itself: i.e., the capital-intensive and, at the beginning probably deficit-prone operations of the International Seabed Authority could be, largely, financed by a small part of the huge profits of the oil industry. There would indeed be nothing extraordinary in such a method, already widely applied at the national or corporate level: companies,engaged both in oil production and in metal mining, commonly finance the deficits arising from the metal mining operations during the present period of crisis on the metal market, from the huge profits they make on oil production.

An ocean development tax would of course have to be a progressive tax: Rich nations, who also are the biggest users, should pay much more than poor nations, who should pay much less than what they get in return in benefits. Such a tax could be a tool of substantial importance in development strategy. It also could, to a large extent, compensate landlocked and geographically disadvantaged States for the vagaries of geography that have been invoked in fashioning the iniquities of the exclusive economic zone.

4. The restructuring of the U.N. System

The emerging Law of the Sea Convention (the Composite Text) provides a system of management for only one of the uses of ocean space,and that is deep-sea mining. For the other major uses -- the management of living resources, navigation, scientific research,environmental protection, the transfer of technology -- it provides a "code of conduct." The Text reveals an awareness, however, that this is not enough and makes repeated reference to, and demands on, "the competent international institutions." In some cases, these "competent international institutions" already exist: COFI (FAO) for the living resources; IOC (UNESCO) for scientific research; IMCO, for navigation; UNEP for the protection of the environment. In other cases -- transfer of technology, regional fisheries

management, in some regions -- they will have to be created. In any case it is clear that the existing organizations will have to be restructured to be able to assume the new required functions; and that restructured and newly established institutions must be co-ordinated and integrated at the policy-making level, providing for a forum where problems arising from the uses of the oceans can be discussed by States in their interaction and including not only their technical but also their political dimensions.

During the Seventh Session, the Delegation of Portugal tabled a rather complex resolution, co-sponsored by 17 other Delegations from developed, developing, and socialist States, to give the necessary official impetus to this process which, more or less informally, is already in course, although the results of recent questionnaires, sent by the institutions themselves to Governments, have been disappointingly conservative.

"Considering that the implementation of the Convention on the Law of the Sea calls for an active and increased role of the appropriate international organizations with competence in ocean affairs..." the Portuguese Resolution states, "Recognizing that further strengthening of these organizations and increased co-operation among them are required, so as to allow Member States to benefit fully from the expanded opportunities for economic and social progress offered by the new ocean regime..." the Resolution calls on member States, on the Secretary General, the Specialized Agencies and other organizations of the United Nations, to take the necessary steps to achieve the needed restructuring and integration.

This restructuring and integrating of the marine-oriented part of the U.N.system inserts itself into the broad trend to "restructure the U.N. system," to provide an institutional framework for the New International Economic Order. The marine-oriented part may point the way.

In conclusion, it is evident that marine resources and ocean management not only can make a major contribution to development strategy, but that, beyond this, the new institutional forms, being developed in the process, should be considered as models and pilot projects for the building of a New International Economic Order in general.

POLICY RECOMMENDATIONS

I. <u>It is suggested that African States should press for a definition of the legal and economic content of the concept of the Common Heritage of Mankind</u>.

This concept is the heart and motor of the Conference. It must become the basis of the New International Economic Order. Yet, it is nowhere defined. Without starting a necessarily long-drawn theoretical discussion, a definition can be drawn, however, from various articles of the Composite Text (Articles 136, 137, 140, and 145) as follows:

First Article

The Area and its resources are a Common Heritage of Mankind.

Second Article

For the purpose of this Convention "Common Heritage of Mankind" means that

1. No State shall claim or exercise sovereignty or sovereign rights over any part of the Area or its resources, nor shall any State or person, natural or juridical, appropriate any part thereof. No such claim or exercise of sovereignty or sovereign rights, nor such appropriation, shall be recognized.

2. The Area and its resources shall be managed for the benefit of mankind as a whole, irrespective of the geographical location of States, whether coastal or land-locked, and taking into particular consideration the interests and needs of the developing countries as specifically provided for in this Part of the Convention.

3. The Area shall be open to use sxclusively for peaceful purposes by all States, whether coastal or land-locked, without discrimination and without prejudice to the other provisions of this Part of the present Convention.

4. Necessary measures shall be taken in order to ensure effective protection for the marine environment from harmful effects which may arise from activities in the Area, in accordance with Part XII of the present Convention.

These paragraphs express the four legal and economic attributes of the Common Heritage concept as they have developed in discussions and writings since the concept was first proposed by Arvid Pardo in 1967. These attributes, more succinctly are:

- non-appropriability,
- shared management and benefit sharing by mankind as a whole,
- use for peaceful purposes only,
- conservation for future generations.

II. The Seabed Authority and its Enterprise System.

It is suggested that African States take up the Nigerian/Austrian proposal for consideration by the Conference.

The objections from the industrialized countries will be (1) that the Conference has solved almost all remaining problems of the "parallel system" and that an accord on this system is imminent; (2) that the whole issue is premature since the mining companies recently have drastically revised their production schedules and there may be no production for at least another ten to 15 years, also considering the present crisis on the metal market and the lack of available capital; that Part XI of the Composite Text should therefore be separated from the rest of the Convention and left for later consideration; (3) that it is "too late" for the introduction of "totally new ideas," which would postpone the conclusion of negotiations by several years.

Objection (1) is plainly an untruth. The problems of technology transfer and of financing the Enterprise have not been solved. What is more, they cannot be solved in the context of a parallel system. If industrialized States and their companies are free to use their limited capital and technological resources to mine what they need, there is no need, no economic incentive for the Authority's "Enterprise," which simply will not get off the ground. There will be no participation of developing countries in seabed mining: there will be no beginning of a new international economic order.

There is some truth in objection (2): The mining companies are not in a very brilliant situation at the moment. Decisions on huge investments in seabed mining will be hard to come by. This, however, will encourage the companies to cooperate in the joint-venture approach, which would reduce their investment and share their risk. In this, the companies are thinking farther ahead than the Governments of the industrialized countries, whose resistance against the new approach, however, may be less adamant than it now appears. There is likely to be an immediate majority in favor of the proposal, as soon as a group of States would make it. It might be a real breakthrough, in the sense indicated in this memorandum.

As to objection (3): obviously, if there can be no agreement on the "parallel system," it is not too late to discuss an alternative solution. As a matter of fact, in the present stale-mated situation, the introduction of a new idea might considerably shorten, rather than lengthen, the process of negotiation.

III. Limits of the outer continental shelf:

It is suggested that African States insist on their position that the limit of the outer continental shelf coincide with that of the exclusive economic zone, that is, 200 miles from well defined baselines.

This is the position actually favored by the majority of members of the Conference, including the 53 landlocked and geographically disadvantaged States. The number of countries who could gain, or think they could gain, from an extension beyond 200 miles, is very small: not more than 20. They could, however, muster one third of the votes to block the 200 mile proposal. The consequence would be that there would be no agreement on the outer limits of the continental shelf. In the view of this writer, no agreement, on this point, is better than a very bad and unworkable one. It leaves the door open for a better agreement at a later date. The present proposals, both for the delimitation of the international area and for the delimitation of the continental margin (the "Irish formula") are so bad and so elastic that, practically, they are equivalent to no agreement. If they were adopted, however, it would be much more difficult to change them later. If there is no agreement now, there may be one later, when there is more clarity about the international area and perceived interests will change.

It was not possible to agree on the limits of the territorial sea at the Second Conference on the Law of the Sea. It is possible now. Negotiations on the continental shelf may well have to go through the same paces.

As a last resort, the formula proposed by the Soviet Union would be preferable to the Irish formula.

IV. Revenue sharing.

It is suggested that African States support some form of revenue sharing, in the form of an international tax on major uses of ocean space.

The Nepalese proposal may be somewhat over-elaborate: It proposes, in fact, the establishment of a special Fund -- the Seabed Authority already has two Funds, a General and a Special one -- with a special Board of Governors, duplicating the Council and the Board of the Enterprise. Such a proposal would not seem to have chances of success.

On the other hand, the idea of an international tax is a highly constructive one, as pointed out in this memorandum. And the principle of revenue sharing also in areas under national jurisdiction is now generally recognized by States, as indicated, as a matter of principle, by the uncontested inclusion, in the Composite Text of the provision for revenue sharing on the continental margin beyond 200 miles: to have, in fact, affirmed this principle, is the primary merit of this Article.

Perhaps a broad enabling clause, enabling the competent organs of the Authority to establish such a tax, would be the best way to follow.

V. The Portuguese Resolution

It is suggested that African States support the Portuguese Resolution.

Effective management systems for national ocean space and resources can only function if there are equally effective management systems for international ocean space and resources: this follows from the fact that ocean space is an ecological whole: Yneither living resources nor pollution recognize national boundaries, and uses and areas are interdependent.

The restructuring and integration of the international organizations competent in ocean affairs is therefore an essential part of building a new order in the oceans.

While all States need international organization and international cooperation in ocean affairs, this applies, in particular to developing countries and to landlocked and geographically disadvantaged countries. It is only through international organization that these groups of States can hope to get their share of the common heritage of mankind.

It is therefore suggested that a tactical alliance between the group of 77, and, espsecially the African countries, and the group of landlocked and geographically disadvantaged States would be most fruitful: on the question of the Portuguese resolution, on the issues of the Seabed Authority, on the question of the limits of the outer continental shelf, and on others. Such an alliance might in fact become a determining -- and saving -- factor at the Conference.

Selon le paragraphe 3:

> "Lorsque la capacité de pêche d'un Etat côtier lui permettrait presque d'atteindre à lui seul le volume admissible des prises fixé pour l'exploitation des ressources biologiques de sa zone économique exclusive, cet Etat et les autres Etats intéressés coopèrent en vue de conclure des arrangements bilatéraux, sous-régionaux ou régionaux équitables permettant aux Etats en dévellop-pement sans littoral de la même région ou sous-région de participer à l'exploitation des ressouurces biologiques des zones économiques exclusives des Etats côtiers de la sous-région ou région, selon qu'il convient, eu égard aux circonstances et à des conditions satis-faisantes pour toutes les parties."

Le paragraphe 4 précise que:

> "Les Etats développés sans littoral n'ont le droit de participer à l'exploitation des ressources biologiques, en vertu du présent article, que dans les zones économiques exclusives d'Etats côtiers développés de la même sous-région ou région et compte tenu de la mesure dans laquelle l'Etat côtier, en donnant accès aux ressources biologiques de sa zone économique exclusive à d'autres Etats, a pris en considération la nécessité de réduire à un minimum les effets préjudiciables aux communautés de pêcheurs ainsi que les perturbations économiques dans les Etats dont les ressortissants pratiquent habituellement la pêche dans la zone."

Enfin, "Les dispositions ci-dessus sont sans préjudice des arrangements éventuellement conclus dans des sous-régions ou régions où les Etats côtiers peuvent accorder à des Etats sans littoral de la même sous-région ou région des droits égaux ou préféreniels pour l'exploitation des ressources biologiques de leur zone économique exclusive". (50)

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(50) document A/CONF.62/WP.10/Rev.3 op. cit.

CONCLUSION

La question de l'accès à la mer des pays sans littoral et de leur participation à l'exploitation des ressources de la zone économique a été un facteur déterminant de l'éclatement des groupements d'intérêts traditionnels fondés sur des critères idéologiques ou des niveaux de développement. Elle constitue également l'une des causes importantes des difficultés auxquelles se heurte encore la troisième Conférence sur le droit de la mer. Les revendications des pays sans littoral n'ont été prises en considération que partiellement: ils n'ont aucun droit sur les ressources minérales de la zone économique, et ne peuvent prétendre aux mêmes droits que les Etats côtiers en matière de ressources biologiques.

Le groupe des pays sans littoral ou géographiquement désavantagés dispose d'un nombre de voix suffisant pour bloquer, le cas échéant, l'adoption de la future Convention; mais prendrait-il le risque d'utiliser cet ultime recours alors que les négociations à la Conférence se trouvent déjà dans une phase difficile? (51)

Ces difficultés pourraient être surmontées si les Etats côtiers étaient, dans la pratique plus compréhensifs à l'égard de leurs voisins enclavés et moins développés (52).

En définitive, c'est de cette compréhension que dépendra l'aboutissement des prochaines négociations et la participation effective des pays sans littoral à l'exploitation des ressources de la zone économique exclusive.

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(51) En raison notamment du changement de la position américaine sur certaines dispositions du projet de Convention.

(52) La prise en considération des intérêts des pays sans littoral en développement est particulièrement importante dans la mesure où se sont surtout ces pays qui rencontrent des difficultés économiques et alimentaires considérables. C'est d'ailleurs la raison pour laquelle ces Etats dont certains font partie du groupe des "pays les moins avancés", font presque toujours, depuis la première CNUCED notamment, l'objet de mentions particulières au sein des instances internationales.

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Law of the Sea: New Perspectives

Just two years have gone by since INTERNATIONAL PERSPECTIVES reported on the status of Law of the Sea negotiations, which, according to Donald Munro, generated a "Canadian Dilemma, with this country "caught in the middle" between an influential group of Western industrialised States, led by the United States, flatly rejecting the 1982 Convention on the Law of the Sea, and a group of Eastern Socialist countries which, for the time being, abstained from taking any final position.

In just two years, perspectives have radically changed.

When the Convention was opened for signature on December 10, 1982, it gathered a record-breaking number of 119 signatures on the very first day. On the day the deadline for signing expired, on December 9 1984,159 States had signed: another record. Among major States, only the U.S., the U.K. and the Federal Republic of Germany did not sign. U.K. and F.R.G., however, come under the convention under the umbrella of the European Economic Community of which they are membhich has signed the Convention. The U.S. alone, among major, remains outide, forthe time being, together with a heterogeneous group of minor states which wish to settle their boundary problems before acceding to the Convention. There can be no doubt: The Convention will come into force when it has obtained the equired 60 ratifications. Fourteen States already have ratified it.

Together with the Convention, the U.N. Conference on the Law of the Sea adopted a numbef Resolutions, two of which are of particular importance for the future of the Convention. Resolution I established a Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea. Resolution II, inspired by an earlier U.S. proposal, creates an interim regime for ocean miners, for the period between

the signing of the Convention and its coming into force. It provides for an orderly registration of "pioneer investors" after they have settled, among themselves, any overlapping claims. Upon registration, they enjoy security of tenure and exclusive rights under a contract for exploration, site-specific research and development. They are also guaranteed a contract for exploitation and a production authorization as soon as the Convention comes into force. In return, they have certain obligations towards the Commission, such as the payment of a registration fee and an annual fee for their exploration rights; assistance in training of personnel for the future Enterprise, facilitation of access to the technology required for the future Enterprise, and assistance in exploring two mine sites for the future Enterprise, thus ensuring that the Enterprise can proceed with its operations at the same pace as the pioneers, once the Convention comes into force.

Four pioneers have already submitted applications for the registration of their claims: India, the Soviet Union, Japan, and France, thus indicating unequivocally that they intend to proceed with their seabed mining projects under the Convention regime, and not under any alternative regime.

On December 17, 1984, Delegations of these four countries met in Geneva to "exchange coordinates," i.e., to inform one another confidentially about the exact location of the sites they intend to register, and to examine the question of possible overlaps. It appears that there are indeed such overlaps between the areas claimed by the Soviet Union on the one hand and the Western Consortia (including U.S. companies) on the other. These will have to be reconciled before claims can be registered and exploration authorized.

As is well known, it had been the intention of the United States to create an alternative regime. Since the basic principle of the Common Heritage of Mankind, on which the Convention regime rests, is opprobrious to the Reagan administration, the U.S. opted not to sign the Convention

and to try to convince the other potential ocean miners (U.K., France, Federal Republic of Germany, Netherlands, Belgium, Italy, and Japan, to enter into a "Mini-Treaty" agreement, under which each one should have recognised the others' claims and proceeded to mine under its own national jurisdiction and legislation.

But it turned out harder than the Reagan administration had anticipated to convince the allies. Much water had to be poured into the wine of the "Mini-treaty." First it was downgraded to a "Reciprocating States Agreement" -- nothing more than an agreement to settle bilaterally any overlapping claims in the area beyond national jurisdiction: a step required by, and in accordance with, Resolution II -- then it was further diminished into a "Provisional Agreement" which finally was signed in August this year, just before the opening of the resumed Second Session of the Preparatory Commission in Geneva. It was there that the three States signatories both to the Convention and the "Provisional Agreement" -- France, the Netherlands, and Japan, made it quite explicitly clear that, in their view the "Provisional Agreement" merely provided a mechanism to settle overlapping claims, not an alternative regime, and they confirmed their loyalty to the Convention -- France and Japan, the pioneers, by filing their applications for exploration rights in their specified site.

It is most unlikely, therefore, that the U.S. will pursue a course of open defiance of the Convention. If -- when the time comes -- U.S. companies wish to mine outside (not against) the Convention, they can do so in areas under national jurisdction, on the basis of bilateral agreements with States having deposits of nodules in their economic zones. The U.S., as is well known, does not have any quarrel with the other parts of the Convention which U.S. lawyers mostly consider -- rightly or wrongly -- to be "customary law."

Thus, there is no longer much of a "dilemma." The interim regime for sea mining exploration, research and

development has acquired concreteness and specificity. And there is no alternative regime: Any State attempting to exploit the Common Heritage under unilateral national legislations would clearly be in violation of international law.

This is not to say that there are no longer any problems, or that the Preparatory Commission got off to an easy start. The problems are many: Our inheritance from UNCLOS III is not an easy one; and the world situation keeps changing. Many solutions that appeared acceptable or reasonable in the 'seventies, are obsolete in the '80s and '90s. What is needed, to meet these challenges, is not only flexibility and empiricism; it is inventiveness, leadership and creativeness: as much of it as was required during the period of the making of the Convention.

The Preparatory Commission was most fortunate in the appointment of its President, Dr. Joseph Warioba, Attorney General and Minister of Justice of Tanzania, and a longtime leader in UNCLOS III. His negotiating style is characterized by calm, firmness, understatement, lack of rhethorics, and a good sense of humor. He listens, and then assumes his responsibilities. He is fair and has acquired the trust and confidence of East West, North and South.

It was under this strong leadership that the Commission succeeded, after a period of groping for its bearings, to adopt its rules of procedure, define its programme of work and organise its subsidiary organs.

As almost everything connected with the making of the new Law of the Sea, the Preparatory Commission is a most unusual institution, without precedent in the history of international organisation. Its uniqueness stems from the fact that it is not only a "Preparatory Commission" as defined in Resolution I and as there have been many others in the past: it is, at the same time, the executor of Resolution II, that is, it must administer the regime for exploration, research and development for the pioneer

investors: receive examine, and approve their applications and survey their activities. Its relations to the pioneer investors are, in fact, quite similar to those between the future Authority and the States and companies who will exploit the Seabed under contracts with the Authority. At the same time, the Prep.Com has the responsibility to "ensure the early entry into effective operation of the Enterprise," and this, too requires operational capacity: The selection of mine sites for the Enterprise, the training of personnel, the acquisition of technologies. There has been much discussion, within the Prep.Com, whether the Prep.Com possesses indeed the legal capacity required for the fulfilment of its functions.However, it appeared less useful to pursue this questions theoretically than to proceed practically and simply do what has to be done.

The Commission is organised in a Plenary -- resembling the Assembly of the future Authority, and a General Committee of 36 members, including all the officers of the Commission, selected on a regional basis. The General Committee, under the chairmanship of the Commission's President, and under the guidance of the Plenary, acts as executor of Resolution II. It should be noted that the Council of the Authority, likewise, will consist of 36 members, selected on the basis of far more complex criteria, combining interest representation and regional representation. Also its decision-making processes are far more complicated. The General Committee, as executor of the interim regime under Resolution II, appears like a streamlined, more functional body, with a decision-making procedure that strictly follows the precedent, tried and trusted,of UNCLOS III, that is, consensus, whenever possible, with voting only as a last resort.

The Plenary, which co-ordinates and harmonises the work of the whole Commission, is also entrusted with the specific task of drafting the rules and regulations for the Authority and it subsidiary bodies -- with the exception of the Enterprise for which there is a Special Commission.

There are four Special Commissions, each one entrusted with a specific task, although these tasks do overlap and much coordination and integration will be necessary. The Plenary has embarked on its task in a businesslike and effective manner.

The First Special Commission deals with the question of the land-based producers, that is, those countries which, like Canada or Zaire or Zambia, produce, on land the same minerals that will be extracted, in the future, from the seabed, and which, therefore may lose exports and foreign exchange earnings. This is one of the problems most perplexing for Canada: One that may still pose a "dilemma" for Canada.

The Convention itself proposes three courses of action to help solve this problem of the land-based producers. The first is a production limitation, imposed for the first 15 years of ocean mining. The result of endless and most difficult negotiations, the limitation formula is based on the prospective rate of increase in nickel consumption. Seabed production, under the Authority, is not to exceed 60 percent of the anticipated rate of increase, thereby trying to ensure a healthy growth to land-based producers and to potential land-based producers. This is the preventive approach. The second course of action is remedial: Land-based producers are to be indemnified by the Authority for their losses in export earning, where such losses occur.

The third course of action is cooperative: The Authority is to participate in global commodity agreements ensuring prices fair to producers and consumers.

Already before the conclusion of UNCLOS III it had become clear to every one that these measures were not likely to protect land-based producers among the developing countries. The production limitation formula was quite seriously flawed in two ways: If it protected anybody, it would protect nickel producers only, of whom Canada, of

course, is the major one. But due to the composition of the nodules: the proportions between nickel, copper cobalt,and manganese, on the one hand, and the demand for these metals on the world market, on the other, it would not protect producers of cobalt and mangangese, and this is what would have been interesting for developing countries like, e.g., Zaire. Producing the lawful amount of Nickel, the Authority would wildly overproduce cobalt and, perhaps, manganese, and the prices of these metals might be severely affected.

Worse than this first flaw, however, is the second. The whole concept is based on assumptions which, if they ever were valid, certainly are no longer valid today. It had been assumed that (a) manganese nodules would be the only commercially interesting minerals to be mined in the foreseeable future; (b) that these nodules were to be found exclusively in the international area and the Authority therefore really could control their production. Both assumptions are false. Nodules are to be found in areas under national jurisdiction -- in the EEZ of Mexico, which has already signed a joint venture agreement with a U.S. company for their exploration, and in those of France, the U.S., Chile, and probably others. To limit production only in the international area simply means to limit the Authority out of production: Production will go elsewhere. Which, of course, it may in any case: One certainly should expect the United States now to take this perfectly letigimate route rather than affronting the international community by an open violation of the Convention. Thus the production limitation formula, for which, it should be added in all fairness, Canada is largely responsible, is worse than useless.

The same goes for the compensation formula. If land-based developing producer countries can be compensated only for damage arising from production in the international area, this compensation may be meaningless, since there can be no compensation for production under national jurisdiction which may equally affect prices. Besides, it will be impossible to determine what is affecting what.

The third course of action, global commodity agreements, remains open, but it is well known that they are effective only under certain limited circumstances, and whether these will exist for the nickel, cobalt, and manganese market (copper will be very little effected in any case, at least until the sulphide crusts are commercially exploited), is a wide open question.

It is clear, then, that the First Special Commission, under the able leadership of Ambassador Hasjim Djalal of Indonesia (now Ambassador to Canada), will have to come up with some new and creative thinking.

To bury one's head in the sand, or try to stop ocean mining, will not do. If and when ocean mining is going to be economical, it will be undertaken on a large commercial scale. That is as sure as a law of nature. It may be an unsettling development, affecting miners in industrialised countries, such as Canada, since ocean mining tends to be more and more, perhaps completely, automated; and it may affect relations between industrialised consumer countries and developing producer countries, marginalising the latter. Land-based producers ought to get ready for this possibility. They can do so, not by recourse to Neo-Luddism, but by joining what they cannot kill: by becoming ocean miners themselves, through cooperation with the International Seabed Authority, utilising their skills and experience, especially in the mineral processing sector, and updating them. Rather than compensation, they should seek the assistance of the Seabed Authority in diversifying their economies and starting new industries, particularly in the new sector of the bio-industries which, in turn, are very likely to transform the mineral processing sector. (processing can be done through bacteria.)

Since all these changes are rather unpredictable at the present time, the First Special Commission cannot do very much more than study the problems and monitor developments. And that is what it is doing.

We have expanded somewhat disproportionally on the problems of the First Special Commission because they are of particular interest and importance to Canada. But the tasks of the other Special Commissions are no less challenging, and they all interlink.

The Second Special Commission , led by Trinidad's Lennox Ballah, another one of the veterans and leaders of UNCLOS III, has a twofold mandate. As a "preparatory commission," it has to draft rules and regulations for the future Enterprise: a paper-work responsibility. At the same time, it has an operational responsibility, that is, to ensure the early entry into effective operation of the Enterprise by exploring at least one mine site, if not two, training personnel and assuring the availability of technology for the Enterprise.

The Enterprise, it will be recalled, is the "operational arm" of the Seabed Authority: an international public company that can undertake seabed mining projects on its own or in joint venture with other companies or States. The Enterprise, whose Statute is annexed to the Convention, is governed by a Board composed of international civil servants elected by the Authority's Assembly.

Thus Commission II has to function, to some extent, as a pre-Enterprise or interim Enterprise in the framework of the Commission. Whether, as a Committee of the Whole, it can perform this operational task effectively, is open to question. Perhaps it should establish its own operational arm. The Delegation of Austria has introduced a proposal for the establishment, by the Commission and under its auspices, of a Joint Enterprise for Exploration, Research and Development (JEFERAD), which could, most expeditiously, fulfil the operational part of the Commission's mandate. Such a Joint Enterprise should be directed by a board, with half of its members selected by the Commission, and the other half by investors (States or companies), in proportion to their investment. The Commission should also come up with

half the required investment -- one half of some two to three hundred million dollars over the next five years -- which would make the venture highly attractive to industry and industrialised States while it would offer developing countries a unique opportunity to participate as equals in the management of a high-tech venture. JEFERAD would represent a new form of scientific/industrial cooperation between North and South, providing a framework for co-development of technology rather than transfer (which is much more costly and problematic).Such undertakings: new forms of scientific/industrial cooperation between North and South, have been proposed on many occasions by political leaders. They have never been realised. Here, for the first time, we have a concrete, well defined, opportunity to realise a prototype. Would this not be, apart from everything else, a splendid response to the request of the Secretary General of the United Nations, to think of ways to strengthen the system and make it more operative, on the occasion of its 40th birthday?

The Third Special Commission, chaired by the Dutch Hans Sondaal,is elaborating a mining code, in accordance with the terms of the Convention. Wisely, this commission has begun by concentrating on rules and regulation for the early stages, namely, exploration, research and devlopment, which is, what actually is going on, while nobody really knows when commercial mining will get under way, and in what form. It would be a pity if the international community let itself once more be trapped into writing detailed laws and rules which may be obsolete and inapplicable at the time and in the situation in which they are to be applied.

The Fourth Special Commission, finally, is in charge of writing rules and regulations for the International Tribunal for the Law of the Sea, which will be established in Hamburg, Federal Republic of Germany, as soon as the Convention comes into force. The fact that the FRG has not signed the Convention may cause some difficulties, of a political if not of a legal nature, with regd to the seat of the Tribunal. This notwithstanding, The task of this

commission, ably led by Gunter Görner of the German Democratic Republic, is relatively easy and clear-cut. The International Court of

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The Fourth Special Commission, finally, is in charge of writing rules and regulations for the International Tribunal for the Law of the Sea, which will be established in Hamburg, Federal Republic of Germany, as soon as the Convention comes into force. The task of this commission, ably led by Gunter Görner of the German Democratic Republic, is relatively easy and clear-cut. The International Court of Jusice can serve as a usable precedent, at least in some aspects, while there are others which require new thinking: e.g., rules and regulations applying to entities which are not States (companies, individuals) and which, under the Convention have a standing in the Tribunal's Seabed Chamber. In any case, the work of this special commission is proceeding smoothly and expeditiously, and undoubtedly will be completed in another session or two.

How long the work of the Preparatory Commission as a whole will last, is hard to predict. U.N. planning appears to be based on the assumption that the 60th instrument of ratification may be deposited in 1988, at which time the Convention would come into force. The Commission would continue to exist until the first session of the Authority's Assembly and the election of the Authority's Council.Perhaps until 1989 or 1990. Perhaps it will have one decade of activity. The effectiveness with which it performs its functions certainly will be a determining factor: Not only may it hasten the process of ratification by removing many of the uncertainties and preoccupations confronting States, whether signatories or nonsignatories of the Convention. It may also largely determine the shape and modes of operation of the institutions created by the Convention -- especially the International Seabed Authority. For institutions are not

made only by the letter of the law that created them; they must be living organisms, able to respond to changing circumstances. An effective interim regime for exploration, research and development, benefiting pioneer investors, developing countries, the Enterprise, the Authority and, thereby the United Nations system, will smoothly, almost without a break, grow into a permanent regime for exploration and exploitation under the Convention. An interim regime unable effectively to control exploration and unable to keep the development of the Enterprise in line with developments outside, will create a host of new problems for the Authority upon the entry into force of the Convention -- or may even postpone the entry into force of the Convention *sine die*.

This is why the PrepCom's work is as important as the work of UNCLOS III itself. This is why it is to be hoped and urged that Canada should continue to play the same leading role, with the same continuity and high-caliber representation and participation in the Prep.Com. that made her so strong during UNCLOS III. One can only get out what one puts into a collective undertaking, or into a relationship in general. Canada has put a lot into the Convention, and got a lot out of it. It has a high stake in the ratification and coming into force of the Convention. It has a high stake in giving to ocean mining a direction that is compatible with Canadian interests and its leadership in strengthening the United Nations system and economic cooperation with developing countries. It can be done.