Chapter 4

Natural Resources and World Order

4.1 Introduction

Modern technology, at the privileged disposal of only a few industrialized countries, \(^1\) has also made possible the recovery of mineral-rich manganese nodules from the seabed, thus necessitating the development of an international regime to govern exploitation in the Area beyond national jurisdiction. Currently, marine minerals are estimated to generate approximately one trillion dollars in revenue each year.\(^2\) Burgeoning technologies for seabed mining continue to evolve, and exploitation of polymetallic nodules, cobalt-rich crusts, and polymetallic sulphides becomes a commercial reality, the future potential increase in this revenue is enormous. What is needed today is a vision, a vision of realism a vision of opportunity.

It is necessary to eliminate existing pessimism, not to say defeatism and confrontation, regarding the possibility of the rights of an enormous majority of mankind being better protected. Various types of insecurity, instability, and imbalance characterize the present exploration and exploitation of natural resource. Technological progress has been made in all spheres of activities in the seabed, thus providing a solid potential for improving well-being of all peoples.

In the past, when the influence of technology was not so strong in terms of development, trade in technology was the domain of private individuals and private ownership of freedom in setting contractual terms and condition. By extending
technological domination, industrialized countries have gradually created legal principles\(^3\) and instruments have become historically anachronous in the area of technology and of implementation of the principles of NIEO. Deep seabed mining had emerged as an issue during the late 1960’s and the early 1970, as speculation increased\(^4\) regarding the potential to mine mineral deposits on the deep floor. By the early 1980’s\(^5\) many were predicting a major boom in the mining of deep seabed nodules of cobalt, manganese, nickel, copper and other minerals.

The enthusiasm for deep seabed extraction was not restricted to mining companies and consortia. By the early 1990s,\(^6\) the prospect for economically feasible deep seabed mining nodules any time soon has become remote, due primarily to the discovery of substances for many materials and the ample availability of land based supplies. The deep seabed mining did not exist when part XI was negotiated. Many of the objectionable provisions of part XI were negotiated on the assumption that such mining\(^7\) would become a commercial reality before the end of this century.

The 1994 Agreement Amendment to UNCLOS have brought the major industrialized countries\(^8\) back into the fold through concession on the seabed regime of 1982, which was seen as too much under the influence of the NIEO and planned economy models prevailing in the 1970’s. The evolution of the UNCLOS deep seabed regime is traced up to the 2000 Deep Seabed Mining Code. Strictly speaking that there is no right under customary international law for states to make unilateral claims to a right explore and exploit resource of the seabed in the high seas. The CHM doctrine,\(^9\) which is postulated under United Nations Law of the Sea Convention 1982 and a doctrine which enshrines a collective means of exploring and exploiting resources of the seabed, must be seen as the guiding principle upon which further developments under international law should proceed. However there are differences
of opinion among the states with reference to this principle. Moreover, what constitute
the CHM is never resolved. The need to recognize the exclusive right to exploit an
Area and claim its resources brought deep seabed resources into the broader context
of ocean use, while the need for international recognition put the issue in the context
of the ocean and resource discussions already underway in the United Nations.

The ISA established by the Convention to oversee deep seabed mining, held
its first working session in 1995. The International Tribunal on the Law of the Sea
established by the Convention with jurisdiction over disputes concerning the
interpretation or application of the Convention heard its first case in 1997. Soon after
the United Nations General Assembly decision to establish a committee to study all
aspects of peaceful use of the seabed and its resources beyond the limits of the
National jurisdiction.

The International Seabed Committee began work in 1969 on a statement of
legal principle to govern the use of the seabed and its resources, and the following
year the General Assembly unanimously adopted the Committee’s Declaration of
Principles, which stated that “the seabed and the ocean floor, and the subsoil thereof
beyond the limits of national jurisdiction as well as the resources of Area are the
CHM, to be preserved for future purposes, not subject to national appropriation and
not to be exploited except under the international regime to be established. All rights
in the resources of the Area are vested in mankind as a whole, on whose behalf the
Authority shall act, these resources are not subject to alienation. The minerals
recovered from the Area, however, may only be alienated in accordance with the
provisions of the UNCLOS”.

For many years following the adoption of UNCLOS the provisions of Part XI,
dealing with deep seabed mining, were viewed as an obstacle to the universal
acceptance of UNCLOS. That was particularly true in the view of the fact that the main apposition to those provisions came from the industrialized states. Under UNCLOS, all exploring and exploiting activities in the international seabed Area would be under the control of the ISA. It is essential to realize that the UNCLOS has to grapple with a number of complex interlocking issues affecting the interest of all nations of the world, which are sovereign, independent and equal. Major problems of scientific research and prevention of pollution on a global scale are involved. A coherent comprehensive, integrated, intelligent and co-operative approach that comprises pragmatism, vision and high purpose is called for.

There is undesirable disappointment and even despair that even after the establishment of ISA, there is not only no agreed Convention but that such a Convention does not appear to be even in an effective sight. Moreover, the 1994 Agreement has given very purposeful opportunities to industrialized states. Such a view, however, is based an inadequate appreciation of the magnitude and complexity of the difficulties. There is no absolute evidence of progress in the world order. Theoretically some of the principle for the exploration and exploitation are negotiated. But those, which are theoretically, sound but not practically. There must be harmony between the states while they are exploring the resource of the seabed, subsoil and ocean floor without which it would virtually impossible to sustain the resources.

4.2 Explorations and Exploitation of Mineral Resources

The exploration and exploitation of the natural resources\textsuperscript{13} of the sea constitute one of the most typical problems of the contemporary international law. There was differences of opinion among the states for the exploration and exploitation of the natural resources. The Regan Administration, however, introduced the argument that
freedom of high seas, recognized by all for navigation, could be extended to the exploitation of minerals, ensuring that seabed minerals were open to all on the first come basis.

It is no longer possible under world order. Wherever the intensity of human activity has increased, the emergence of management arrangements has been a prerequisite for rational utilization of such areas and their resources, the industrial nations ignored many of the provisions and continued to advance explorations and to minerals beyond sustainability. Two additional interests bolstered the developing country group. First were the interests of the developing country producers that would compete with minerals from the seabed. The very benefit of lower prices sought by the industrialized countries was a threat to the mineral-dependent economies of numerous developing countries.

The ISA is the supreme Authority of UNCLOS to control all the activities of exploration and exploitation, with the seabed held in trust by the Authority for all humanity. Minerals from the deep ocean floor were only a scientific curiosity in 1876 when nodules of iron and manganese oxide were discovered on the deep seabed by a British research expedition on the HMS Challenger. Depth and distance ensured that interest in these minerals would remain scientific rather than economic for many years to come. It was not until the 1960s, when demand rose for the nickel, copper and cobalt contained in some of these deposits, that these minerals gained economic and political attention. More recently, two other forms of seabed mineral deposits, cobalt crusts and polymetallic sulfides, have been studied and considered for economic exploitation.

So in the international field whether it is outer space, the polar region or the deep ocean regions, the international co-operative arrangements have evolved to
circumscribe the limits of individual action and provide for co-operative use and joint
management. While actual exploration of the vast mineral resource in and under great
oceans is unlikely to become significant for some time, the means for such
exploitation are already at hand or will within sight.

Further developments are now perhaps as dependent on favorable economic
and legal conditions as an improvement in the physical capabilities. Imagine a time,
years into the future, when resources are scare. People do not have enough fuel to heat
their homes or to power their vehicles. Every day products are in short supply,
because the mineral supply needed to produce them has depleted. Even more, the
accessible freshwater resources are running dangerously low. How will countries
protect the needs of their citizens? One solution will be to derive whatever benefits
from the deep seabed, outer space, and Antarctica. But confusion exists as to who
owns the rights to these resources.

The gap between the rich and poor, the awesome predictions about world
populations growth, and the growing scarcity of raw materials seem to weigh heavily
on policy makers concerned about seabed resources. In general, developed nations
integrate the CHM principle as allowing the common use of designated areas, while
upholding traditional concepts such as freedom of the high seas and freedom of
exploration. The main reason for this lies in the extraordinary development of
techniques for exploring these resources and turning them to account. Advances in
techniques have made its possible both to turn to account resources hitherto unknown
or which could not be tapped, and to exploit other resources on an immeasurably
more intensive scale than was previously feasible.

The resources of the sea beyond the limits of national jurisdiction are the
CHM; the framers of the treaty faced the question of who should mine the minerals
and under what rule? The developing nations, on the other hand interpret the CHM principle broadly as means of implementing three major goals in the area of resource exploitation. The exploitation of the deep seabed's mineral resources beyond the limits of national jurisdiction were hindered by two factors: the absence of a mechanism to obtain long term exclusive rights to explore and exploit a specified Area and a process by which a title could be acquired. It was not until the mid-1960s that consideration was given to the exploitation of the minerals of the deep seabed; until that time there had been no cause to seek an alternative to the concept of freedom of the seas, a freedom that was antithetical to exclusive claims to areas and resources.

First, they interpret the CHM principle to prevent developed nations from monopolizing resources from these common areas at the expense of nations that lack of technology or financing. Second, developing nations want direct participation in the international management of resources extraction. Finally, Developing nations the want for the economic benefits to be distributed in their favor. In other words, while developed nations feel that the exploiters of resources should determine what is equitable pursuant to the CHM, developing nations argue that the international committee composed of nations without regard to who actually exploited resources, provides the best forum to manage common heritage areas.

The resource exploitation was the central theme of the Third Conference of the Law of the Sea. Moreover the mining process led to a main source of contention between the developed and developing nations. Countries like the United States of America refused to sign the Law of the Sea Convention specifically because of the deep seabed mining provisions. The developed countries took the view that mining companies, in consortia, should exploit the resources and that an international Authority should grant licenses to the companies.
Activities in the Area are to be carried out for the benefit of mankind as a whole by or on behalf of ISA established. In general, all the rights in the resources of the Area are vested in mankind as a whole, on whose behalf the ISA is to act and all activities should be carried out for the benefit of mankind as a whole. Article 140 provides that the Authority should provide for the equitable sharing of financial and other economic benefits derived from the activities in the Area. The regime governing the exploitation and conservation of the resources of the sea depends on the juridical nature of the sea in which they are to be found with regard to the possibilities of exploitation the mineral resources of the subsoil of the sea.

Recent technical information shows that the place where the depth of exploitation is not exclusively determined by the technical ability to build in the depth of water an installation or to use a device for exploitation. The resources might be considered to be property of world community as a whole. This appears to be the general trend in interpretation. At least some feeling for world ownership may be serving to restrain unilateral appropriation of minerals. If, then, the resources are the common property of the world community, how can each nation define its share of this property? Over exploiting must be eliminated from world public order or policy. This cannot be arranged with any particular resources unless the whole Area in which the resources can be exploit is concerned by the regulatory measures. No easy or cheap way is apparent out of these problems not would it be expected that there should be conflicts concerning ownership of land resources have been the subject of costly and intensive activity for many thousands of years. The ocean covers more than 70% of the earth surface, yet miniscule amount of money are being spent by the nations in scientific enquiry.
Such conflicts have increased in frequency as effort has increased, and this is likely to continue. The exploitation of the seabed should make a considerable and unprecedented contribution to developments as much from the value of resources of the seabed and its substratum themselves, as from the importance of the implications implicit in the exploitation, particularly scientific research, which has real although indirect influence on the level of growth. The minerals contained in seabed manganese, nodules are economically and strategically important to the world’s major industrialized nations. The United States, for example, is heavily dependent on the import of nodules.

Much of the present land mining for these minerals is carried out in the underdeveloped countries. The evolution of the global economic system, globalization, has resulted in a frangible socio economic structure susceptible to disruption at many places and in many ways. Worse, the demands of population for food coupled with the relative inefficiency of agriculture on land, made fishing a preferred way of getting enough protein. The notion of the sea being a CHM espoused by the advocates of the United Nation Law of the Sea Convention made absolutely no sense without universal regulation and enforcement of the rules. The claim for collective international exploitation of marine resources has been associated in more recent times. The CHM concept, though lacking agreement in detail is an idealistic expression of a goal of universal justice.

Article 140 reflects the declaration of the principles in providing that activities in the Area shall be carried out for the benefit of mankind as a whole taking into particular consideration. The interest and needs of the developing states and of peoples who have not attained full independence or other self-governing states.
On the basis of the work of the Seabed Committee, the General Assembly in 1970 adopted unanimously the Declaration of Principles Governing the Seabed and Ocean Floor. Some of the major points may be summarized as follows:

1. The seabed and ocean floor, and the seafloor thereof, beyond the limits of national jurisdiction, as well as the resource of the Area, are the CHM.

2. The Area is open to use exclusively for peaceful purposes;

3. The exploration of the Area and exploitation of its resources are to be carried out for the benefit of mankind as a whole;

4. State shall act in the Area in accordance with the applicable principles and rules of international law, including the UN Charter, and in the interests of maintaining international peace, and promoting international cooperation and mutual understanding;

5. No state or person, natural or juridical, shall claim, exercise or acquire rights with respect to the area or its resources incompatible with the international regime to be established and the principles of this declaration;

6. States shall promote international co-operation in scientific research exclusively for peaceful purposes;

(a) By participation in international programs by encouraging co-operation in scientific research by personnel of different countries.

(b) Through effective publication of research programs and dissemination of the results of research through international channels.

(c) By co-operation in measures to strengthen research capability of their nations in research programs.
7. With respect to activities in the Area and acting in conformity with the international regime to be established states shall take appropriate measures for and shall co-operate in the adoption and implementation of international rules and standards and procedures for *interalia*:

(a) The prevention of pollution and contamination and other hazards to the marine environment including the coastline, and of interference with the ecological balance of the marine environment;

(b) The protection and conservation of the natural resources of the Area and prevention of damage to the flora and fauna of the marine environment;

8. Every state shall have the responsibility to ensure that activities in the Area, including those relating to its resources, whether undertaken by governmental agencies, or non governmental entities or persons under its jurisdiction, or acting on its behalf, shall be carried out in conformity with international regime to be established.

9. Parties to any dispute relating to countries in the Area and its resources shall resolve such dispute by the measures mentioned in the article 33 of the Charter of United Nations and such procedures for settling dispute as may be agreed upon in the international regime to be established.

Since the very early stages of civilization, efforts have been made to regulate the different uses of the seas and in later years also to protect its resources and the marine environment. Gradually there has emerged an international law, customary as well as treaty law, which has become known law of the sea. However it was not until a few decades ago that the content of this law was discussed at global level with the participation of a growing number of independent states, representing all continents of the world. General assembly also expressed the view that an international regime and
machinery should be established as soon as possible by an international treaty of a universal character generally agreed upon, to govern all activity involving the exploration and exploitation of the resources of the Area and other related activities.

The CHM approach was supported primarily with arguments based on efficiency. The common heritage of supporters in the United States however, undermined the common heritage concept. The present effort by developing states to maximize control over natural resources is based on a particular legal interpretation of the concept of CHM. The provisions of the 1982 United Nations Convention on the Law of the Sea UNCLOS III regulating, the seabed beyond natural jurisdiction prohibiting unilateral measures for the exploitation of the resources of the seabed, incorporate the common heritage concept as the Group of 77 interprets it. The provisions are alleged to have the character of Jus Cogens.

In 1969, the General Assembly of the United Nations adopted resolution 2574, known as the Moratorium Resolution. The resolutions provided that states must refrain from exploiting the resources of the seabed, depending on the establishment of an international regime. The law of the sea negotiations provided an opportunity for the developing states to apply these principles to effect change in the existing legal order. Exploration confers exclusive rights and involves the search, analysis, and tests of equipments, estimation of commercial viability and other activities necessary identifying potential mining site. The development of equipment and techniques to investigate and exploit the deep seabed as has been one of the greatest challenges to science and technology over the past half century.

The recovery of minerals from the seabed and our knowledge of new sources of marine minerals have developed rapidly during recent decades, yielding significant economic returns and promising potentially valuable additions to the world’s resource
base. In fact, UNCLOS convinced a substantial periods of recent history prior to its conclusion, extending over two decades and three global conference. The ISA adopted its first legislations in 2000, entitled Regulations on Prospecting and Exploration of the Poly Metallic Nodules in the Area, which made executing the initial exploration contracts possible.  

The regulations focus exclusively on prospecting and exploration for nodules; therefore commercial nodule mining, such as exploitation is not addressed.

The regulations on prospecting are laudable attempt to manage the beginning phase of the mining cycle. Nevertheless, there are serious problems with the regulations in their current format. There are two pressing matters on prospecting that will be addressed. First the ISA must ensure that miner will comply with the regulations. More particularly, the ISA should determine what incentives, the regulations provide to induce miner compliance, or alternatively, if there are sanctions that would accomplish the same. Second, the ISA must evaluate whether the regulations properly measure the ramifications of prospecting on the marine environment. Such an evaluation involves considering what mechanisms are built into the regulations to measure environment impact and whether an independent organ should oversee the environmental impact measurement process.

Notwithstanding, prospecting is an activity that is potentially more widespread, and there must be some formal guidance promulgated by the ISA in order to protect and preserve marine environment. The rules governing exploration are more comprehensive than those that govern prospecting. Nevertheless, many shortcomings in the present exploration regulations must be improved. Given the regulations that are forthcoming with respect to cobalt rich crusts and polymetallic sulphides, it is particularly noteworthy that the current regulatory scheme addressing
polymetallic nodules falls short in its endeavor to protect the environment. Considering that the ISA has entered into seven exploration contracts to date, any environment shortcoming in regulations that apply to the exploration phase should cause vexation in the international community. Moreover, the ISA has also failed to recognize the serious conflict of the interest given its role in approving contracts of exploration.

There are more questions than answers, regarding the adequacy of the Regulations Governing the Prospecting and Exploration of Nodules. One can hypothesize that the environmental matters the ISA must consider in the case of the mining cobalt rich crusts and polymetallic sulphides are at least as arduous, if not more so, than the issues involved with nodules.

Crusts do not form in areas where sediment covers the rock surface. They are found at water depth of about 400-4000 meters, in contrast to the 4,000 to 5000 meters at which manganese nodules occur. The thickest crusts, richest in cobalt, occur on outer rim terraces and on broad saddles on the seamounts, at depth of 800 – 2500 meters.

Crusts generally grow at the rate of one molecular layer every one to three months, or 16 millimeters per million years; one of the slowest natural process on earth. Consequently, it can take up to 60 million years to form thick crusts. Some crusts show evidence of two formative periods over the past 20 million years, with an interruption in ferromanganese accretion during the late microcline epoch 8-9 million years ago, when a layer of phosphoric was deposited. In addition to cobalt, crusts are important potential sources for many other metallic and rare earth elements such as titanium, cerium, nickel, and platinum, manganese, phosphorus, thallium, tellurium,
zircon tungsten, bismuth and molybdenum. Crusts are composed of the minerals nandite and foroxide.\textsuperscript{35}

Figure 1. Crust

Figure 2. Polymetallic nodules
Figures 1 and 2 are stating about crusts and poly metallic nodules. The character of crusts and poly metallic nodules can be properly understood by learning to their photographs taken by the explorers. Crusts are found where the currents have swept the ocean floor of sediment over millions of years; they are typically located on the plants and summits of submarine mountains ridges, and plantean. Submarine mountains can be huge sometimes rivaling the mountain rages on the continents and the richest deposits of minerals on these mouths are found in the Pacific Ocean.36

The technologically utilized for mining crusts and sulphides differs drastically from that employed in nodule harvesting, as nodules are scattered closely on the seabed and can be scooped up. In the case of crusts, there are strangely to ocean rocks, and assessing their presence and metal content involves digging or drilling ores from a solid rock via bottom traveling vehicles, water jet stripping of crusts from rock, and chemical leaching of crusts from submarine mouths.

Contracts with the seven seabed entities were signed in 2001 and 2002 by officials of the organizations and, on behalf of the Authority, by its Secretary General, Sathyanandan. These contractors are China Ocean Mineral Research and Development Association (COMRA), Deep Ocean Resource Development Company (DORD), Government of India (Signed 25th March in Kingston), Govt. of Republic of Korea (KODOS), Association Françoise Pour l’ etude et lan recherché des nodules (AFERNOD), Intergovernmental Joint Organization (IOM) and Yuzhomogeologiya. The regulations set out the duties and obligations of the Authority and contractors regarding their seabed activities. The contracts following a standard formula and valid for 25 years, requires their signatories to abide by the Convention.
4.3 Third World Approach

Miserably underdeveloped states are no doubt developing, but their advance is much slower than that of the developed states. As a geopolitical entity, the Third World demonstrates an inchoate quality. This is not only because of the very large number of nation states which it comprises but also because, *inter alia* of the diversity of geographical factors and political regimes, the economic orientation of component states, the variety of conditions under which they attained their national states and the susceptibility of these new states to outside pressures. Third World has played a leading role in shaping the some 400 articles that currently comprise the draft Convention on the Law of the Sea. 37

The Conference is the largest and most improvement undertaking in world history in terms of participation and complexity of issues. The active participation 38 of the Third World in the delicate negotiations of UNCLOS III is both symbolic and actual manifestation of the fact that as a force in international politics, the developing countries are no longer to be ignored. Depending on the interpretation accepted, the unilateral exploitation of the resources of the seabed may or may not be permissible under international law. The unilateral efforts are not permissible according to the developing states, organized as the Group of 77.39

Before proceeding to address the contribution and position of the Third World on certain of the crucial seabed issues it would be the appropriate to recount now UNCLOS III reached its present stage. The Third World countries have felt little or no constraints in proposing charges in the international legal and economic order that were contrary to existing principles.
As active participants in world politics, Third World countries have sought, and are seeking, to redress the imbalance in the international legal and economic order. As it will be seen, UNCLOS III provides them with a most appropriate forum to right way of the wrongs of the past countries. They stopped just short of demanding that these countries ratify the Convention, and it was very clear from the beginning that many of these developed countries would not sign the Convention, for various reasons which were not all related to western views. There were also some developing country views on establishing certain land-based production limits, which made the process a little less palatable to them. However, it was clear from the beginning that it would be an uphill struggle to get a lot of developed countries on board.

The legal principles articulated by the Group 77 in support of this view has a relatively recent origin, however, and are not consistent with the history of state practice with respect to the resources of the seabed generally. In the past, the resources of the seabed and this sub soil have been ultimately exploited. That exploitation evidently not submits to any prohibitory harm was bound on several theories. It was precisely the imbalance in the uses of the seas, the prominent role placed by the few individual countries in the exploration of what is convey to all and the fear that complete chaos, anarchy and even a state of belligerency might prevail that promoted the historic address of Ambassador Arvid Pardo of Malta before the First Committee of the General Assembly on November 1, 1967. He spoke of the importance of resources of the areas and the impact that less exploitation might have a mankind.40

The Group 77 has taken the view that the CHM concept is an emerging prohibitory norm, which is crystallized into binding customary international law. Generally the past approach of states may be characterized of attempts to maximize
control over the natural resources of the high seas. Though both developing and developed states alike sought to advance the same interest, i.e. maximizing control over resources, the approaches for satisfying this interest have differed. Resources have been exploited under freedom of high seas as by the extension of natural jurisdiction or sovereignty over resources area (i.e. the continental shelf.) Natural resources were to be used in accordance with the principles and purpose of United Nations, to principally benefit poor countries. It was until 1974 the Group 77 and over 120 developing countries at the United Nations have demanded that an International Authority be created should to enable the Group to mine the seabed independently.

Creation of an ISA proposed by the Group 77, is now reality. The response of the General Assembly was prompt and positive under Res. 2467 A XVIII a Permanent Forty-two-Member Committee was established whose task was to:

a) Study the elaboration of the legal principles and norms which would promote international co-operation in the exploration and use of the seabed and sub soil beyond the limits of the national jurisdiction;

b) Study the means of encouraging the exploration and use of the resources of this Area in the light of forcible technological developments and the economic implications, bearing in mind the fact that such exploitation should benefit marked as a whole;

c) Review and stimulate the exchange and widest possible dissemination of scientific knowledge on the subject;

d) Examine proposals to prevent marine pollution that may result from resource exploration and exploration; and
e) Study the question of reserving the seabed for exclusive peace purposes and to undertake a study of the question of appropriate international machinery, taking into special consideration the needs and interests of the developing countries.

This Committee supposes to submit report annually to the General Assembly on its progress. Thus the work of the Seabed Committee was broadened to cover almost all aspects of the law of the sea. As such it paved the way for UNCLOS III. The pivotal issue of the Conference has been the extraction of the non-living resources of the deep-sea bed and related items. Moreover, it is regarded as the starting point in the creation of a more just and equitable system of distribution of the resources of the deep seabed within the NIEO. Consistent with the Third World’s philosophy, which is founded on valid principles, the Group 77 has insisted that the following be suspected with regard to the Area:

a) The seabed and ocean floor and the sub soil thereof as well as the resources of the Area are the CHM;

b) The Area shall not be subject to appropriation through any means by states or persons, natural or judicial and no state shall claim or exercise sovereignty or sovereign rights over any part thereof. Any claims or exercise of sovereignty shall not be recognized;

c) The exploration of the Area and the exploration of its resources shall be carried out for the benefit of carried out for the benefit of mankind as a whole taking into particular consideration the interests and needs of the developing countries.

d) All activities in the Area shall be governed by the international regime to be established.

e) The Area should be reserved exclusively for peaceful purposes;
f) States shall act in the Area in accordance with the United Nations Charter and in the interests of maintaining international peace and promoting international co-operation and mutual understanding;

g) There is a need to reduce the economic gap between the developed and the developing countries.

h) The international interests of both producers and consumers in an orderly priced situation and in rational exploitation of the non-renewable resources, both from land and from the sea should be safeguarded.

i) MSR on the Area shall be carried out exclusively for peaceful purposes and for the benefit of mankind as a whole.

j) The transfer of technology to developing states should be promoted and encouraged; and

k) The marine environment should be protected.

The Group of 77 proposed a “unitary” system of exploitation, in which the ISA would have the prominent role in deciding how the Area should be exploited. The Group of 77 has maintained that the Area be explored under the operating arm of the Authority which must have direct and effective control over all the activities of exploration, exploitation and scientific research. Although American ratification of the LOST would not be enough to resurrect the NIEO, it would nevertheless enshrine into international law some very ugly precedents that are reminiscent of the collectivist spirit of the NIEO. One such precedent is that the nation-states of the world collectively own the world's unclaimed resources. Granting ownership and control to petty autocracies with no relationship to the resource or any ability to contribute anything to their development makes neither moral nor practical sense.
Much better on both counts is the simple notion that mixing one's labor with resources by developing complex machinery capable of scouring the ocean floor, for instance grants one a property interest in them.

A number of Third World Countries are major producers or potential producers of such raw materials as copper, nickel, manganese and cobalt, which can also be found in abundance on the seabed. Developed countries, on the other hand, are mostly importers of these minerals. It is not that there is some natural demise in policies, but instead it's that developing countries were not interested in maintaining the purity of the 1982 policies, and it certainly wasn't because there was a change in the market economy. The numbers and aggressiveness of the NIEO proponents gave them great influence among the developing countries, who organized their activities on seabed issues under the Group of 77, a Group that was initially formed to pursue developing country interests in trade and development negotiations and had since grown far beyond its initial membership. Since many developing countries believed that seabed mining would contribute little to their economies, G77 positions on the issue were more influenced by ideological interests than by economic concerns. Developing countries that did perceive economic benefits in seabed mineral development had to adopt positions that appealed to the G77 as a whole in order to maintain their influence in this group.

Uncontrolled seabed mineral production could have a direct and cause catastrophic impact on the foreign exchange earning of Third World land based producers. It is becoming increasingly difficult, however to arrive at an agreement because the interests of land based producers are varied and complicated.

The Declaration of Principles Governing the Seabed and the Ocean Floor are the Sub Soil Thereof Beyond the Limits of National Jurisdiction 1970 say that the
exploration of the Area and the exploration of its resources shall be carried out for the benefit of mankind as a whole, irrespective of the geographically location of states, whether land locked or coastal and taking into particular consideration the interests and needs of the developing countries.

Pursuit to specific articles dealing with scientific research, transfer of technology and the distribution of revenues, the Authority would be empowered to give special consideration to the interests and needs of developing countries, particularly the land locked and geographically disadvantaged among them. Such special consideration would not be deemed discriminatory activities in the Area shall as specifically provided in the Art 150, be carried out in such a manner as to foster healthy development of the world economy and balanced growth of international trade and to promote international co-operation for the overall development of all countries, especially developing states.

Unresolved issues of Third Conference of the Law of the Sea have developed. Again there is line of assertions among the states. Most of the developed nations have violated these regulations as indicated or articulated in the law of the sea. Over confidence and ambitions have forced to violate the rights and duty of others. And as developing countries started experimenting with market economics, they backed away from the wide-ranging NIEO, which sought, to promote income redistribution from the industrialized North to the impoverished South. By the early 1990s, some Third World diplomats were privately admitting that the Reagan Administration had been right to kill the LOST.

Position on the transfer of technology from seabed miner under a contract with ISA show the range of disagreement between the Third world and the industrialized countries. This position happened through the 1994 Agreement on Implementation of
Part XI of Third Law Conference on the Law of the Sea 1982. The policy of the Authority of assessing developing countries which suffer serious adverse on their export earning or economic resulting from a reduction in the price of affected mineral or in the volume of exports of that minerals to that extent such reduction is caused by activities in Area shall be bound on the following principles:

a) The Authority shall establish an economic assistance fund from a portion of the funds of the Authority, which exceeds those necessary to cover the administrative expenses of the Authority.

b) Developing land based producer states whose economies have been determined by the production of minerals from the deep seabed shall be assisted from the economic assistance fund of the Authority.

c) The Authority shall provide assistance from the fund to attended developing land based producer states.

Critics of the Convention lament what they view as a failure on the part of Western UNCLOS III delegations emphasis physiological issues at the Conference. The argument is that the failure invited the Group of 77\textsuperscript{55} to fill the resulting ideological vacuum with self-serving economic doctrines designed to guarantee the developing countries a sufficient role in seabed development.

The treaty negotiations were held in a different era, a time when communism reigned throughout much of the world, Third World states were proclaiming socialism to offer the true path to progress and prosperity, and multilateral organizations were promoting the NIEO, to engineer massive wealth redistribution from the industrialized to the underdeveloped states.
Indeed, the so-called Group of 77, the developing states’ *de facto* international lobby, dictated many of the provisions of the original LOST, particularly those provisions regarding seabed mining. The latter half of the 1980s saw major changes in world politics, particularly in the areas of investment and commerce. The Soviet Union introduced economic changes, as did other Eastern European socialist countries, and became more accepting of market economics. The coalition of developing countries was unable to sustain its support for the extremes of the NIEO. By the end of the decade, some leading supporters of the Convention in both developing and industrialized countries saw that the changing conditions and the continuing need to gain universal acceptance of the Convention made the market approach more widely acceptable as the basis for a revised regime for seabed minerals.

The theme of the deep seabed mining negotiations was the demand of developing nations to share the wealth and technology of seabed resources recovery. The Group 77 a bloc of less developed countries rallied behind the CHM concept and viewed the seabed mining regime as an opportunity to establish a NIEO.

By failing to recognize this crucial geographical reality, the developed states risks slipping further into some forum of international, political, economic, and social isolation with the image of an international out law or outcast. In order to maintain and strengthen their position as world leaders, the developed states must eschew this isolationist stance. The developed states stood to gain a great deal in long-term interest relations by being more open to compromise with the Group 77.

These nations saw the LOST as the leading edge of a campaign that included treaties covering Antarctica and outer space, expanded bilateral and multilateral aid programs, and activism by a veritable gallery of UN alphabet soup agencies ILO,
UNCTAD, WHO and WIPO. Ambassador Pardo commented that American acceptance of the treaty, however qualified, reluctant, or defective would validate international political control of private economic activities, or what he euphemistically termed the global democratic approach to decision making.

This lamentable blindness to the implications of global interdependence of threats U.S. influence in the Third World *vis-a-vis* the Soviet Union. Indeed, the deadlock on ideological issues that characterized the dialogue between the West and the Group 77 at UNCLOS III was explained by the Soviet Union as a means to consolidate its influence with the non aligned country and to isolate further the United States and its allies the world community. The Group 77 used the CHM doctrine to give developing countries a disproportionate voice in seabed development. In addition, the Convention can be viewed as moving toward a legitimization of the NIEO. Upon the future of the Convention, eight western industrialized nations entered into provisional understanding on August 3, 1984. Although the Group 77 immediately denounced the agreement of wholly illegal the provisional understanding is probably legal because its neither claims sovereignty or ownership over portion of the seabed, nor grants exclusive rights to any Area of the seabed that are intended to be valid against the rest of the world. The provisional understanding lacks any system of control over nations not party to the agreement. When non-parties already hostile to the provisional understanding, alternative regime, pouch upon mining sites claimed by parties to the provisional understanding. The parties will be faced with difficult confrontation.
4.4 The Customary Norm Process

The need for strict adherence to the recognized international procedural requirements for the creation of new customary international norms has enormous interests. Customary international law has been broadly defined as a generally recognized practice among states, which is recognized as binding. The Art 38(1)(b) reads international custom, as evidence of a general practice accepted as law. It is argued that the effect of this formulation is to create a presumption that all states, whether or not they have participated in the practice are presumed to have assented to the rule unless they can demonstrate that they have the start of persistent object.

The ICJ has endorsed viewpoint in the North Sea Continental Shelf Cases, wherein the court considered whether the equidistance principle of the self-delimitation, set forth on the Convention on the Continental Shelf, had coalesced into a norm of customary international law. The contemporary law of the continental shelf also supports the doctrine. It is because the seabed is not subject to national sovereignty that it was necessary to make new law to permit exploration of the shelf as an exception to the general rule. Indeed, the law of the shelf reaffirms the general character of the seabed as res communis. However, the exploitation would nevertheless be permissible although claims to exclusive rights in particular seabed areas would be precluded by both the freedom of the seas principle and the res communis status of the seabed.

While the freedom of the seas principle acknowledged the right of all to use the surface of the sea and seabed beyond the limits of national jurisdiction, it also protected the freedom of all to acquire by capture the resources of the sea reducible to possession. Five principles of the Declaration of Principle Governing the Seabed and

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the Ocean Floor, and the Sub Soil Thereof beyond the Limits of National Jurisdiction are relevant for this research work. First applies the common heritage label to both seabed and its resources; second, it forbids sovereign claims or appropriation of the seabed, but not to its resources; third, it precludes resource claims which are in compatible with the international regime to be established or the principles of this declaration; Forth, it provides that the international regime to be established shall be created by a treaty of a universal character, generally agreed upon; and fifth, it amplifies upon the “Common Heritage” principle by requiring that seabed and resource exploitation shall be carried out for the benefit of mankind as a whole.

In examining the impact of this resolution on the status of customary international law, defects may be found in all four of the pre-requisites. In analyzing the legal impact of this resolution the threshold observation may be made that General Assembly Resolutions have no force as positive international law.

Since the resolution of adopted in absence of formal opposition, the quantitative and qualitative consensus requirements are facially satisfied. This point would seem to support one of two alternative hypothesis: either that the Declaration was perceived as a political rather than a legal, instrument or that the Declaration was not perceived to be in derogation of the pre-existing freedom of the seas. Resource exploitation cannot be incompatible with a non-existent regime. Resolution of the international legal problems of the oceans, which account for over two thirds of the earth’s surface, is the cornerstone of the future world ordering. The customary norm process with its leisurely development and usually general norms is inherently less effective at ensuring the stability of world expectations than the more formal and specific treaty process. The paramount interest must be taken, however to preserve the
integrity and credibility of the customary norm process, both during the course of negotiations in the future.

4.5 Disarmament

Disarmament in the global level is not a new phenomenon in international relations. The Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Seabed and the Ocean Floor and in the Sub soil thereof was concluded by UK, USA and Soviet Union in 1971. The Treaty actually came into force on 18 May 1972. The Treaty provided that the signatory states would not emplaced on the seabed and the ocean floor and in the sub soil thereof beyond the outer limit of a seabed zone any nuclear weapons or any other type of weapons of mass destruction as well as structures, landing installations or any other facilities specifically designed for storing, testing or using such weapons.63 Article IV states “nothing in this Treaty shall be interpreted as supporting or pre-guarding the position of any state party with respect to existing international conventions including the 1958 Convention on the Territorial Sea and the Contiguous Zone, or with respect to rights or claims which such state party may assert, or with respect to recognition or no recognition of rights or claims asserted by any other state, related to water of its coasts, including interalia, territorial sea and contiguous zone or to the seabed and the ocean floor including continental shelves”. The advance in the technology of oceanography and greatly inclined interest in the vast and virtually tapped resources of the ocean floor lead to concern that the absence of clearly established rules of law might lead to strife.

In a similar vein Art 2 says that “in order to promote the objectives of and insure compliance with the provisions of this treaty, each state party to the treaty shall
have the right to verify through observation the activities of other states parties to the Treaty on the seabed and the ocean floor and in the sub soil thereof beyond the zone referred to in Article 1, provided that observation does not interfere with such activities”. To ensure that the term of the Treaty were being complied with by all the signatory states, the members were given the right to verify through observation the activities of others states provided such an act did not interfere with such activities. The member states also agreed to continue negotiations concerning further measures to prevent on any race on the seabed, the ocean floor and sub soil.

It was holds good when it was ratified by the states but not in the present scenario. Moreover, the implementation machinery also not adequate to face new forms of problems that are established through new technologies. The long-standing problems remained as it is from 1971-2006. Article VI says, “Any state party may propose amendments to this Treaty. Amendments shall enter into force for each state party accepting the amendments upon their acceptance by a majority of the states parties to the Treaty and therefore, for each remaining state party on the date of acceptance by it”. Moreover, the ISA has an obligation to implement or modify some of the norms pertaining to the disarmament in the seabed sub soil and ocean floor. So for as the present scenario is concerned the existing laws pertaining disarmament in the seabed is not more effective. Even the 1982 and 1994 Agreement have not focused more effectively. There ought to be reciprocity in order to over come these issues.
4.6 Seabed Mining

The legal regime of deep seabed mining has been the subject of an intense ideological controversy. The political and economic context of deep seabed mining has rendered uncertain in future.

This is not a case of mere codification of various treaties, agreements, Convention etc., established through state practice and custom. It is also evident that unless special steps are taken, seabed-mining operations can actually widen the gap between the developed and the developing countries. Interest in the exploration and exploitation of deep seabed ocean floor areas beyond the limits of the continental shelf has developed only in recent decades. It is largely connected with the imminent exhaustion of mineral resources found on the land surface and its sub soil and with awareness of the vast mineral resources which researchers have discovered on the seabed. At the same time, it has demonstrated that the mining of these resources will involve considerable difficulties.

It is inevitable that a major share of the benefit will accrue only to the nations, which are able to participate in such operations. The wealth of the seabed resources will be reflected as income only in the case of nations, which actually participate in the exploration and exploitation of activities. These considerations and the scientific and technological advances in the deep seabed mining have brought the cost of the minerals thus extracted close to the economically acceptable level.

The LOST may purport to promote international justice, fairness and cooperation, but, in fact, it advances none of these principles. Rather, it rises to the status of international law self-indulgent claims of ownership to be secured through an oligarchy of international bureaucrats, diplomats and lawyers. And the treaty's
specific provisions, which still, even if in an attenuated form, mandate global redistribution of resources, create a monopolistic public mining entity, restrict competition and require the transfer of technology, reflect the sort of status panaceas that were discredited by the historical wave that swept away Soviet-style communism.

In addition to the traditional conflicts over fishing rights and the breadth of territorial sea, further technological developments have created new problems concerning the exploitation of the resources of the seabed. In 1970, the General Assembly of the United Nations decided to convene a Third Conference on Law of the Sea. The second session of this conference was held in Caracas, Venezuela from June 20 to 29, 1974. A third session held in 1975. The 1994 and 1982 Law of the Sea Convention also focused some regulatory process for exploration and exploitation of the seabed mining. For more than a decade, since 1982, deep seabed mining was among the most contentious issues of the international politics of natural resources. 1994 Agreement, which radically altered provisions of Part XI, was primarily designed to respond to new development, especially the growing concern for the global environment and political and economic changes, including in particular a growing reliance on market principles.

The mining regime in the area, whose fundamental provision embodied in 1982 UNCLOS the CHM remained untouched in many other respects differ from original. There are four generally recognized elements of the CHM doctrine: first, no nation can approach the area to which the doctrine applies; second, all countries must share in the areas management; third, all countries must actively share in the benefits derived from the areas resources; and fourth the area must be reserved for peaceful purposes. Proposals of the CHM doctrine note that seabed mining, unlike fishing or navigation can occur only when each miner has exclusive rights to a specific area. In
seabed mining, the mining sites cannot overlap; therefore, contrary to the principle of
*res nullius*, nations must exclude each other in order to mine the seabed.

Thus, there is presently no consensus as to the appropriate doctrine to govern
the seabed. Beyond the impediments it creates to formulating a treaty acceptable to all
parties, the doctrine debate alone has little practical impart on the availability of
investments in seabed mining. Universal agreement on the freedom of the high seas
principle simply would encourage each mining Enterprise to rush to claim specific
mining areas. Such situation, however, would be too uncertain for investors to risk
billions of dollars on projects having no assurance of uninterrupted mining rights.

The interest of the land-based mineral producers is antagonistic to the very
idea of seabed mining, which is expected to reduce resource prices. Yet they, as well
as the developing States Parties, representing special interests, such as geographically
disadvantaged nations, each have their own chamber, and thus a *de facto* veto over the
ISA operations. Thus, the voting power of such groups essentially matches that of the
United States. Moreover, the qualification standards for miners are to be established
by consensus, essentially unanimity, which could give land-based producers as much
influence as the United States. The possession of a veto provides them with an
opportunity to extract potentially expensive concessions from nations that support
mining new limits on production, for instance, or redistributionist payments to let the
ISA function by promulgating mining rules. Unfortunately, once the ISA asserts
jurisdiction over seabed mining, potential producers would be hurt by a deadlock,
which would prevent them from mining.

Although perhaps, laudable for adhering to *laissez faire*64 principles, the
Provisional Understanding is unfortunately an agreement which profitable to long-
term seabed mining activities. By understanding global interdependence in deep
seabed matters, the parties to the provisional understanding have taken an unrealistic and provisional approach to international issues. Thus mining of seabed has not yet become a growth industry. Nevertheless, thus vast potential wealth, located on the 70% of the Earth’s surface covered by the oceans, is the impetus for both the attempt to privatize the oceans and the resistance to such an enclosure. But the principle of CHM recognizes no sovereignty and no private property on natural resources.

In 1969, the General Assembly of the United Nations Resolution 2574 is known as the Moratorium Resolution. The resolution provided that states must refrain from exploring the resources of this seabed, pending the establishment of an international regime. In 1974, the United Nations General Assembly adopted the Declaration on the Establishment of NIEO, which is based on soft laws, rather than hard laws.

Since the 1970s considerable instruments have been made in research and prospecting activities in the deep ocean with a view to identify alternative sources of metals. Other resources, such as methane hydrates containing frozen natural gas, petroleum, phosphorus’s for agricultural fertilizers and precious metals have also around the interest of research interests and mining companies, the freedom of the sea principle is compatible with this treatment of the seabed and its resources.

The mineral rich nodules on the seabed are not exhaustible resources. States engaged in mining, under any regime, will acquire exclusive rights to the minerals. Unlike other freedoms of seas such as fishing or laying submarine mining can only take place if it is not prejudicial effect can only be avoided by prohibiting any mining at any time, which would, in effect, be prejudicial to the interest of all states. Instead, mining states can generate benefits for non-mining states by taxing the revenue derived from the activity. With the taxes reserved for the international community.
The Group 77 interpretation of the CHM concept signifies the sharing of benefits. Ocean explorers have begun to document the riches that lie beneath the oceans: energy resources sufficient to power the earth’s factors for century. But in many ways, these riches might as well be on the moon, so petroleum rigs at sea are already able to control their drill bites from up to 6 kilometers above the point where they enter the seabed. The economic advantages to seabed mining states have corresponding disadvantages for land-based exporters of the metal, nickel, copper, cobalt and manganese. The land producers of these 4 metals are both developing and developed states. Because the production and export of these metals in developing countries constitutes the greatest share of their income, it is mainly these countries, which are at discharge. They are in fact quite different from the agenda that are might have had in this field. In USA nearly 47,000 pounds of minerals must be mined for each person to maintain their standard of living. Proceeded materials of mining origin accounts for nearly five percent of US gross domestic products.

These have been increasing in nature. The main priority for the Authority in the immediate future is the development of regulatory regime for polymetallic sulphides and cobalt rich crusts. Since 1998, the Authority has establish of workshops and seminars on specific issues relating to seabed mining with participation by internationally recognized scientists, experts, researches, members of the Legal and Technical Commission as well as representatives of contractors, the offshore mining industry and members states.

The Group of 77 united in pursues of ideological triumph for a NIEO through the creation of an elaborate ISA and an Enterprise to manage seabed mining. To developing nations, the common heritage means common ownership of resources and the incidents of ownership: the right to establish an institution which
would determine how and by whom and on what terms the mineral would be developed.

From a longer view of the world order it is not all certain that the creation of new domains over the richest area of the ocean will contribute to the objectives of conflict avoidance. Since, however, that possibility seems inevitably in any cases, such speculations do not alter the equation. A present movement it appears likely that seabed mining will precede with legislative emplacement in the United States, which will probably be followed by reciprocal legislations by other countries with mining technology, many of who are already associated in consortium with United States companies. Although the deep seabed mining is going to be undertaking by the limited number of technologically developed and financially sound countries or their companies, a substantial number of countries both developed and developing are concerned with the effects of that activity.

On these that proceeded the deep seabed mining negotiations was the need to recognize the interest of world community in the areas of seabed beyond national jurisdiction, usually expressed through the medium of the common heritage doctrine, while at the same time creating conditions under which mining would actually take place. Broadly there are at least four groups, which have stakes in the matter:

1) The developed countries led by the United States, which have the technological and financial capacity to carry out the sea bed mining;

2) The Russian Federation, which also has the technology but not comparable financial capability.

3) A large number of Third World countries, also known as the Group of 77 most of which have neither the technology nor the financial capability to carry out
seabed mining, but have a lot of expectations from the fruits of the exploitation of the deep seabed minerals;

4) A number of land based producers most of them belonging to the Group of 77, which fear that the deep seabed mining will adversely affect their economies because of their heavy reliance on the export earnings of these minerals.

On ocean mining the burden of compromises in now, however unfairly, largely upon the developing countries, the fundamental objectives of developing countries, of course, to get as large a share in the resources of the seabed as possible. They have been not only emphasizing the need for on equitable distribution of benefits to be derived from the seabed activities, but trying to persuade the international community to count itself to give special consideration to their interests. Along side from technological problems, the feasibility of mining the ocean is limited by perhaps greater legal problems. The mineral contained in seabed manganese nodules are economically and statistically important to the world’s major industrialized nations. The Convention also proceeds for assistance to developing countries.


Advances in science and technology have enormously increased the capacity of human beings to put the natural resources to new uses and to control the environment. In recent years, it has become, possible for states to exploit the mineral resources of the deep-sea bed. Currently, interest is focused on polymetallic nodules which lie on the seabed and which are rich in minerals such as manganese, cobalt and copper. The original scheme of Part XI was so objectionable to a number of states that
they felt compelled to resist ratifying the 1982 Convention. The nub of these objections is that the unmodified Part XI establish a bureaucratic, expensive international institution, which denied a decisive say to those financing it, which proposed to exploit the ability of developed states to undertake deep seabed mining operations and which distributed its funds on an inappropriate basis. For many years following the adoption of UNCLOS, the provision of Part XI, dealing with deep seabed mining were viewed as an obstacle to the universal acceptance of UNCLOS. That was particularly true in view of the fact that the main opposition to those provisions came from the industrialized countries. Under UNCLOS all exploring and exploiting activities in the international seabed are would be under the control of the ISA.

The six objectives identified President Reagan required of deep seabed mining regime that would:

- Not deter development of any deep seabed mineral resources to meet national and international demand;

- Ensure national access to these resources by current and future qualified entities to enhance U.S. security of supply, to avoid monopolization of the resources by the operating arm of the international Authority, and to promote the economic development of these resources.

- Provide a decision-making role in the deep seabed regime that fairly reflects and effectively protects the political and economic interests and financial contributions of participating states.

- Not allow for amendments to come into force without approval of the participating states, including in our case, the advice and consent of the senate.
- Not set other undesirable precedents for international organizations and
- Be likely to receive the advice and consent of the senate. In this regard, the Convention should not contain provisions for the mandatory transfer of private technology and participating by and funding for national liberation movements.

The United States and all other major industrialized nations have signed potential operating arm may be activated and any activities on its part as subject to the some requirements that apply to private mining companies. The Reagan administration's involvement should be recalled in the context that this was one of the few international matters he mentioned in his presidential campaign. The Reagan administration responded with a series of amendments. However, those amendments were not polemic, but instead, they were sensible. Of course, they wanted to change the structure in many ways, but these changes were not deconstructive alterations. Meanwhile, the world community was prepared to wait, given the importance of the United States.

The United States realized that the UNCLOS would soon enter into force in November 1994 because the minimum number of ratification had already been deposited with the United Nations. Still, it is said that the United States wants changes in the provisions of the Law of the Sea Convention relating to:

a) The composition of the Council of the ISA so that it could secure a permanent seat therein as a matter of right and specific designation, as it has in the Security Council of the United Nations, and not by way of implication as the existing arrangement envisages;
b) The production policies of the Authority, so that the alleged super-cartel could be nipped in the bud and a free production policy could be pursued according to the demand and supply of the world free market economy.

c) The transfer of technology arrangements so that the United States and its transnational consortia will not be required to transfer technology to their competitors as a matter of obligation as the present provisions envisage, but only according to their free will freedom of contract and commercial expediency;

d) The role of the Authority so that it should be no more than a licensing and taxing Authority; and

e) The sharing of resources so that the North/South conflicting scenario does not pervade the economic adventure at the seabed.

The Authority would be authorized to conduct its own mining operations through its operating arm, the Enterprise and also to contract with private and state ventures give them mining in the Area, so they could operate in parallel with the Authority. 79

The 1994 Agreement specifically permits industrialized nations to veto the ISA’S financial or budgetary decisions. Objections to UNCLOS provisions dealt mainly with the detailed procedures for production authorization from the deep seabed, cumbersome financial rules of contracts, decision 80 making in the Council of Seabed Authority and mandatory transfer of technology. Although the United States played an instrumental role in drafting the treaty, it was not until 1994 that President Clinton signed an amended version that satisfied U.S. concerns, especially regarding deep-seabed mining, and submitted the treaty to the Senate for ratification.
The Authority is not only a regime designed to manage the exploitation of the mineral resources of the deep ocean floor. It is also a prototype for new multilateral regimes in other spaces and resources. Innovations such as chambered voting by interest groups, emphasis on decision-making by consensus, formal roles for panels of experts and extensive contributions by expert bodies and individuals will be tested in the Authority, and the successes and failures in this regime will provide lessons for the negotiation of other regimes in the future. Members have already indicated the importance of U.S. participation in the organization through the 1994 Agreement, which addressed all the U.S. concerns with the seabed issues in UNCLOS. The opportunity to help lead this organization through its substantive contributions, and even more through its inspirational standards, is now here.

The Bush administration has given its support to U.S. ratification of UNCLOS and the 1994 Agreement. The Senate Foreign Relations Committee has endorsed it unanimously. The potential for U.S. leadership in a new multilateral organization rests now with the leadership of the U.S. Senate, which should move forward by giving its advice and consent to the Convention and the 1994 Agreement on Implementation.

According to the objections, the original scheme was not market oriented, but policy driven. After the 1994 Agreement, where the cost sharing requirement of Part XI were dropped as a result of US pressure, what is left of the CHM principle? The Convention on Climate Change and Biodiversity Agreement uses the phrase “Common concern of humanity”, instead of the CHM principle. Does it mean the CHM is dead? Overcome these objections, the United Nations Secretary General undertook informal consultation with all parties lasting nearly four years. As a result, the General Assembly adopted on 28 July 1994 Agreement Relating to the Implementation of the Part xi of UNCLOS. The special 1994 Agreement removes
several such objections to the deep seabed mining provisions as articulated by the major industrialized powers. It removes objections to deep seabed mining resource allocation; which had excluded the input of the major powers within the ISA.

There is no doubt that the Convention has established a comprehensive and detailed regime for the management of the deep-seabed Area. The Agreement overrules the decision making process of Part XI to amend the US and others with major economic interests at state, decisive influence over future decisions on possible deep seabed mining. From the perspective of the United States, the regime for deep seabed minerals is a success. Reduced greatly in size, scope and autonomy from the proposals of the NEIO, the Authority provides the exclusive right to explore, develop and exploit mineral deposits of the deep seabed and to obtain clear title to the recovered minerals; the Authority is a defined and constrained regulatory regime that provides predictability and comparability with the land-based regimes of national governments.

This was the objective of the United States from the beginning of the UNCLOS process and it was achieved through persistence during periods of market ups and downs, the development of the non-aligned movement and the NIEO, and the introduction of democracy and market economies into the eastern socialist bloc. Perhaps more importantly, beyond the confines of the deep seabed, the decision-making structure of the Authority provides a demonstration of an alternative decision-making process in international organizations based on consensus and chambered voting, changing the balance from the one nation, one vote and majority rules methods of groups such as the UN General Assembly.
The Agreement guarantees a seat for the United States on a critical decision making body and requires financial designs to be based on a consensus of major contributors.

There is a problem in the decision making system on 1994 Agreement like many international organizations, the ISA established by the Convention will have an Assembly in which all parties are represented, a Council of limited membership, and specialized elected organs who of linked membership. The policy making in the Seabed Authority would be carried out by a one nation, one vote Assembly.

Private deep seabed miners would be subject to an understanding request for the transfer of technology to the Enterprise and to developing countries. This provision was considered burden some, prejudicial to intellectual property rights, and objectionable as a matter of principle and precedent.

There are at least six possible choices of modifications whereby the changes could be introduced in the existing deep seabed-mining regime:

a) An amendment to the Law of the Sea Convention;
b) A review of the Convention;
c) The adoption of the rules of procedure in tune with the desired changes;
d) The adoption of a resolution superseding the existing arrangements;
e) The adoption of a Protocol to the Law of Sea Convention;
f) The evolution of an alternative/parallel regime.
g) The Convening of a Fourth UN Conference on the Law of the Sea (UNCLOS IV).

As originally concerned, Part XI of the Convention emphasized the discrimination aspects of deep-sea mining and minimized the benefits, which a state could take for itself, even if it had injected much finance and foil over many years.
4.8 Conclusions

The problem of ensuring consistent and universal compliance with the principles and standards of the contemporary international law of the sea, towards ensuring effective international rule of law is a foremost issue in today world. These global problems can be solved only on the basis and within the framework of contemporary international law of the sea. The extraordinary developments, which have taken place in the techniques for exploring and exploiting the resources, have important repercussions in the economic and political spheres. These developments have naturally necessitated a substantial revision of certain concepts and principles of international law of the sea.

From the above perspective it can be said that the exploration and exploitation of the world ocean is possible only on the basis of 1982 Convention and 1994 Agreement and that no one can ignore this essential instrument of contemporary international law. The purpose of chapter points out some of the issues relating to certain specific questions concerning the natural resources and world order. These were calls for the establishment of a new international marine order, some coastal states were bent on extending their jurisdiction over coastal waters; many developing countries feared that the industrialized states would unilaterally appropriate deep seabed resources. More importantly, freedom of the high seas is a principle that accommodating the market economics of western industrialized countries.

Today many developing countries argue that the freedom of high seas mainly satisfies the interests of the maritime powers, for industrialized states. Developed countries have technically for the exploration and exploitation of the seabed beyond the continental shelf and they wanted to have a monopoly on access to them resources.
that the CHM concept implied free access to and exploitation of the seabed resources on the basis of freedom of high seas. Evidence supporting this conclusion may be found through analysis of the seabed precedents referred to above.

The discussion having been opened based on the pessimistic assumption of possible UNCLOS failure; it is appropriate that it should be concluded on a more affirmative note. In this perspective, that the exploration and exploitation of sea resources should be consistent with the existing laws. The Third World approach is based on the socialist problems, which are contrary to the capitalist countries.

The process, as reflected in the UNCLOS III negotiations, therefore provides both the greatest hope for long-term stability and the smallest chance for conflict due to ambiguity. The seabed mining system and 1994 Agreement provision have problems. The 2000 regulation are most potentially help the developed countries. The 1994 Agreement has given full pledge facilities to industrialized countries those who have strong technology and economic aspects. There is no absolute incentive given to developing countries for the exploration and exploitation of the resources of the seabed. The ISA has duty to give facilities to these developing and land locked states for their livelihood. The law has to be changed in order to overcome contemporary problems of law of the sea.
Chapter Notes

1. United States would be prepared to agree to a means of financing the Enterprise in such a manner that the Enterprise begins its mining operation either concurrently with the mining of state or private enterprise or within an agreed time span that was practically convenient.


3. Declaration on the Establishment of New International Economic Order, GA Res 320. The law of the sea negotiation provided an opportunity for the developing states to apply these principles to affect change in the existing legal order. Consistent with principles, the Group of 77 demanded the creation of an international entity with the authority to engage in seabed mining and the transfer of technology to enable it to mine independently.


6. Ibid p.128


8. See part xi of the Law of the Sea 1982

9. See 1994 Agreement; say for example USA, UK, Germany


13. Resources means all solid, liquid or gaseous, mineral resources in situ in the area or beneath the seabed, including polymetallic nodules; resources when recovered from the areas are referred to as minerals; also see article 133 of 3rd Law Conference of the Law of the Sea 1982;


18. Article 137, 140, 156, 157

20. Article -140

21. Article -146

22. Article 140; http://www.diveweb.com/uw/archives/arch/mayjun01.05.shtml;

http://www.jura.uni-duesseldorf.de/RAVE/ends/endsv/v121/v1215/v12158.htm;

23. U.N General Assembly Resolution Declaration of Principles Governing the Seabed and Ocean Floor.


25 The views of the Groups of 77 are contained in a document entailed legal position of the Group 77 on the quantum of unilateral Legislation Concerning the Exploration and Exploitation of the Seabed and Ocean Floor and Subsoil Thereof Beyond National Jurisdiction;

http://www.nrcan.gc.ca/ms/emw/content/1999/07.pdf#search=%22international%20seabed%22;http://www.mfa.is/speeches-and-articles/nr/2893;
http://www.suetheterrorists.net/page47.html;http://www.thelibertycommittee.org/leitnerstatement051204.htm

26. An international jurisdiction customs having the character of *Jus Cojens* has been defined by the Vienna Convention on the Law of the Treaties as a preemtory norms of general international law accepted and recognized by the international community of states, as a whole, as a norms from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character. International Seabed Authority Press Release Sixth Session Kingston, Jamaica 20-31 March 2000Roundup of Session


http://www.townhall.com/columnists/PatrickJBuchanan/2006/05/23/the_death_of_the_nation-state


32. Ibid


35. Minerals data are collected from the Data Repository of International Seabed Authority. Available at http://www.isa.org/html/


37. See 3rd UNCLOS

38. Sessions to the 3rd Law Conference of International Seabed

39. Division for ocean affairs and law of the sea, UNCLOS at the final session of the UNCLOS at Mondeq Bay, Jamaica Dec. 11, 1982.


40. GA Res. 24 67 A XXIII 42 Member Committee

http://fletcher.tufts.edu/multi/texts/bh903.txt


41. To satisfy these demands, the UNCLOS established an IAS charged with mining the seabed on behalf of mankind as a whole and with granting contracts to those who wish to more privately. The United States dissatisfied with this agreement.; http://www.brandeis.edu/ibs/news_cal_item2.php?event_id=481

http://www.greenpeace.org/international/press/releases/greenpeace-exposes-suffocating

42. An activity, which is a freedom of high seas, may be extended by all states.

43. http://www.g77.org/much/doc.htm

44. The ISA is an autonomy with agency having a relatively agreement with the UN’s established under UNCLOS as modified by the 1994 Agreement voluntary to the implementation of Part XI of the convention.


http://www.nap.edu/nap-cgi/skimit.cgi?recid=10844&chap=173-204


http://www.gasandoil.com/ogel/samples/freearticles/article_79.htm

47. Ibid; http://www.natural-resources.org/minerals/CD/int_law.htm

48. Equity is nothing but fair, just, morality and reasonable. In absence of the international covenants, and customary law, equity plays an important role.

49. Supra Note 43; ISA Press Release Sixth Session Kingston, Jamaica3-14 July 2000 Roundup of Session SB/6/2914 July 2000x Nodule Regulations Adopted by ISA Second Part of Sixth Session, KINGSTON

50. Prosperityof.III;

51. General Assembly Regulation

52. GAR Economic Rights and duties

53. Art 15

53. From the outset and in addition to the problems of substance, UNCLOS III need to cope with formidable absence of base texts and procedure;

   http://www.diveweb.com/uw/archives/arch/mayjun01.05.shtml; http://www.jura.uni-duesseldorf.de/RAVE/ends/endsv/v121/v1215/v12158.htm; http://www.diveweb.com/uw/archives/arch/mayjun01.05.shtml; http://cache.trafficmp.com/tmpad/content/askjeeves/smileycentral/BL_720x300_0505_200511894523.htm; http://eprints.soton.ac.uk/9424/


54. Certain parties of the proposal submitted by the Group of 77 were supported by some developed countries which also emphasized that the activities within the Area should be conducted directly by the Authority since it would of all states, they representing humanity as a whole.

55. Developing states including least developed states, geographically disadvantaged or land locked states.
56. The developing nations influence has been well dominated; ISA Press Release Sixth Session Kingston, Jamaica 3-14 July 2000 Roundup of Session SB/6/2914 July 2000x Nodule Regulations Adopted by ISA Second Part of Sixth Session, KINGSTON


58. Art 38(1) (b) of International Court of Justice, Charter 1946

59. Convention on the Continental Shelf, 1958, see North Sea Continental Shelf cases, with respect to the other elements usually regarded as necessary before a conventional rule can be considered to have become a general rule of international law, it might be that a very widespread and representative participation in the Convention right suffice on itself, provided it included that of states where interest were specifically attended.

60. These freedom and other which we recorded by the general principles of international law, should be exercised by all states with equitable regard to the interest of other states in their exercise of the freedom of high seas.

61. Declaration on Principles of Seabed

63 Article 1 of Emplacement of Nuclear Weapons and other Weapons of Mass Destruction on the Seabed and Ocean floor and in the Subsoil Thereof

64 Testimony of William H, Legal Advisor, Department of State before the Senate Committee on Foreign Relations.

65. Ibid http://news.bbc.co.uk/2/hi/business/4354036.stm

http://www.foreignaffairs.org/20030901faessay82511/john-temple-swing/what-future-for-the-oceans.html; http://lugar.senate.gov/sfrc/rice_qfa.html; http://www.mofat.go.kr/me/me_a003/me_b011/me_c015/me03_03_sub02.jsp; http://www.mofat.go.kr/me/me_a003/me_b011/me_c015/me03_03_sub02.jsp


70. The 1994 Agreement on the implementation of the Seabed Provisions of the Convention on the Law of the Sea,


71. Ian Brownlie, Basic Documents in International Law (Vienna, 3rd Ed, Oxford University Press, 1983) p. 349-86.

72. The provisional understanding offers the US for less opportunity for successful commercial seafloor mining would a universally accepted UN Convention, especially in the light of international liability towards the provisional understandings isolationist stance.

http://www.oceanlaw.net/texts/domingo.htm
http://www.fsmgov.org/fsmun/51stga.html


75. Mining industry of the future exploration and mining technology, Sept. 2002.
76. Statement made by Ambassador Satyanandan, Secretary General of the International Seabed Authority to the 5th meeting of the UN ICP on the LOS 7-11 July 2004; ISA, Press Release, Sixth Session Kingston, Jamaica 3-14 July 2000 Assembly (AM) SB/6/5 July 2000 Secretary General Report to Seabed Assembly’s Press Release Sixth Session Kingston, Jamaica 3-14 July 2000 Assembly (AM) SB/6/19 Council (AM) 3 July ISA Press Release Sixth Session Kingston, Jamaica 20-31 March 2000 Assembly (AM) SB/6/1631 March 2000


79. Part XI of 1982 Convention
