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Conflicts and Cooperation in the Opening-up of New Economic Resources

The Third UN Conference on the Law of the Sea

by Klaus Dieter Wolf, Tübingen

The Third United Nations Conference on the Law of the Sea (UNCLOS III) will meet in March for its ninth session. The size of the resources available for distribution and their allocation by the Conference are surveyed in the following article as are the possibilities of conflict to which they give rise.

Faced with increasing resource scarcities and ever growing difficulties in the safeguarding of continuous supplies of the raw materials of economic and strategic importance, the industrialized states have made particular efforts in recent years to keep abreast of their energy and raw material requirements by opening up unexplored reserves of our planet or exploiting previously unutilized deposits. While these efforts are going forward, the underdeveloped states are demanding for the Third World an appropriate share in the revenues from those newly opened resources, to which the valid international law gives no state a legal title, so as to help to mitigate the world-wide prosperity differentials.

It is no wonder that these two competing strands have both found expression at UNCLOS III which was convened at the time of the "oil shock" and is meeting for its ninth session this year: The potential resources of the oceans were regarded as unlimited. Their distribution has evolved as the central topic of the Conference. Being the "Common Heritage of Mankind", they ought to be used primarily for the benefit of the Third World which should be allowed a major influence on the way in which they are administered and utilized.

Apart from a few species of fish which are threatened by overfishing, only a very small part of the treasures of the oceans have as yet been put to economic use because the technological capabilities and economic necessity were lacking. Recent

technological advances have however opened the door to new forms of resource utilization – such as deep seabed mining and offshore oil extraction – which in distinction from traditional industries like fishing and shipping cannot be practised without friction side by side with the traditional methods on the basis of the old-established principle of the freedom of the seas.

The necessary reform of the fundamental principles governing the use of the sea thus coincides with an attempt by individual members of the community of nations to secure for themselves as large as possible a share in this largest allocation scheme in the history of the world since they see the world's resources getting scarcer and dearer while the Conference on the Law of the Sea is at the same time confronted with the demand that it should lay the first cornerstone for a more equitable international economic order by making arrangements for global resource and environment management and creating collective goods of the international community (the "Common Heritage")¹.

At issue is "a strong precedent for future world-wide institution-building to deal with the complex problems of resource scarcity in a high technology era"².

¹ Cf. the RIO Report to the Club of Rome: Reshaping the International Order, New York 1977, p. 165, 293 f.

² J. M. Murphy: The Politics of Manganese Nodules, in: San Diego Law Review, Vol. 16, No. 3, April 1977, p. 542.

The potential resources of the seas may be divided into three main categories:

- ☐ living resources,
- ☐ non-living resources of the shelf areas (oil and gas),
- ☐ mineral deposits of the seabed (manganese nodules).

The energy potential of the seas (thermal energy, use of tidal and other waves for power generation, uranium) and the ore-bearing sludge of the Red Sea are at present in comparison of little importance.

Reallocation of Fishstocks

No more than about 11 % of the total consumption of animal proteins is currently met by the global fish catch of about 70 mn tonnes a year. In the Third World however the proportion of fish amounts to up to 55 % (in Asia), and if the demand for fish doubles by the year 2000 as it is expected to do, three-quarters of the additional demand will originate in developing countries. This indicates the great importance of making the best possible use of the fishstocks of the oceans in order to close the protein gap in the underdeveloped regions of the world³.

90 % of the fish output comes from the shelf areas circling the continents. In the open sea tuna fishing alone is of any real significance because in these parts of the sea fishing is either technically impractical or else unprofitable owing to the great depths of water.

The first universal legal norms in this sphere were laid down by the First Conference on the Law of the Sea, in 1958, by the Convention on Fishing and Conservation of the Living Resources of the High Sea: Art. 6 (1) authorized the coastal states to enforce conservation measures extending beyond their territorial sea (the three nautical miles of coastal waters) and applying to the contiguous zone the use of which had been one of the freedoms of the high sea⁴.

This very ambiguous and expansible provision was however evaded in practice by unilateral state action long before it came into force: Following the nationalization of the USA's continental shelf by Truman in 1945 many coastal states had begun to lay claim to national fishing rights far beyond their coastal waters for areas of up to 100 (Ceylon, Ghana) or even 200 nautical miles (Chile, Ecuador, Peru, Costa Rica). This creeping expansion has now been finally sanctioned by the recognition at UNCLOS III of a national "economic zone" of 200 nautical miles in which the coastal states enjoy exclusive rights to the resources.

As a result of this arrangement 20 coastal states receive 71 % of the combined area of all economic zones and the top ten alone (USA, Australia, Indonesia, New Zealand, Canada, USSR, Japan, Brazil, Mexico, Chile) 53 %. This far-reaching reform which awards the lion's share of 90 % of all fishstocks to this small number of states with extensive coastlines will have grave consequences for some nations which traditionally engage in fishing operations far from their own coasts and in particular for the states which have no or only small economic zones or whose economic zones do not contain significant raw material resources.

Implications for Long-Distance Fishery States

In the past 15 states accounted for about two-thirds of the world's fisheries output and the Soviet Union and Japan alone for one-third. The industrialized states together reached 55.9 % (in 1971), about half of it by fishing off foreign coasts (10 % outside developing countries), whereas the Third World states (China, Peru, India, South Korea, Indonesia, the Philippines, Chile, Nigeria, Brazil and Mexico accounted for the bulk of the remaining 44.1 %) fished almost exclusively in their own waters⁵.

The institution of economic zones thus hits the *industrialized long-distance fishers* among the traditional fishing nations hardest. The USSR, Japan, Spain, Poland, the GDR, France and the Federal Republic of Germany with their highly developed fishing fleets obtained an important or even overwhelming portion of their output from regions which will form part of the economic zones of other states in the future. The only remedy left to them is to buy back fishing rights in bilateral negotiations.

The developing countries which have established long-distance fishing fleets (Cuba, South Korea, Taiwan) or are about to do so (Algeria, Kuwait,

³ Cf. K. T i e w s: Aspekte der Nahrungsproduktion aus dem Meer (Aspects of food production from the sea), Wilhelmshaven 1973, p. 3; Frankfurter Rundschau, Aug. 22, 1979: FAO will ein Leerfischen der Meere verhindern (FAO wants to prevent seafish stock depletion).

⁴ Cf. G. H o o g: Die Genfer Seerechtskonferenzen von 1958 und 1960 (The Geneva Conferences on the Law of the Sea of 1958 and 1960), Frankfurt/M. and Berlin 1961, p. 41-46.

⁵ Cf. A. P a r d o, E. M a n n - B o r g e s e: The New International Economic Order and the Law of the Sea, Occasional Paper No. 4, International Ocean Institute, Valetta 1975 (?), p. 209 ff.

Senegal) find themselves in a similar position. The abandonment of rich fishing grounds is for these states a setback not only in regard to the creation of employment opportunities but for the supply of food to their people.

Industrialized long-distance fishery states such as the USA or Norway which obtain a relatively small portion of their total catch outside their own 200 mile-zone, can afford to look at the institution of economic zones primarily from the point of view of the coastal states and count themselves among the beneficiaries form a group of their own.

Geographically Disadvantaged States

The non-coastal states and the states with a constricted coastline and those for which the absence of significant raw material resources in their own economic zone makes access to foreign economic zones economically especially important are affected even more grievously than the relatively small group of countries which send fishing fleets to distant waters. The loss of the right to fish outside the three-mile territorial seas deprives them of the – often vital – option to fish in contiguous seas and thereby help to feed their people. At UNCLOS III these states combined in the group of “landlocked and geographically disadvantaged states” (LL/GdS) in order to oppose the expansive claims of the states with long coastlines but their interests are too disparate (the group has about 50 members who have virtually nothing in common except their unfavourable maritime position) and their power to say no is too small to gain genuine concessions.

Only on paper have they obtained a share in the living resources of the economic zones of neighbouring or other states with extensive coastlines: Articles 62, 69 and 70 of the latest draft convention (the Informal Composite Negotiating Text / Revision 1 of the spring of 1979) make it obligatory for the coastal states to grant access to “other states to the surplus of the allowable catch” (Art. 62 (2)) but it is up to the coastal state to decide the size of the allowable catch and thus the amount of fishing which is surplus to its own capacities.

Quite substantial differences have arisen within the LL/GdS group about the question of participation, and these cast a light on the divergent partial interests inside this alliance: The loss of the option of fishing in previously open seas is at present only of theoretical interest to most of the non-coastal underdeveloped

states because building up fishing fleets of their own would be too costly; the geographically disadvantaged coastal states on the other hand will find themselves in a different position, especially if they depend greatly on the use of neighbouring economic zones for supplying their own populations, as is the case in Singapore, Thailand, Ghana, Ivory Coast, Jamaica and other states.

Other states, like Romania and Yugoslavia for instance, feel that the draft convention imposes a handicap on them as long-distance fishers and developed GdS because Art. 69 (1,4) and 70 (1,5) provide for preferential treatment by the coastal states of *underdeveloped* LL/GdS in the *region concerned* as compared with other states.

To sum up, the UNCLOS III provisions concerning the utilization of the living resources of the sea will not conduce to a more equitable distribution of the treasures of the world but the naturally less favoured states will have to submit to only slightly curbed arbitrary decisions by the states with long coastlines. Bearing in mind that 48 % of the total area of all economic zones are allotted to as few as 13 industrialized states, other developing countries are bound to take a cynical view of the justification of the economic zone concept as a contribution to a New International Economic Order by some expansionists in the Third World who claim that it safeguards the sovereignty of developing countries over their natural resources in accordance with UN Resolution 3201 (4e).

As for the rational management of the living resources of the sea with the aim of stock conservation and optimum utilization, the fragmentation of the seas into individual areas of national jurisdiction will make the necessary global coordination of economic controls actually more difficult.

Offshore Oil and Gas Deposits

The remarks about the redistribution of the living resources of the sea by the institution of economic zones apply with even greater force to the oil and gas deposits below the sea. They are also – practically to 100 % – situated in the offshore areas, especially in the subsoil of the continental shelf contiguous to the dry land. The size of these reserves is estimated at 2,000,000,000,000 bbls with a total value of about \$ 40,000,000,000,000 for the 200 mile-zone alone. As much as one-third of the daily world output is already drawn from these reserves which are the real treasure

of the sea. Significant finds have been made in the continental shelves of Australia, Brazil, Chile, Gabon, Iran, Libya, Mexico, Nigeria, Saudi Arabia, Great Britain, Norway, Venezuela, etc.⁶.

The regime hitherto appertaining to the continental shelf⁷ is the one laid down by the First Conference on the Law of the Sea of 1958 in Art. 1 of the Convention on the Continental Shelf. The delineation of the outer limit of the legal continental shelf is based on a combination of the 200 metre depth line with the principle of exploitability. Particularly the second component which permits a state to push its continental shelf boundary outward into the open sea up to the point at which the depth of water will allow exploitation of the seabed or subsoil was most unsatisfactory: It was not made clear whether it referred to technical or economic exploitability or whether it related to the situation and technological capacities of the coastal state concerned or those of any state.

New Continental Shelf Regime

The institution of the economic zones which establishes a legal title of the coastal state to all "natural resources, whether living or non-living, of the sea-bed and subsoil and the superjacent waters" (Art. 56 (1a), ICNT/Rev. 1) in the 200 mile-belt really implies the nationalization of the bulk of the oil and gas deposits. A proposal by the Arab states therefore envisages the merging of the continental shelf regime in the economic zone concept. But the so-called broad-shelf states some of which have continental margins greatly in excess of 200 nautical miles aimed from the outset at a much more extensive arrangement. This group which consists of about two dozen states including Argentina, Australia, Indonesia, Malaysia, Norway and the Soviet Union wants the national continental shelf regime to be applied to as large a part of the whole continental margin as possible.

An understanding on the outer limit of the continental shelf is one of the great problems still to be solved at UNCLOS III. It would appear however that eventually agreement will be reached to allow all coastal states to

choose for themselves the most favourable of a variety of limitation criteria. It is thus to be expected that the national "continental shelves" will vary between a minimum (irrespective of the actual extent of the geological formation) of 200 nautical miles and a maximum of 350 miles or alternatively a distance of up to 100 miles beyond the 2,500 metre depth-line (Art. 76, ICNT/Rev. 1).

The landlocked and geographically disadvantaged states initially vehemently opposed the surrender of this salient element of the "Common Heritage" to the coastal states but later accepted the shelf states' offer of a trade-off involving a stepping-up of the revenue-share of the *International Seabed Authority*, which is acting on behalf of the community of nations, in the proceeds from the *non-living* resources *outside* the 200 mile-zone. In return for the stepping-up of the "revenue-sharing" rate, as it is called, to a maximum of 7 % of the earned profits or the value of the output (Art. 82) most LL/GdS waived their demand for full or partial internationalization of *all* offshore oil and gas deposits.

Common Heritage Fund

To judge from the present state of the negotiations it is therefore most unlikely that the other states will have a share in the crude oil produced in the national economic zones although the Conference is again faced with moves in this direction because more and more developing countries have come to realize that deep seabed mining alone will not provide them with the revenues which they hoped would accrue to them from the reform of sea utilization rights. Since the spring of 1978 a group of LL/GdS states has been trying to convince the other developing countries, including the coastal states amongst them, that the institution of economic zones benefits only a few, for the most part already privileged, industrialized states and therefore runs counter and does great harm to the Group of 77 aim of joint progress at UNCLOS III towards the goal of a New International Economic Order; Nepal has acted as its spokesman and about 20 states (including Algeria, Zambia, Bolivia, Singapore, Turkey, Greece, Austria and Switzerland) are supporting this move.

The members of this group are not so unrealistic as to count on an abrogation of the economic zone arrangements and therefore try to invest the idea of the "Common Heritage of Mankind" which was put forth at the opening of the Conference with a new content by establishing a "Common Heritage Fund"⁸.

⁶ Cf. L. G. Weeks: Subsea Petroleum Resources, UN. Doc. A/AC. 138/87.

⁷ The term "Continental shelf" used here — and also at UNCLOS III — is a legal concept not to be confused with the natural geological continental shelf which together with the continental slope and incline forms the continental margin and is clearly defined by this description.

Into this Fund, which is to be administered by the International Seabed Authority, all net exporters of *non-living* resources (i. e. oil and gas) withdrawn from *inside* the economic zones are to pay a tax on earnings the rate of which has still to be fixed (perhaps at 1-20 % varying according to the per-capita GNP of the coastal state). The annual revenue from this is estimated at \$ 4,000,000,000 which would be far more than the amount of \$ 250,000,000 expected according to ICNT / Rev. 1 from "revenue-sharing". The tax receipts are to be distributed by the International Seabed Authority which is to give special consideration to the interests of the least developed countries and amongst them in particular to the non-coastal states, and besides to technology transfer and the financing of the Authority's "Enterprise".

Predominance of National Interests

The response to this proposal is symptomatic of the minor role to which notions concerning a New International Economic Order have meanwhile been reduced at UNCLOS III: The industrialized states were amused bystanders at the eighth session, refraining from comment when the Group of 77 quarrelled amongst themselves whilst a storm of protests swept through the camp of coastal states of the Third World. States like Brazil, Peru and Pakistan suspected that industrialized states intent on splitting the Group of 77 were behind this move which was in fact an attempt to save of the early ideas of the Conference more than mere symbolism. They took their stand upon the importance of the "delicate balance" between the various interests achieved only after arduous negotiations. The Uruguayan delegation even claimed that UNCLOS III was not the right forum for questions of equitable distribution. Somalia argued that the "revenue-sharing" arrangements for non-living resources outside the economic zones were sufficient compensation for the losses to the community of nations due to the institution of economic zones and there was no more room for further measures.

True, some industrialized states may well find the internal problems of the Group of 77 convenient because they may weaken its position in the negotiations on deep seabed mining. It is however likely that the coastal states of the Third World which are giving vent to the suspicion that the industrialized

states are behind the move want to detract attention from their own selfish attitude. They are perverting the idea of solidarity among developing countries when they solicit support from other Third World countries to achieve national advantages. Even if Nepal's initiative should not be reflected by the wording of the Convention on the Law of the Sea, it shows that developing countries are in increasing numbers no longer willing to trust spokesmen for their group when they claim to pursue collective rather than national interests. At UNCLOS III the coastal developing countries were right from the beginning the dominant partners in the alliance. The aim of a New International Economic Order with international distribution mechanisms was for them only a second-best choice to be used when, as in the case of the manganese nodules (see below), an individual state sees no possibility of securing the right to exclusive resource utilization without participation of its underdeveloped teammates.

The dispute about the oil and gas deposits in the 200 mile-zone is thus an instructive example of the failure of the attempt by UNCLOS III to make a contribution to a New International Economic Order.

Not only has the fragmentation of the jurisdiction over the seas negative effects on the control of the living resources of the sea but it hampers global measures for the protection of the environment which are becoming necessary as a result of the exploitation of offshore oil and gas deposits.

The international Deep Seabed

After one-third of the whole sea area which as it happens contains the richest raw material resources has been nationalized through economic zones and the continental shelf regime, the "Common Heritage" in which many Third World states put great hopes for their own development when the Conference opened will consist almost entirely of the deep seabed resources, the manganese nodules. Anything up to 3,000,000,000 tonnes of these potato-sized lumps lie below the sea at depths of about 3,000 metres or more⁹. In addition to manganese (24-30 %), their main ingredient, they contain copper (1.3-1.5 %), nickel (1.3-1.5 %) in 39 times the quantity available below dry land surfaces, and cobalt (0.25 %) equal to 200 times the reserves on dry land.

⁸ Cf. J. J. Logue: The Nepal Proposal for a Common Heritage Fund, in: California Western International Law Journal, Vol. 9, 7/79, p. 606 ff.; UN. Doc. A/Conf. 62/65.

⁹ Cf. G. Geschke: Retten die Meere aus der Rohstoffnot? (The seas — an escape from the raw material troubles?), in: Deutsches Allgemeines Sonntagsblatt, Oct. 8, 1978; Neptune, Vol. 14.

The deposits of the strategically important copper and nickel on dry land will be exhausted in the not so distant future (copper in 25-29 years and nickel in 32-46 years). The few industrialized states capable of extracting the deep seabed deposits show, besides, interest for the cobalt; even in the first stage of deep seabed mining (1990-2000) it should be possible to meet two-thirds of the world cobalt requirements from the sea by producing no more than one-tenth of the annual output planned for later periods¹⁰.

So far the mining operations have for the most part not gone beyond the trial stage. The participating consortia are waiting for the creation of a legal framework which enables them to start deep seabed mining operations without incurring undue additional risks. No reliable information is therefore available on future net yields, prices or costs, and this has been a virtually insuperable obstacle in the negotiations on output restrictions for the protection of developing countries producing the raw materials in question on land, on levies to be passed on to the International Seabed Authority and on the taxation of profits.

In spite of the presence of many unknown quantities it is assumed that, to be profitable, a deep seabed mining operation would have to involve a minimum annual output of 3 mn tonnes (3,300-10,000 tonnes a day) of manganese nodules, go on for about 20-25 years and require initial investments of \$ 500-700 mn¹¹. By the middle of the next century the annual output is to be raised to 20-30 mn tonnes, i. e. 6 mn tonnes of manganese, 70,000-100,000 tonnes of cobalt, 200,000-300,000 tonnes of copper and a similar tonnage of nickel¹².

Because of the high reserves on land the consortia – unlike the industrialized states behind them – are showing little interest in the manganese contained in the nodules, which means that of an initial annual output of 3 mn tonnes 2.9 mn tonnes will be returned to the sea as waste.

The euphoric expectations of the Third World states at the beginning of UNCLOS III have in the meantime given way to a more sober assessment of deep seabed mining under development aspects. The reserves are potentially almost inexhaustible and of unimaginable value. Even though a large part of the deposits is of no immediate interest because the nodules contain too little copper, nickel and cobalt or are too widely

dispersed or too far below the surface of the sea, an annual profit of \$ 3,000,000,000 around the year 2000 is perfectly feasible; up to 50 % of this could be distributed by the International Seabed Authority among developing countries. But there are so many potential recipients that this sum could not achieve the hoped-for break-through to a new quality of automated resource transfer compared with the development aid as provided now.

As the developing countries toned down their expectations, they also changed their strategy: "Realizing that there would be no significant *financial* dividend from an ICNT treaty, many Third World nations became increasingly interested in obtaining an *ideological* dividend from a treaty. The ideological dividend is an ISA (*International Seabed Authority*, ed.), which is so powerful that it will be a symbol of, and a down payment on, the New International Economic Order (NIEO)"¹³.

International Seabed Authority

As the salient feature of the Convention on the Law of the Sea to be negotiated at UNCLOS III this International Seabed Authority, and the arrangements of its powers, make-up and finance in particular, are a contentious issue which has given rise to extensive controversies and may act as a catalyst for the conflicts of interest coming into the open in connection with the deep seabed mining complex. The form under discussion at present is a compromise between the starting positions of the industrialized states, which are interested in an early start of the mining operations, and the underdeveloped producers of manganese, nickel, copper and cobalt on dry land who are apprehensive of negative effects of these operations on their own export earnings and were able to muster support from the Group of 77.

It is the view of the developing countries that the subsea mineral resources outside the areas under national sovereignty must not be allowed to widen the economic gap between rich and poor states. Hence they demanded originally the establishment of an international authority to be solely entitled to decide on any activities connected with seabed mining. This authority was to have an exploitation monopoly, and

¹¹ Cf. M. Hardy: The implications of alternative solutions for regulating the exploitation of seabed minerals, in: International Organization, Vol. 31, No. 2, Spring 1977, p. 316.

¹² Cf. A. Pardo, E. Mann-Borgese, op. cit., p. 214.

¹³ Cf. J. J. Logue, op. cit., p. 619.

¹⁰ Neptune, Vol. 12, May 1978.

the developing countries were by virtue of their dominant position in the voting and control organs to have a decisive voice in matters concerning the distribution of earnings.

In the face of the opposition of the industrialized states able to carry out mining operations under the sea the developing countries modified their ideas: access to the deep sea minerals was to be allowed also to private enterprises. This is to be done by the so-called "parallel system" now under negotiation which would make it possible for both the Enterprise of the International Seabed Authority and private consortia to engage in seabed mining under an ISA regime.

Attitudes of the Interested Groups

To go by the different interests which have come to light in the negotiations the states taking part may be divided into three categories:

- The industrialized states which possess the necessary technology (i. e. mainly the USA, Japan, the Federal Republic of Germany, Great Britain and France) and are also among the largest users of the raw materials in question,
- the big dry land producers and net exporters of the four metals who for the most part belong to the Group of 77, and
- the majority of states which are not materially affected by deep seabed mining either as producers or as consumers, almost all of them developing countries and wooed by both sides.

The *technologically leading industrialized states* were from the beginning interested in deep seabed mining as a means of reducing their dependence on imports of the raw materials concerned and safeguarding their supplies over the long term. The USA for instance imports almost 100 % of its cobalt and manganese (from Zaire and South Africa respectively), 71 % of its nickel and 15 % of its copper requirements¹⁴. The Soviet Union really also belongs to this group but kept aloof from the loose grouping of industrialized states so as not to impair its relations with the Third World states. The industrialized states wanted their companies to be given as free access to the subsea treasures as possible in order to open them up speedily and efficiently. They stressed that this was also in the interest of the Third World states which do not possess these raw materials because it would have a stabilizing effect on the prices which would otherwise rise.

On the strength of this argument they demanded that if the Group of 77 insisted on the establishment of an international authority, this should administer the seabed resources only as a licensing and clearing organ with narrowly circumscribed powers. They stipulated, besides, that the group of the biggest consumer countries should have a right of veto in the decision-making body, the ISA council.

When the industrialized states found that they could not have their way at UNCLOS III, they started at the instigation of the interested companies to prepare national legislation on the activities of such enterprises below international waters. That they are entitled to pass such legislation is inferred from the fact that the utilization of this area is not forbidden by any internationally valid law and is thus one of the "other freedoms" of Art. 2 of the Geneva Convention on the High Seas of 1958. It is thus implicitly denied that either the moratorium resolution of the UN General Assembly forbidding the economic use of the international seabed in any form as long as there exists no internationally agreed regime (Resolution 2574) which was adopted in 1969 against the votes of the industrialized states or the 1970 resolution on the principles of the use of the seabed (Resolution 2749) which declared this area and its resources to be the "Common Heritage of Mankind" and was passed with the votes of the industrialized states is legally binding. In the opinion of the Group of 77 these two resolutions prohibit national appropriation of the "Common Heritage".

The group of the *producers on dry land* and main exporters of the four raw materials have an interest in investing the international authority with the far-reaching powers required for the control of deep seabed mining operations in such a way that they suffer no loss of earnings from exports of copper, nickel, cobalt and manganese.

The principal producers of these raw materials are:

Manganese	Copper	Nickel	Cobalt
South Africa	USA	Cuba	Zaire
Soviet Union	Chile	New Caledonia	New Caledonia
Gabon	Soviet Union	Canada	Zambia
Brazil	Zambia	Soviet Union	Cuba
Australia	Peru	Indonesia	Soviet Union
	Zaire		Canada

Source: C. Q. Christol: An International Seabed Authority, in D. Walsh (ed.): The Law of the Sea, New York 1977, p. 185.

¹⁴ Cf. J. M. Murphy, op. cit., p. 534.

This list includes a few industrialized countries but their interests, and especially those of the USA, are determined primarily by their needs as consumers. Canada alone among the industrialized countries unofficially endorses the official Group of 77 policy which as far as deep seabed mining is concerned is dominated by the Third World states producing raw materials on dry land. The latter would not mind blocking deep seabed mining operations altogether but cannot afford to jeopardize the support of the other developing countries which hope to be given a share in the revenues from the "Common Heritage", for their strength in these negotiations rests on this support.

Prominent members of the group of *states which are neither producers nor consumers* but only potential co-heirs are several countries (like Algeria and Tanzania) which want the ideas of a New International Economic Order and the Common Heritage to be applied to the seabed mining regime with as few reservations as possible because this does not involve any great material risks for themselves. Their attitude has been dubbed "re-ideologization" and found expression in fierce attacks on the planned national initiatives for deep seabed mining legislation. An especially clear instance of this occurred at the eighth session last year when the Group of 77 turned down a Dutch proposal for joint ventures of the ISA Enterprise and private or state companies in order to make the former more viable. This would really have been in the interest of the underdeveloped countries because it would facilitate the technology transfer to the International Seabed Authority and the financing of its Enterprise. The explanation given for the rejection was that the proposal was "enfeebling the Enterprise idea" since commercial firms were to be given a right to a 20 % participation in an Enterprise operation in return for a 20 % participation of the ISA Enterprise in one of their operations.

Decision on Seabed Mining

The eventual decision on the deep seabed mining regime is still quite open, the more so as the indicated conflict of interests is complicated further by differences between the western and eastern industrialized states: In the view of the socialist states in eastern Europe the usual UN quotas should be disregarded for the financing of the Authority and Enterprise – the criterion should be the benefit derived from the resources. Other issues in dispute are the

voting modalities in the Authority's Council and the inclusion of an anti-monopoly clause intended to prevent the western industrialized states with the greatest present potentialities from occupying the most attractive mining areas and leaving nothing for those which will develop the necessary technological capabilities in the future.

Privileges Secured

The consortia which are interested in deep seabed mining operations are now faced with a choice between three options:

- ☐ They can wait, as they have done, for UNCLOS III to agree on an arrangement which favours investments.
- ☐ They can end their commitment and withdraw their capital from this field as being too precarious.
- ☐ They can start commercial mining operations backed by national interim legislation irrespective of what may happen at UNCLOS III.

At the moment it seems most likely that if seabed mining operations are undertaken at all in the foreseeable future, they will start on the basis of interlinking national laws beyond the control of and amidst fierce protests by the states without a direct stake in them. The result would be – at least at first – that this last remaining category of maritime resources would, like others, be at the disposal of a small number of states.

It would thus be impossible to uphold at UNCLOS III either the ideas of a more equitable resource distribution linked to a New International Economic Order or the alliances between different interests needed for their realization: With the institution of economic zones and the new continental shelf regime the major part of the potential resources will go to a small number of states which are in any case for the most part already in a privileged position. The remainder, left as the "Common Heritage", will either for the time being remain unutilized or else it will be exploited on the terms of a few leading western industrialized states which describe the regime which they are setting up as an interim arrangement and will pay over a part of the proceeds to the developing countries but are in fact securing privileges for themselves which it will be almost impossible to remove.