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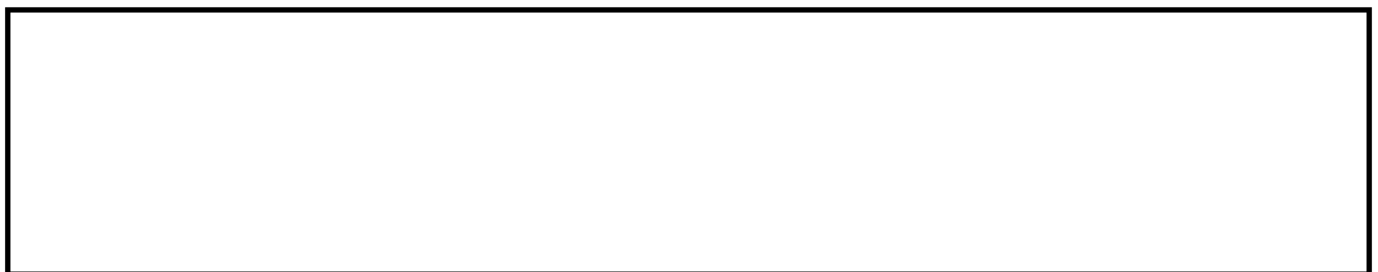

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HISTORICAL DEVELOPMENT TO THE 1982 UNITED NATIONS CONVENTIONS ON THE LAW OF THE SEA AND THE NEW INTERNATIONAL ECONOMIC ORDER.

BY

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and

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1. Introduction

Pursuant to a resolution adopted by an overwhelming majority by the U.N.G.A. on the 17th of December 1970 it was decided to convene a new law of the sea in 1973,[2] chief among other factors that would have provoked this decision, fifteen years only after the 1958 Geneva Convention, was the proposal of Ambassador Arvid Padro, the head of Malta delegate on and a Permanent Mission, to the U.N.G.A. to study the peaceful uses of the seabed and ocean floor beyond the limit of National Jurisdiction. By this the objective of giving the seabed and its subsoil the status of a "common heritage of mankind", and in practical term, this would mean that the area in question belongs to the international agency. All the above were subsequent on the analysis of the new technical, economic, political and military developments to the 22nd session of the U.N.G.A. in 1967; by Dr. Arvid Padro.

He asserted that a race for control of the seabed of the oceans, fraught with grave consequences for international order, was inevitable, unless the international community was prepared to establish an international regime and effective international machinery for the seabed clearly beyond defined limits of national jurisdiction in order to create conditions in the maritime environment that would be benefit to all countries irrespective of their level of economic, social and political development. As a matter of interim measure he proposed that:

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[2] UNGA Res 2750 (xxv) 1970

(1) The General Assembly declare the seabed beyond national jurisdiction a "common heritage of mankind to be used and exploited for peaceful purpose and for the exclusive benefit of mankind as a whole with particular regard to the need of poor countries (emphasis mine) and that a number of basic principles governing seabed activities be included in this Declaration.

(2) Claims to sovereign rights over the seabed beyond "present national jurisdiction" be frozen until a clear definition of the continental shelf could be formulated.

(3) A negotiating body be established to draft a comprehensive treaty establishing an international regime and machinery for the seabed beyond national jurisdiction.[3]

The above recommendation was not uninfluenced by the scientific and technological development which are in the hands of the developed countries since the sharing of the wealth of the sea and of the seabed is a factor in development, and the developed countries are pillaging this wealth, thereby making an unequal distribution or "bite" of the "international cake"; hence we can say safely too that the proposal was predicated on economic and political consideration.

The Maltese proposal was debated extensively in the First Committee (political) and on December 18, 1967, the General Assembly adopted a resolution creating an Ad hoc Committee to study the peaceful use of the seabed and the Ocean Floor Beyond the limits of national jurisdiction. The committee, comprised of 35 which was later expanded to 91 members, including the USSR was requested to prepare for the 23rd session the study of the recommendation.[4] What is clear from the above is the exigent need to keep pace with the new developments both economic and political, particularly the yearnings of the developing countries for equity in the exploration and exploitation of the marine resources. The positive response of the community of nations with the United Nations anchoring discussions on these burning issues brought about the 1982 convention of the Law of the Sea (which will be hereinafter referred to as 1982 LOSC). Though this is not without undue prolongation, intrigues, are agitation by the developing countries in form of a "quiet revolution".

2. Prelude to the United Nations Convention on the Law of the Sea 1982

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[3] U.N. Doc. No. A/6695 August 18 1967

[4] G.A. Res. 2340 (xxvi) December 18, 1967

The law of the sea has been governed for centuries by rules of international customary law which has developed through uniform and consistent state practice and that were considered, in most instances, to be obligatory. It was not until late 19th century that the evolution of the international community suggested the wisdom of codifying the existing and emerging customary norms. This eventually led to multilateral treaty negotiations, including The Hague Codification conference of 1930 and the three United Nations Conferences on the law of the sea.

The wind of change, which have so much altered, human concept and attitudes in recent years are now moving across of the world. States have begun to look at the sea with new interest, principles governing the use of the sea, once considered sacrosanct are being challenged, or ignored with increasing frequency. The laws of the sea found itself in a state of flux.[5] From antiquity, men have utilized the ocean for navigation, fishing, and trade, as a base for military power. Rules have also developed to govern these activities in due course of time.[6] But at present the oceans have become an arena of acute human challenge. Just as man is gaining the ability to fly over the outer space, so too he is conquering the depths of the sea and many resources found therein.

The development of the law of the sea can be traced in different phases.[7] The first was to the freedom of the seas, enshrining the rights of all states to use the seas for a purpose and to exploit the resources, based on the principle of *res communis*.[8] Thirdly, new means of using the resources of the sea and its bed, and the new threats to national security and other interests presented by the increased speed and mobility of the ships, have been reflected in the far-reaching changes in the law.

In the face of the profound technological and economic advances of recent times, the traditional principles are no longer valid. We are now entering the fourth phase of the development. The "common heritage of mankind" which as been declared by the General Assembly in 1967. It is however not possible to specify the position of the "common heritage of mankind". States are very eager to exploit the resources become of the fear that with the newly acquired knowledge the resources of the sea can very soon be exhausted.[9] This modern developments have influenced the

[5] J.S. PATIL, Legal Regime of the Seabed, Deep and Deep Publications New Delhi (1981) p. 9.
[6] Kohli S.N: Sea power and the Indian ocean.
[7] Jenils W.C: A New World of Law?
[8] Anaud R.P: The law of the sea Caracas and beyond (1978) p. 37
[9] Kohli S.N. *op cit.* p.70

states, in compelling them to revise the accepted concepts and principles governing the use of the seas.

On the one hand, advances since 1958 in the technology of seabed exploration and exploitation opened the way for activities in ocean depths far beyond the limit envisaged at Geneva Convention. On the other hand, the group of newly emerged states, who are technologically and financially at a disadvantageous position became gravely concerned at the possibility that the exploitability criterion might enable a small number of powerful coastal to monopolize the exploitation of the ocean floor resources.[10]

While most of the proposals agreed that there should be an international seabed authority for regulating the exploitation of the resources of the sea, the U.S. and other developed states argued that, the authority should license and regulate the private companies, with guarantee of access to the resources for a sufficiently reasonable time and royalties can be taken from the exploiting enterprises.[11] On the other hand, the developing countries are afraid of this type of colonialism by developed countries, and argued for the exclusive control of the exploitation and exploration of the seabed authority.[12] This problem persisted through successive multilateral talks or conferences. Perhaps the season may be that we are trying to create the legal principle and concepts on the basis of the deliberations by the political leaders of the nations, who are trying to preserve their own national interests, apparently pretend to look into the international interests for the benefit of mankind at large. Thus the objective of the various interests of the community of nations and the general interests of the people at large is necessary.

A second conference was held in Geneva in 1960, especially for the purpose of reaching agreement on the width of the territorial sea and exclusive fishing zones. At this conference the United States – Canadian proposal for a six-mile limit for the territorial sea and additional six-mile limit for exclusive fishing rights gained wide support, but was ultimately not accepted because of one state opposing rather than abstaining. Since no other proposals proved to be more successful, the conference failed to reach agreement on a subject that is still considered as one of the crucial questions of the law of the sea.

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[10] Shearer I.A: *Starke's International Law* (11th ed) . Butterworths London (1994) p. 228.
[11] Anaud RP *op cit*. p. 21
[12] Ibid, p. 21.

The Arvid Padro's proposal in 1967 was not an isolated idea in the history of maritime development, but an integral part of an emergent international sense that one had to know more, and do more, about earth's unknown territory, the ocean floor.[13]

The desire to amass information concerning the sea and advance international cooperation in dealing with ocean issues was reflected and often anticipated, in the work of the United Nations in 1966 the Economic and Social Council (ECOSOC) asked the Secretary General to:

> Make a survey of the present state of knowledge of these resources of the sea beyond the continental shelf.[14]

And the General Assembly requested a comprehensive survey of activities in marine science and technology. It called for international marine education and training programmes and sought expanded cooperation for better understanding of the marine environment and for development of sea resource.

In the summer of 1968, the ECOSOC after consideration of secretariat report on "resources of the sea beyond the continental shelf", and on "marine science and technology" called for a "common long-term programmes of exploration of the oceans as a source of resources". The ocean, it recognised holds "promise of becoming a more important source of food and minerals and for a rapidly developing world…" but knowledge about it exceedingly limited.[15] By 1969, when the General Assembly agreed on the general principle of holding the conference, its many desperate strands – political, legal, economic, informational among others – were finally coming together. The secretariat in response to a community of nations wanting to know more about the ocean, intensified a research process that was to produce numerous pioneering studies. A general assembly jurisdictional question was resolved with a decision to assign responsibility for the conference. The General Assembly also approved a Declaration of principles drawn up by a committee it had established three years earlier – The Committee on the peaceful uses of the seabed and ocean floor beyond the limits of National Jurisdiction.

3. The 1958 Conference On The Law Of The Sea

[13] A Quiet Revolution: United Nation Convention on the Law of the Sea; Dept of Public Information, United Nations, New York 1984, p.7
[14] Ibid.
[15] Ibid.

The General Assembly of the United Nations by its Resolution[16] in 1957 called for a conference of its members to:

> Examine the law of the sea, taking account not only of the legal but also of the technical, biological, economic and political aspect of the program, and to embody the results of its work in one or more international conventions and such other instruments as it may deem appropriate.[17]

The United Nations Conference on the law of the sea met at Geneva, Switzerland from February 24 to April 27 1958 with representatives of 86 countries present.[18] This in fact represent the first great effort to determine by an act of international legislation the scope of the continental shelf doctrine in international law.

The conventions itself reflected in general a moderate approach, and this is an achievement in which its framers may take satisfaction. Extravagant claims of the kind which in recent years have threatened to reduce the shelf doctrine to absurdity will gain from it little support. It notably rejected the view that the doctrine justifies claims to vast offshore areas regardless of depth or exploitability, or that it entitles a coastal state to exercise unlimited jurisdiction over the waters above the shelf. On the contrary, the general principle is explicitly affirmed that the shelf doctrine does not affect the established legal order of the high seas.

At the Geneva Conference in 1959, on the one hand the continental shelf and the contiguous zone doctrine became settled law and on the other hand, through the convention on fishing and conservation of living resources, the coastal states special interest in the maintenance of productivity of the living resources in an area of the high seas adjacent to its territorial sea, and also the right to adopt unilateral measure of conservation were recognized.[19] The rights of non-coastal states in the same area were also sought to be protected through provisions for the negotiations, agreement and dispute settlement mechanisms. But no agreement on the limit of this adjacent areas was arrived at. But nevertheless, these four conventions formed the core of the generally accepted rules of the law of the sea concerning maritime zones.

Within the framework of the I.L.C. the issue of exploration and exploitation of the deep seabed beyond the limits of National Jurisdiction was discussed although not exhaustively. The

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[16] Res 1105 (xi) February 21, 1957
[17] U.N.G.A.; 11th Session Official Records Supp. No. 17 (A/3572)
[18] Final Act of the UNCLOS 1 (Geneva) February 24 – April 27 1958
[19] Text in International Law Materials Vol. XVIII No. (1979) p. 397.

I.L.C. recognized the existence of the freedom to exploit the seabed and the subsoil seaward of the juridical continental shelf.[20] Also there were proposals advanced on the internationalization of the seabed as part of the efforts to reform the law of the sea.[21] At the meeting on 31st March 1958, the question of the breadth of the territorial sea was dealt with in connection with its juridical status when it was pointed out that demands for wider zones of control over the living resources of the sea constituted a trend which could not be ignored. If no agreement was reached many countries would take the matter into their own hands.[22]

On the 15th April 1958, the U.S. introduced a new proposal in favour of a maximum limit of six miles with fishing rights up to twelve miles.[23] This attempt at compromise, which was described as involving a substantial sacrifice of the interests of the U.S. failed largely because it continued to embody a vested rights principle guaranteeing foreign fishing interests which had existed for twelve years previous to the signature of a convention, to continue to exercise this right. After various proposals had been rejected in the conference, the U.S. reintroduced its proposal at the plenary meeting on 25th April 1958, arguing that this was now the only one which contained the essential element of just and realistic compromise.[24] However, it failed to gain the necessary two-third majority, and so on provision for the breadth of the territorial sea was included in the 1958 law of the sea convention on that topic. But whatever the outer limit of the continental shelf may eventually be, there seemed to be widespread agreement that the shelf should not be extended indefinitely and that precise boundaries can and should be fixed for the deep ocean floor. Although it can be asserted confidently that under the 1958 convention on the territorial sea, the breadth of the territorial sea may not in any case, exceed twelve miles which provides as follows:

> The contiguous zone may not extend beyond twelve miles from the baseline from which territorial sea is measured.

A fortiori, the outer boundary of the territorial sea may not transgress the twelve miles limit.

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[20] U.N. Year Book of International Law Commission Vol. 102 (1956) p. 278

[21] Slonka "United Nations and the Deep Oceans from Data to Norms": *Syracuse Journal of International Law and Commerce* (1972) 61-69.

[22] UNCLOS I Official Records Vol. III 89

[23] ibid, 253

[24] UNCLOS I, Official Records Vol. 1, 35.

The rights of the non-coastal states in the same area were also sought to be protected through provisions for negotiations, agreement, and dispute settlement procedures. But at the same time no agreement on the limits of this adjacent area was arrived at.

However, the main reason for the chaos raised this law of the sea seemed to be the elastic definition of the outer boundary of the continental shelf given by the relevant Geneva Convention. Under Art. 1 and Art. 2 of the 1958 Convention on the continental shelf, the coastal state may explore and exploit the natural resources of the ocean floor adjacent to its coast up to 200 metre isobath,[25] that is, the line formed by the outermost points of the adjacent ocean floor at a depth of 200 metres or beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources. This so-called "exploitability" test creates a curious and rather alarming situation: the continental shelf of each coastal state increases with the exploitability of the ocean floor. This means that the exploitability of the seabed and its subsoil at increasing depths causes the boundary of the legal continental shelves to move outward. In 1958 the framers of the convention had assumed that this clause would remain purely theoretical for many years to come and that the ocean floor would not become exploitable much beyond the 200-metre isobath. Thus assumption, however proved to be erroneous, for modern and emerging technology has made it possible to exploit the seabed and subsoil beyond this line.

Accordingly, the parts of the ocean floor to which coastal state may lay claim owing to the exploitability test have grown to alarming size. If that test was maintained and if marine technology continue to progress, if it were, as is clearly to be expected the entire ocean floor will be eventually be divided up among coastal states. If this were to happen, the states endowed with a long coastline would obviously get the lion's share, while the land-locked states, like Hungary for example would receive nothing. It is self evident that such division would be most unjust. In addition, it would be contrary to the time-honoured principle that the ocean floor beyond national jurisdiction as well as the waters of the high seas belong to the international community as such as thus may not be appropriated by individual states. It is therefore of vital importance to freeze national claims over parts of the ocean floor before the latter is divided up entirely.

The conference on the law of the sea in Geneva in 1958 was the first world-wide conference on the subject held since 1930 World War II had intervened. Colonialism was ending; new states were being created. Nationalism was on the increase, hence it will be most difficult to settle in

[25] Art. 24(2) 1958 Convention.

Nine week the problems of a generation. But more importantly in the face of extraordinary technological advances, here the seemingly judicious prudence of 1958 convention have been reduced to undue conservatism.

The advances in the technology of the seabed exploitation and exploration on the one hand has opened the way for activities in ocean for beyond the limit envisaged at Geneva Convention. On the other hand the group of newly emerged states who are technologically and financial disadvantaged became gravely concerned at the possibility that the exploitability criterion might enable a small number of the powerful coastal state to monopolise the exploitation of the ocean floor resources. Hence there the imperative for a new conference.

4. **The Inadequacies of 1958 Convention on The Law of the Sea**

In spite of the conventions adopted in 1958, it nevertheless failed to produce comprehensive conventions, but rather adopted a plurality of legal instruments which were slowly ratified with many reservations.[26] The 1958 conventions were to prove inadequate and twenty-four years after their adoption three-fourth of the nations of the world were not parties to them. Until the adoption of the 1982 convention on the law of the sea. The argument could be made that there existed no adequate and comprehensive maritime treaty law as such for the large part of the world community.

The inadequacy of the 1958 Convention had become patent within a decade, particularly as regards the continental shelf and the seabed such that in 1966, U.S. President Lydon B. Johnson warned against as:

> new form of colonial competition among the maritime powers… a race to grab and hold the lend under high seas… we must ensure that the deep seabeds and the ocean bottoms are, remain, the legacy of all human being.[27]

The conference itself is best seen as the culmination of a decade-long negotiation among states old and new that started well before 1973. By the mid-1960s, the pressures building up for the conference began to be intense. Thus for example in 1966 the U.S.S.R. and the U.S. agreed to consult all other nations on whether the world consent to a new global conference on the law of the sea to deal with territorial limits and freedom of navigation.[28]

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[26] Wolfang G. Vitsthurn: "The Law of the Sea Development"*A.J.I.L.* Vol. 23 No. 2 (1983) p. 161 at 169
[27] Quoted in Quite Revolution (supra) p. 5
[28] ibid. p. 6

By the later 1960s, a number of bilateral and regional fishing accord had come into being, creating the pressure for the still wider international rationalization the conference and convention eventually would being. Here were the beginnings of arrangements between coastal states, and long-distance fishing states, which were of such particular importance to development countries. However, those nations sensed that both their resources and new found economic sovereignty needed still greater protection.[29]

The desire to amass information concerning the sea and advance international cooperation in dealing with ocean issues was reflected, and often anticipated, in the works of the U.N. In 1966 the Economic and Social Council (ECOSOC) asked the Secretary General to:

> Make a survey of the present state of knowledge or these resources of the sea, beyond the continental shelf.[30]

And the General Assembly requested a comprehensive survey of the activities in marine science and technology. It called for international marine education and training programmes and sought expanded cooperation for better understanding of the marine environment and for development of sea resources particularly fish.[31]

In the summer of 1968, the ECOSOC after consideration of secretariat reports on "Resources of the sea beyond the continental shelf" and on "marine science and technology" called for a "common long-term programme of exploration of the oceans as a source of resources". The ocean, it recognized holds "promise of becoming a more important source of food and minerals for rapidly developing world… but knowledge about it "it exceedingly limited"[32]. With all these uncertainties about the extent of national jurisdiction and legal regime of the seabed, and at the same time temptation to find vast amounts of mineral resources which can be found there with the ever developing technology, there is always a danger of serious international conflicts. This also repeat the old history of scramble for colonies among the European powers during the last three centuries with its disastrous consequences.

Afraid of this possibility, President Johnson of the U.S. warning which deserve a full mentioning here expressed as warned that:

> Under no circumstances must we ever allow the prospect of rich harvest and mineral wealth to create a new form of colonial

[29] Ibid.
[30] Ibid.
[31] Ibid.
[32] Ibid.

> competition, among the maritime nations. We must be careful to avoid a race to grab and to hold the land under the high seas. We must ensure that the deep sea and the ocean bottoms are and remain, the legacy of all mankind.[33]

5. The Arvid Padro's Proclamations

In order to avoid a recolonization by the Northern Hemisphere Economic powers, and also to discourage the appropriation of vast areas of the ocean floor by those who have the capacity to exploit it, Ambassador Arvid Padro of Malta, in a memorandum to the U.N. Secretary-General on the 17th August 1967, suggested that the time had come for the U.N. to take action. He proposal the creation of an effective international regime for the seabed and ocean floor beyond clearly defined limit of national jurisdiction, declaration of that area as a "common heritage of mankind"; not subject to national appropriation and to be used and exploited for peaceful purposes and for the benefit of mankind as a whole. The propose treaty was envisaged to established an international agency which would assume jurisdiction over the seabed as a trustee of all nations, regulate, supervise and control all activities therein, and enforce the principle and provisions of the treaty.

This 1967 Arvid Padro's proposal was not an isolated idea in the history of maritime development, but an integral part of an emergent international sense that one had to know more about earth's unknown territory, the ocean floor.[34]

As an immediate interim measure Malta proposed that:

"(1) The General Assembly declare the seabed beyond national jurisdiction a "common heritage of mankind" to be used and exploited for peaceful purposes and for the exclusive benefit of mankind as a whole with particular regard to the need of poor counties, and that a number of basic principles governing seabed activities be included in this declaration;

(2) Claims to sovereign rights over the seabed beyond "present national jurisdiction" be frozen until a clear definition of the continental shelf could be formulated;

(3) negotiating body be established to draft a comprehensive treaty establishing an international regime and machinery for seabed beyond national jurisdiction.[35]

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[33] Quoted by Anond R.P: "International Machinery for Seabed: Issues and Prospect: The *AJIL* Vol. 13 (1973) p. 354.

[34] A quite revolution *op cit. p.7*

[35] Arvid Padro: "The Emerging Law of the Sea"; *The Law of the Sea: Issues in ocean resources management;* Ed. Don Walsh, Praeger Publishers New York 1977 p. 36

In a unanimous resolution[36], the General Assembly:

> Recognizing the common interest of mankind in the seabed and ocean floor… that the exploration and the use of the seabed and the ocean floor… should be conducted … in the interest of maintaining international peace and security and for the benefit of mankind… desiring to foster greater international cooperation and coordination in the further exploration and the use of the seabed; established an adhoc committee composed of 35 members to study the peaceful uses of the seabed, and the ocean floor beyond the limit of national jurisdiction.

A very important issue is at stake here. To developing nations the concept of common heritage of mankind implies not only sharing in the benefit to be obtained from the exploitation of the resources of the area but also, and above all an effective and total participation in all aspects for the management of this common heritage. To be more precise, the developing nations seek to participate in all the activities to be carried out in this area: in scientific research, in exploration and exploitation, and in management distribution of the benefit to be derived.
Clearly the resistance of certain developed nations to accepting the fundamental principle that the seabed and the ocean floor and its resources are the common heritage of mankind and the proposals made by other developed nations to weaken or make this principle practically meaningless have contributed to an impression in the developing nations that the real objective of both groups is to establish an international regime whereby in fact, thought if not by law, they would control the resources of this area.[37]

6. The Seabed Committee

At its 23rd session, the UNGA adopted another resolution[38] in December 1968, establishing a standing committee of 42 states. This was subsequent to an earlier constituted ad hoc committee of 35 states on 18 December 1967, whereby the U.N.G.A. unanimously passed a resolution[39] on

> Examination of the question of the reservation exclusively for peaceful purposes of the seabed, and the ocean floor, and the subsoil

[36] Res. 2340 (XXII) adopted on December 18, 1967.
[37] Andres Aguilar: "How will the future deep seabed regime be organized?" *The Law of the Sea: Issues in ocean resources management*: *op. cit* p. 44.
[38] Res. 2467A (XXII) 21st December 1968
[39] Res. 2340 (XXII) 18th December 1967.

thereof, underlying the high seas beyond the limit of present national jurisdiction, and the use of their resources in the interest of mankind.

This committee is otherwise known as "The United Nations Committee on the peaceful uses of the seabed and the ocean floor beyond the limit of national jurisdiction". It had as its fundamental objective the mandate to develop legal principles and norms to promote international cooperation in the exploration and use of the deep ocean floor and to ensure the proper exploitation of its resources for the benefit of mankind. The U.N. also in its 25th session in 1970 by Resolution 2750, entrusted the committee with the preparation of a comprehensive law of the sea conference to be held in 1973.

After very intensive discussions in the committee over a number of years and long and acrimonious debates in the General Assembly; the latter unanimously adopted on 18 December 1970 'A Declaration of principles governing the seabed and ocean floor and the subsoil thereof beyond the limit of national jurisdiction'.[40]

During its first session in 1972, the seabed committee was able to adopt the agenda for only two of its three sub-committee and to establish a working group to draft treaty articles on the basic principles that should govern the activities of the states beyond national jurisdiction. No delegation has yet formally supported the concept of a comprehensive approach to the problems of ocean space. The technological advanced countries, however, have been strongly opposed to any restriction on their freedom to explore and exploit the resources of the seabed. There is no rule of international law, they have contended, to justify such action. Thus the U.S. representative, expressing as it were the view of the developed countries, said that the moratorium resolution proceeded on a premise which was unsound and self-defeating. All mankind would benefit, he argued by the exploitation of deep seabed resources. Technology had not developed so far, he pointed out, that the developed maritime powers could monopolise the exploitation and rush greedily to exhaust seabed resources before the international community, could establish a legal regime.[41] It was further argued that if technology did not move forward he contended, there would be no exploitation and no benefit to any one, developing, coastal or landlocked, east or west, north or south.

[40] Res. 2749 (XXV) 18 December 1970
[41] Res. 2749 (XXV) 18 December 1970.

The above lamentation by the U.S. representative sound more like a blackmail, but I could not hold sway, because the moratorium resolution was born out of genuine fear and yearning, quest to effectively participate in the activities in the seabed for economic development; and also to involve the spirit of the Declaration of the New International Economic Order (N.I.E.O) of 1974. This view further betray the imperialistic tendencies and incurable economic hegemony and expansionism of American at the expense of the developing countries.

Hence, after a controversial debate when the moratorium resolution was passed in the first committee, (which was adopted by 52 votes to 27 with 35 abstentions, and the General Assembly by 62 votes to 28, with 28 abstentions) the developed states regretted that the United Nations should be willing to make fundamental decisions on seabed issues through a politics of confrontation and paper majorities;[42] and they declared that they would not be bound by it.[43]

The committee continued to work in close cooperation with specialized agencies and inter-governmental agencies. In 1971, it had divided itself into three sub-committee, in a clear portent of the greater scope of the conference to come.[44] The sub-committees dealt respectively with:

(i) International regime of the seabed and the organization and power of the seabed authority.
(ii) The law of the sea questions in general including the question of the territorial sea, economic zones, fisheries and straits.
(iii) The subject of maritime pollution and scientific research.

The sub-committee on international regime for the seabed concluded its discussions on 5th of March 1973. The major issues covering the relevant aspects considered by the committee were:

(i) Organs of the international machinery including composition, procedures and dispute settlement.
(ii) Rules and practice relating to the exploration, exploitation and management of the resources.
(iii) Equitable benefit to be derived from the seabed bearing in mind the special interest of the developing countries, coastal and land-locking states.
(iv) Economic consideration and implication relating to the processing and marketing
(v) Particular needs and problems of land-locked countries
(vi) Relationship of the machinery to the United Nations systems.

On all these aspects, comprehensive proposals were made be several countries. Based on these proposals and discussions, the sub-committee prepared a set of draft Articles. These draft Articles

[42] Ibid.
[43] Anand R.P "International Machinery for Seabed: Issues and Prospect"; *op. cit*.
[44] Dholakia, "International Regime for the Seabed" in, *New Horizon of International Law and Developing Countries*, S.K. Agrawale *et al* (1983) pp. 349.

present the basic and fundamental principles on various aspect of the subject. While there were areas of fierce disagreement in connection with the regime of the deep seabed there were however certain areas of consensus.[45]

7. Consensus Synthesis

The attempted re-opening of the rule of the law of the sea generated a hot controversies and confrontations between the North and the South. Since the sharing of the wealth of the sea is a factor in development, and the industrialized nations are accused of pillaging this wealth, with the modern technical means of exploitation they have available. New rule for the use of the sea is then being sought. The extension of the territorial waters, sought by numerous coastal states, including not only the developing countries, but also countries whose coastal populations depend closely on the wealth of the sea is likely to interfere with the rules governing freedom of navigation, in particularly by increasing the number of straits. Another source of disagreement is the issue of land-locked states to benefit from the wealth of the sea.

The states participating in the conference may therefore divide on the basis of many different principles or interests according to a wide variety of distinguishing factors. There is of course a majority of developing countries, even if not always a united one. They are nearly two-thirds of the total. So it is not in the least surprising that the problem of determining the method which the conference should use to adopt it conclusions should present itself in acute form.

Resolution 2759 (XXV) December 7, 1970 called for the conference to take place in 1973, the question of rule of procedure for this conference was examine very thoroughly by the first committee at the 28th session of the General Assembly in October – November 1973, but there was no agreement on the issue. But at the second session, whereby the conference devoted the first week of its discussions to the adoption of these rules of procedure. This happy pertinacity led on June 27th, 1974 to a consensus approving a text of Rules of procedure together with a Gentleman's Agreement.[46] Consensus as a means of adopting decision gained majority acceptance, as it was argued, it was in conformity with general interest, as "numerical voting was not the solution, and that on the contrary only consensus was possible".

[45] Bernad Oxman: "The Third United Nations Conference on the Law of the Sea – The seventh session 1978" 73 *A.J.I.L. (*1977) p. 1

[46] A/CONF. 62/30 Rev. 1.

It was agreed that everything should be done to achieve consensus and only in the unlikely event of this being impossible world it be necessary to vote. In other words, that every efforts had been made, in vain to each consensus so that a vote is inevitable. Hence consensus was adopted on June 27th based on Gentleman's agreement in the following words:

> Bearing in mind the fact that the problems of ocean space are closely interrelated and needed to be examined as a whole and the desirability of adopting a convention on the law of the sea which will secure the widest possible acceptance, the conference should make every effort to reach an agreement on substantive maters by way of consensus and there should be no voting on such matters until all efforts at consensus have been exhausted.[47]

Thus was adopted and annexed to the rules of procedure, which were in turn adopted by consensus.

There was a consensus about certain fundamental issues connected with exploration and exploitation of the seabed and ocean floor; to wit:

(i) That there is an area of the seabed and ocean floor and subsoil thereof which is beyond the limit of national jurisdiction.
(ii) The area shall be used for peaceful purposes only.
(iii) It shall not be subject to national appropriation and that no state should exercise sovereignty or sovereign rights over any part of it.
(iv) Certain norms and principles of international law apply to this area.
(v) A declaration of principle was desirable.
(vi) That there was need to establish a legally binding international regime to be applicable to the area.
(vii) Freedom of scientific research should be assured to all states.
(viii) There should be a reasonable regard for the interest of all states.

It is necessary to mention here that differences of opinion persisted with regards to the nature of international machinery to be set up for the purposes or regulation of the uses and exploitation of the resources of the Area. However, there were points on which there was a consensus of opinion and which has been termed as *Synthensis* which formed the basis for the work of the legal sub-committee in its efforts to prepare the comprehensive statement of principle for regulating the seabed activities.

> The consensus technique employed was very time consuming. The third conference on the law of the sea (hereinafter referred to UNCLOS III) was in session for 23 months in nine years. This consensus approach has not proved effective in the final phase of

[47] A/CONF. 62/SR. 19 and 20.

> the conference. The law of the sea convention of 1982 was noted adopted by consensus, but upon the request of the U.S., by recorded vote of 130 in favour, 4 against (Israel, Turkey, US, Venezuala) 17 delegations abstaining, 18 delegation being absent or not taking part in the vote.

8. Package Deal Approach

This is an important evolutionary changes in the international communities found in the precedent setting negotiation at UNCLOS III. Perhaps the most remarkable innovation has been the UNCLOS III attempt to rewrite the entire law of the ea in an international treaty provisions is clearly a more eloquent way of referring to the package deal.

The primary objectives of the conference were to consider all problems of ocean space as a whole in view of their inter-relatedness, to hold back their final resolutions pending the overall conclusion of negotiations, and then tie them up in an overall compromise package for simultaneous resolution.[48] The 1982 convention on the law of the sea (hereinafter referred to as 1982 LOSC) represents a complex and indivisible package of closely inter-related compromised solutions to all major problems of the law of the sea; that is any issue agreed upon is an integral part of the whole package, that cannot be alienated. This convention, it was argued is not a basket of fruits from which one can pick only those one fancies.

The convention has been elaborated as a single and indivisible instrument, as a package of closely inter-related compromised decision. Thus it is not possible for a state to pick what they like and disregard what they do not like. This is why the convention does not provide for reservation.

It is important here to note statement made by the U.S. Ambassador James L. Malone.[49] Even when announcing the decision of American not to vote in favour of the convention, conceded to the fact that the convention was not without some concerted effort and agreed to its reasonableness of the compromise in the following words:

> Within the context of an overall acceptable treaty (President Reagan) noted that those many provisions dealing with navigation, overflight, continental shelf, marine research and environment, and other areas are basically constructive and in the interest of the international community. They are of course, not perfect, but they do represent the product of hard negotiation and reasonable compromise.

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[48] A/CONF.62/SR.40 Vol. 1 of the Official Records of UNCLOS III.
[49] This statement was made on 30th of April 1982 in plenary.

It will be relevant here to state the view of the developing countries as represented in the speech of Ambassador Arias – Schreiber of Peru to the plenary, when he said:

> In negotiating and adopting the (law of the sea) convention, the conference had borne in mind that the problems of ocean space were closely inter-related and had to be dealt with in whole. The "package deal" approach rule ruled out any selective application of the convention. According to the understanding reached by the conference at the outset and in conformity with international law, no state or group of states by reference to individual could lawfully claim rights or invoke the obligation of third states by reference to individual provisions of the convention unless that state or group of states were themselves parties to the convention. States which decided to become parties to the conventions would likewise be under no obligation to apply its provisions vis-à-vis states that were not parties. That held true both for the new rules laid down by the convention for areas under jurisdiction (inland waters, territorial seas, contiguous zone, exclusive economic zone, continental shelf, archipelagic waters and straits used for international navigation) and for the regime instituted by virtue of the convention and the relevant resolutions adopted by the conference for the use of the area of the seabed beyond the limit of national jurisdiction.[50]

9. The Third United Nations Conference on Law of The Sea (UNCLOS III)

One may wonder why the community of states deemed it necessary to convey a conference on the law of the sea, fifteen years after the 1958 Geneva Conference. The answer to this question may not be far from the emerging scientific and technological developments on the uses of the high seas and economic and political considerations.[51] It was discovered then that the political and economic realities, scientific development and rapid technological advances then have accentuated the need for early and progressive developments of the law of the sea, in a framework of close international cooperation.

Hence in November 1973, the U.N.G.A. decided that the work of the seabed committee had progressed sufficiently to permit the convocation of the conference on the law of the sea which had been decided in principle three years before. The seabed committee was accordingly dissolved and the law of the sea conference was convened in accordance with General Assembly resolution[52]

[50] U.N. DOC. A/CONF. 62/SR 183, at 3 – 4 (1982).
[51] U.N.G.A RES/2750C (XXV).
[52] U.N.G.A. RES 3067 (XXVIII) 1973

in New York for its inaugural session which was organizational in character from 3rd to 15th December 1973; and was opened by the U.N. Secretary General Kurt Waldheim.

At this organizational session the conference agreed on its agenda; elected its officers, and established three main committees to deal with substantive issues together with a general committee, a drafting committee and a credential committee.

One of the focus special characteristics of the UNCLOS III was the scope of its ambition. It sought to establish a system of governance, political, economic, administrative and judicial for the hydrosphere which constitute two third of the earth surface.

The conference held eleven sessions in all, excluding the final ceremonial session. The conference at its inaugural session discussed among other topics the question of international regime for the seabed and the ocean floor beyond limits of national jurisdiction.[53] The subjects allocated to the first committee were to wit:

(i) Nature and characteristics of the problems
(ii) International machinery, its structure, function and powers
(iii) Economic implication.
(iv) Equitable sharing of benefits bearing in mind the needs of developing countries and landlocked states.
(v) Definition of the limit of the area.
(vi) Use for exclusive peaceful purposes.

There could be no agreement on any full text on any single issue or subject, despite the lengthy deliberations in the seabed committee. The first committee had before it a serious of Draft Articles concerning two broad subjects. First, the status scope and basic provisions of the regime based on the declaration of principles,[54] and second, the status scope, functions and powers of the international machinery to give effect to these principles. These articles were used as the basis for discussion.

At the Caracas session,[55] the first committee reviewed the areas of disagreement to a considerable degree and was able to isolate the following three main issues on which reconciliation of view was most essential for progress, viz:

(i) The system of exploration and exploitation and who may explore and exploit the area.
(ii) The condition of exploration and exploitation and

[53] Stevenson J.R. and Oxman B. "The Third United Nations Conference on the Law of the Sea". The 1974 Caracas Session, 69 A.J.I.L. (1975) p. 1
[54] U.N.G.A. Res. 2749 (XXII)
[55] Stevenson and Oxman *op cit.* pp. 6-13

(iii) The economic aspect of seabed machinery.

Discussion took place in varied fora. In formal plenary session, delegates would present their national view points in broad general terms. In informal closed session there would be coalescing of particular interest grab with the rigidity of position. It so often borings. This is not to say that there were no stalemate or crisis. In fact there were reported threats of boycott and abandonment. But one after other, the conference surmounted them and produced a series of informal texts that were to result in the draft treaty. As it took shape year after year, the participating nations often found themselves realigned in formations dictate maritime interests rather than in their own traditional, political, regional, and economic grouping.

The conference was to go through several stages as it moved from multiplicity of text to a single final text. The first two years saw a massive tabling of proposal as one state after another laid their particular interests on line and gave its overall view as to what the convention should and should not deal with. Particular emphasis was laid on the system and conditions of exploration and exploitation.

By 1975, there had emerged the pattern and treaty would take when the conference's informal single negotiating text (ISNT) came into being.[56] The 1976 session saw a considerable advancement on how to deal with disputes that might arise under the convention.[57] By 1977 the conference had broken down the back of all but the hard-core issues. Three of these related to the future international seabed authority; its composition and powers, and financial arrangements to be made for it; what system of exploitation it should adopt and what kind of contracts it ought to let out.[58]

The group of 77 (comprising about 120 developing states of Africa, Latin America, an Asia) sought an international seabed authority having the power to engage in seabed mining itself; and to control by other licenses who would pay it royalties which along with its own profits would be distributed among all states as the common heritage of mankind. The developed industrialized states in contrast proposed that the authority should be little more than a registry of national claims to seabed, the seabed mining sites, having little or no powers to interfere with exploitation of the

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[56] Stevenson and Oman: "The United Nations Conference on the Law of the Sea"; The 1975 Geneva session 69 A.J.I.L. (1975) pp. 763.

[57] Benard Oxman: "The United Nations Conference on the Law of the Sea"; The 1976 New York Session 71 A.J.I.L. (1977) .

[58] Bernard Oxman: "The United Nations Conference on the Law of the Sea"; The 1977 New York Session 72 A.J.I.L. (1978), p. 57

area by their companies. The view of the G.77 was reflected in the (ISNT) of Geneva session of 1975. Some of the developed states and their transnational corporation which has already surveyed the deep seabed and developed the expertise for the exploitation of the resources were most happy with the Geneva text. They were largely instrumental to having this text revised during the earlier New York session.

When New York nearly done. Most of the hard core issues had been settled.[59] Basically what came to be known as the three P.S. were left; namely:

(i) preparatory commission to set down mining rules in preparation for the establishment of the international seabed authority;
(ii) preparatory investment protection for pioneering seabed mines;
(iii) participation in the convention by regional and international organizations, national liberation movement and territories not enjoying full independence.

After the Ninth session 1980 some unfortunate development were witnessed in relation to the conference and the final convention. A new U.S. administration of Mr. Ronald Reagan came to power in 1981, after a comprehensive policy review of the still pending draft convention requested that several of the deep sea mining provision be respelled for discussion. This was done in the spirit of consensus which permeated the conference.

The Reagan administration, however found the seabed regime in the law of the sea convention to be inconsistent with the free enterprise ideology and thus “fatally flawed”, and asserted that previous negotiators had yielded point of principle on deep ocean mining issues in exchange for short term gains in the context of navigational interest. The fervent rejection of the law of the ea convention by the U.S. is an example of “volte-face in politico economic doctrine” that occurred when President Reagan came to office which however, was not undone after further consideration.

Efforts were made by all concerned to ensure that enactment of seabed mining legislation by the U.S.[60] and the Federal Republic of Germany[61] would not divert the resumed ninth session from completing work on the convention. Thus on the first day, the G.77 made a strong worded statements condemning such legislation, to which the U.S. and the Federal Republic of Germany

[59] Bernard Oxman: “The Third United Nations Conference on the Law of the Sea: The Ninth Session 1980”, 75 A.J.I.L. 211 (1981)
[60] Deep Seabed Hard Mineral Resources Act. Pub. L. no. 96-283, 94 Stat. 553 (1980).
[61] Act on Interim Regulation of deep Seabed Mining, (1980) FRG 1.1 1429

responded.[62] The conference met for a final session in the early spring of 1982, up to then the consensus approach worked remarkably well. However, a the very end of the conference, the U.S. Delegation called for a vote. This resulted in the overwhelming adoption of the text. The vote was 130 in favour, 4 against and 17 abstentions. Of all the four states that voted against the convention, Turkey, Israel, Venezuela and the U.S., it was the latter only that voted against it on its disagreement over the deep seabed policy of the convention.[63]

The convention itself establishes a comprehensive framework for the regulation of all ocean space. It is divided into 17 parts and nine annexes and contains provisions governing *inter alia,* the limits of national jurisdiction over ocean space, access to the seas, navigation, protection and preservation of the marine environment, exploitation of living sources and conservation, scientific research, seabed mining and other exploitation of non-living resources an the settlement of disputes. In addition, it establishes new international bodies to carry out functions for the realization of specific objectives. The convention allows for the establishment of a territorial sea of up to twelve nautical miles in breadth, providing various method for determining baselines and for distinguishing between territorial waters and internal waters. The traditional right of innocent passage through territorial water is recognized. The concept of archipelagic water was introduced for the sake of archipelagoes States.

Beyond the territorial waters, the convention allows the creation of an Exclusive Economic Zone (EEZ) of up to 200 nautical miles. The provisions pertaining to EEZ are the manifestation of one of the first "mini-packages" of delicately balanced compromises to emerge from the negotiations. The convention allows the coastal state certain rights in the EEZ for the purpose of economic advantage, notably rights over fishing and exploitation of non-living resources, as well as concomitant limited jurisdiction in order to realize those rights. The land-locked states and geographically disadvantaged states must be given access to those resources of the zone. The convention lays a broad framework for the peaceful accomplishment of this purpose.

The convention as a result of the yearning of the G.77 established and empowered a body to administer the common heritage of mankind, and to regulate exploration and exploitation will be the international seabed authority. This body is not only entrusted with the power to directly

[62] U.N. Doc. A/CONF. 62/SR 121 (1980). It contained the debate of the two groups that took place on July 28, 1980.
[63] U.N. Chronicle, Vol. XIX, No. 6 (1982) p.3.

regulate purely commercial activities, but it also has the power to engage in seabed mining in its own rights, through its commercial arm; the Enterprise. This is the essence of “parallel system”.

The convention also include provisions to foster the development and facilitate the transfer of all kind of marine technology, and to encourage the conduct of marine scientific research. The convention mandates the owners and users of these technologies to make it available, for acquisition by technological disadvantaged states.

The convention obliges parties to settle their disputes peacefully, and provides a selection of methods for doing so in the event that there are otherwise unable to agree even with the third party’s intervention. The international tribunal for the law of the sea will have shared competence over all law of the sea matters, but it is its specialized chamber. The Seabed Dispute Chamber that will have exclusive competence over all disputes involving the international seabed area; even as against the rest of the Tribunal.

The final meetings of the conference were held in Montego Bay, Jamaica from 6th to 10th December 1986,[64] after which the final Act was signed. The product of the nineteen years old multilateral discussion, that attracted more participation and controversy than any other such conference in international place. The 1982 law of the sea convention was opened for signature on December 10, 1982. And on that very first day 119 countries appended their signatures to the convention and one ratification, that of Fiji was deposited on the same day. This achievement was unprecedented in the history of Treaty Law.

10. Conclusion

The 1982 United Nations Convention on the Law of The Sea has provided , for the first time in history , a comprehensive legal framework for all uses of the oceans. This is one of the most important and enduring merits of the new comprehensive law of the sea convention. The convention does more than codify the existing international customary law on the uses of the seas, it provides new concepts and new legal principles that are designed to accommodate the competing interests of states. In the words of Javier Perez da Cuellar[65], the 1982 convention contains generally acceptable solutions with respect to maritime spaces under the sovereignty and jurisdiction of

[64] U.N. Doc. A/CONF. 62/pv 185-192.

[65] Javier Perez da Cuellar was the former Secretary General of The United Nations, , *See The Law Of The Sea; Official Text of The United Nations Convention On The Law Of The Sea With Annexes And Index* (New York, St. Martins 1983.

states, the rational utilization of the living and non living resources , the rights of land lock states, the promotion of marine scientific research as an instrument for the economic and social development of all peoples, the conservation of the marine environment, respect for freedoms which have traditionally been observed in so far as the community as a whole is concerned and the settlement by peaceful means of disputes concerning ocean space[66].

In addition, sovereignty or sovereign rights for limited purposes have been established for the Territorial Sea, The Contiguous Zone, The EEZ, and The Continental Shelf. Exploitation of the natural resources of the seabed and its subsoil is now regulated, technology is shared, marine scientific research is structured and environmental protection is increasingly dominant.

[66] Ibid.