Proposed Regimes for the Sea-Bed and the Ocean Floor Beyond the Limits of National Jurisdiction

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In 1970, the General Assembly by its resolution 2750 C (XXV) decided to schedule tentatively a comprehensive Conference on the Law of the Sea in 1973 to deal with a precise delimitation of the sea-bed area, a regime for the high seas, territorial waters, international straits, the continental shelf, fishing, contiguous zones, the preferential rights of coastal States and the prevention of marine pollution.

The United Nations Committee on the Peaceful Uses of the Sea-Bed and Ocean Floor also known as the Sea-Bed Committee which had its beginnings in 1967 was set up as a preparatory committee for the Conference. It has already held four sessions, two in 1971 and two more in 1972, and the General Assembly in its last session further mandated the Committee to meet in two more sessions in 1973 to finalize the preparatory work. It is the belief of the great majority in the Assembly that the "take-off" stage in the preparatory work has been reached, in the light of the progress already achieved, and that the two additional sessions of the Sea-Bed Committee would, hopefully, complete the crucial part of its task — that of the drafting of treaty articles on the various subjects and issues listed for consideration by the plenipotentiary conference. The next session of the General Assembly will definitely pass on the adequacy and sufficiency of the preparatory work done and then decide whether or not to proceed with the organizational portion of the Conference on the Law of the Sea in November-December 1973 and the substantive portion in March-April of 1974.

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At the outset, the question may be asked, why is there a need for a regime for the deep sea-bed and ocean floor? There is one simple straight-forward answer to this question. The resources and the riches being discovered in the sea and ocean depths are so vast and so immense that the need arises for their safe and orderly development and management if they are to be of benefit to mankind.

About 16% of the world's total output of oil is now derived from offshore resources. With the advance of science and technology this figure may easily double in the next few years. It is estimated that by 1980, 35% of oil production will come from sea-bed areas and 50% by the year 2000. Deep-sea deposits of nodules show great economic potential. These nodules (generally called manganese nodules) contain about 15 industrially-useful metals such as manganese, nickel, cobalt, copper, zinc, molybdenum, zirconium, cerium, lead, titanium, iron, vanadium and several rare earth elements. At this time, however, the focus of attention is the possibility of deep-sea mining of manganese, nickel, cobalt and copper. It staggers the imagination when one hears of reports that the manganese nodules now in the bottom of

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the sea can provide hundreds or even thousands of years' supply of manganese, nickel, cobalt and copper at the present rate of world consumption. Furthermore, it is also estimated that at the rate nodules are being formed or accumulated in the deep oceans they are providing metals greater in amounts than the annual consumption thereof throughout the world.

It is obvious, therefore, that in order to promote peace and stability in the oceans, there is an immediate need for a body of law to govern the sea-bed and ocean floor.

In 1970 the General Assembly adopted the Declaration of Principles Governing the Sea-Bed and the Ocean Floor and the Subsoil Thereof Beyond the Limits of National Jurisdiction. This Declaration is a set of fifteen (15) principles of which, to my mind, the following are most significant:

> "1. The sea-bed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction (hereinafter referred to as the area) as well as the resources of the area, are the common heritage of mankind.
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> "2. The area shall not be subject to appropriation by any means by States or persons, natural or juridical, and no State shall claim or exercise sovereignty or sovereign rights over any part thereof.
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> "3. No State or person, natural or juridical, shall claim, exercise or acquire rights with respect to the area or its resources incompatible with the international regime to be established and the principles of this Declaration.
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> "5. The area shall be open to use exclusively for peaceful purposes by all States whether coastal or landlocked, without discrimination, in accordance with the international regime to be established.
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> "9. On the basis of the principles of this Declaration, an international regime applying to the area and its resources and including appropriate international machinery to give effect to its provisions shall be established by an international treaty of a universal character generally agreed upon. The regime shall, inter alia, provide for the orderly and safe development and rational management of the area and its resources and for expanding opportunities in the use thereof and ensure the equitable sharing by States in the benefits derived therefrom, taking into particular consideration the interests and needs of the developing countries, whether landlocked or coastal."

The concept of "the common heritage of mankind" is the very foundation upon which the other principles are based. It is such a new and novel concept that those against it claim its lack of precise legal content. Questions have therefore arisen as: Is it a legal principle, moral principle or what? And what are its substance and implications?

The nearest definition so far given to the concept of "the common heritage of mankind" is that it means "common wealth", "common administration or management" and "common or shared benefits".

At any rate, it appears that "the most reasonable conclusion would seem to be that the concept of the common heritage of mankind is not

a legal principle but embodies rather agreed moral and political guidelines which the community of States has undertaken, a moral commitment to follow in good faith in the elaboration of a legal regime for the area beyond the limits of national jurisdiction".

A working group of the Sea-Bed Committee created in 1972 had already produced a draft of 21 treaty articles or texts on the international regime to govern the sea-bed and ocean floor. The draft texts were based on the Declaration of Principles and the second text of the draft reads as follows:

> "The sea-bed and ocean floor beyond the limits of national jurisdiction, as defined pursuant to Article . . . and hereinafter referred to as the 'Area' as well as the resources of the Area are the common heritage of mankind."

The fourth text is worded, as follows:

> Neither the area nor [its resources nor] any part thereof shall be subject to appropriation by any means whatsoever, by States or persons natural or juridical, and no State shall claim or exercise sovereignty or sovereign rights over the Area or [its resources or] any part thereof; nor, except as hereinafter otherwise specified in these Articles, shall any State or any person natural or juridical, acquire or exercise any rights over the resources of the Area or of any part thereof. Subject to the foregoing, no such claims or exercise of such rights shall be recognized."

Thus, the draft texts spell out, pursuant to the Declaration of Principles, the basic concept of the common heritage of mankind. The principles of peaceful uses of the area, equitable sharing of benefits and preservation of the marine environment are also reflected in the drafts.

The draft texts have not been finalized and the Working Group would still consider alternative formulations and pass on portions of the drafts remaining in brackets.

There are actually before the Sea-Bed Committee 12 working papers on the proposed regime and international machinery for the sea-bed and ocean floor beyond the limits of national jurisdiction. These working papers are either detailed draft conventions on the subject or brief outlines of the views of the authors on what they consider to be the more essential elements of the regime and of the machinery.

The detailed proposals are those submitted by the United States of America, the United Republic of Tanzania, the Union of Soviet Socialist Republics, Malta, the 13-Power working paper submitted by Chile, Colombia, Ecuador, El Salvador, Guatemala, Guyana, Jamaica, Mexico, Panama, Peru, Trinidad and Tobago, Uruguay and Venezuela. Working papers were also submitted by Japan, Poland, the United Kingdom, France, Canada as well as by 7-Powers composed of Afghanistan, Austria, Belgium, Hungary, Nepal, Netherlands and Singapore representing the landlocked and shelf-locked States.

These working papers divulge the basic differences among Member States and indicate the positions they have taken, even if tentative at this stage, either as developed or developing countries and either as coastal or non-coastal States.

The question of limits, that is to say, the extent of national jurisdiction in sea-bed from which the international area may be determined, is one that overrides all others in the drafting of the treaty on the sea-bed. Even at the very start of the organization of work of the Sea-Bed Committee, the question of limits had already caused protracted debates as to which sub-commitee should consider it and submit the corresponding recommendation. Finally, after much delay and intensive inter-regional negotiations, it was agreed that all the sub-committees may consider the question of limits and make their own recommendations insofar as the question relates to the subjects assigned to each sub-committee but the final say in making a recommendation on this all-important question of limits would be left to the main committee.

The extent of the international area over which the regime and the machinery shall apply would appreciably affect the nature and scope of the regime itself such that many States are inclined to the idea that the question of limits should first be decided upon before proposals for the regime and machinery should be considered. On the other hand, there are those who would rather see first the content of the regime and the powers of the machinery before the question of limits is taken up. The developing countries, in general, favor this position.

It is nevertheless agreed at this stage that there is an area of the sea-bed and ocean floor beyond the limits of national jurisdiction. In the approved Declaration of Principles, preambular paragraph 2 says: "Affirming that there is an area of the sea-bed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, the precise limits of which are yet to be determined".

The divergence of views arises in the determination of precise limits. But a point of departure is the 1958 Geneva Convention on the Continental Shelf which provides that the continental shelf over which a coastal State exercises sovereign rights for the purpose of exploring and exploiting its natural resources is the "seabed and the subsoil of the submarine areas adjacent to the coast, but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas".

From the above definition of the continental shelf, it can be deduced that the breadth of the territorial sea is an all-important factor in the ultimate determination of both the national and the international sea-bed areas. The problem before us looms bigger as we face the fact that the breadth of the territorial sea is one of the unresolved issues of the law of the sea and as we are confronted by the divergent claims to the territorial sea varying from a minimum of three miles to a maximum of 200 miles, to which should be added our country's own claim to its territorial waters under the new Constitution. An agreement or a compromise on this question could be the turning point that would usher in solutions to the other vital issues of the law of the sea including the determination of the precise limits of the sea-bed and ocean floor beyond national jurisdiction.

On this question of limits, the United States, to start with, has proposed a maximum distance of 12 nautical miles from the coast as the boundary between the territorial sea and the high seas. In its draft convention on the sea-bed, it has proposed that the international sea-bed area shall comprise all areas of the sea-bed and subsoil of the high seas seaward of the 200 meter isobath adjacent to the coast of conti-

nents and islands. In other words, the coastal State is given a continental shelf beyond the twelve-mile limit of the territorial sea up to a maximum depth of 200 meters. The area beyond that depth and seaward to the deep oceans until it meets with the boundary set by another coastal State in accordance with the limits defined above will comprise the area of the international sea-bed. However, it is further proposed that in the international sea-bed area, there shall be what is to be known as the international trusteeship area consisting of the area under the high seas beyond the 200 meters depth and seaward up to the base of the continental slope where it abruptly declines into the abysmal depths.

Under the United States proposal, the coastal State will act as trustee for the international community in the international trusteeship area, sharing revenues in that area with the world community while the international machinery would be authorized to regulate exploration and the use of sea-bed resources beyond the continental margins. In both the trusteeship area and the area beyond the continental margins, the regime and machinery proposed by the United States would apply.

The other proposal which offers a solution to the question of limits for the sea-bed and ocean floor is the Maltese draft Convention on the Law of the Sea which is a unified approach to an overall attempt at balancing the national and international interests in ocean space. The proposal suggests two areas — the national ocean space and the international ocean space.

Article 36 of the draft convention provides, as follows:

> "National jurisdiction extends to a belt of ocean space adjacent to the coast, the breadth of which is 200 nautical miles. Ocean space beyond 200 nautical miles from the coast forms part of International Ocean Space. No part of International Ocean Space is subject to national jurisdiction of any kind unless otherwise expressly provided in the present Convention."

Article 37 reads:

> "The jurisdiction of an island State or of an archipelago State extends to a belt of ocean space adjacent to the coast of the principal island or islands the breadth of which is 200 nautical miles. The principal island or islands shall be designated by the State concerned and notified to the competent organ of the International Ocean Space Institutions. In the event of disagreement with the designation made by the archipelago State, any Contracting Party may submit the question to the International Maritime Court for adjudication."

Under the Maltese proposal "ocean space" would comprise the surface of the sea, the water column and the sea-bed beyond internal waters. Coastal States would reserve to their nationals the exploitation of living and non-living resources in national ocean space, but coastal States would consult with the International Ocean Space Institutions with regard to the manner of exploiting a belt of twenty-five miles of national ocean space adjacent to the international sea, and the coastal States would transfer to these institutions — a proportion of the revenues obtained from the exploitation of resources in national ocean space.

The only other draft proposal which offers criteria for the delimitation of the sea-bed is that of the 7-Power working paper representing the views of landlocked and shelf-locked States. In the very first guideline of the paper, the limits and status of the international area are defined, as follows:

> "The international area shall comprise all sea-bed and subsoil outside the area of the territorial sea (the maximum breadth of which is 12 miles measured from the base-line) and beyond the submarine areas adjacent to the coasts of States. For the purpose of this article submarine areas are considered to be adjacent to the coast of a particular State if
> — either their depth does not exceed 200 meters,
> — or they underlie a belt of sea the breadth of which is 40 miles measured from the baseline of the territorial sea, according to the choice between the two methods of delimitation to be made by the particular State at the moment of ratification. The choice shall be final and the method of delimitation chosen shall apply to the whole of the coastline of that particular State."

The other draft treaties and working papers did not establish criteria for delimiting the sea-bed over which the regimes proposed by their authors are to apply. This was no doubt done in the full knowledge that the delimitation of the area is not only the most critical and controversial issue facing the Committee but is also intertwined with other similar crucial issues of the law of the sea. The Soviet Union, for instance, had made it abundantly clear that the delimitation of the sea-bed should form part of a package deal that should include the resolution of such problems as the breadth of the territorial sea, international straits and free transit and fisheries.

At the time of the adoption of the 1958 Geneva Convention on the Continental Shelf, the idea was farfetched that technology could so advance as to enable men to explore and exploit the resources of the shelf beyond the 200 meters depth. But the framers of the Convention were proven wrong and as we can bear witness, oil may now be produced from the offshore wells up to a depth of 400 meters while drilling is now conducted even up to 1,000 meters isobath. And according to a recent report, a hole drilled in the Gulf of Mexico to a depth of 12,500 ft. showed indication of oil deposits. With all these technological developments, if no agreement is reached on the delimitation of the sea-bed under more precise terms than that provided by the Geneva Convention, it is conceivable that the sea-bed and the ocean floor would eventually be divided up by the coastal States with the simple application of the median line principle.

In the relatively short time still available before the Conference on the Law of the Sea, States will be called upon to make an extremely important political decision in the determination of their respective limits of national jurisdiction over the sea-bed. Up to now, most States, or a majority of them have not yet made up their minds on what proposal and what formulation would best serve the interests of their country and their people.

Corollary to the concept of common heritage is the principle of equitable sharing of the benefits to be derived from the exploration and exploitation of the sea-bed resources, with particular attention to be paid to the needs of the developing countries. What is envisaged

under this principle is that the revenues that may be derived either from the registration, licensing or granting of concessions by the international authority, the levies or royalties on the resources derived from the area, as well as the proceeds from the sale of such resources should form a common fund of the international authority and after deducting the costs of management and administration, the remaining balance would be divided or apportioned among all the members of the international community in accordance with the agreed criteria and with the needs of the developing countries being given particular attention. The Secretary-General of the United Nations had issued a study suggesting methods by which the equitable sharing of the benefits may be accomplished. Because it is anticipated that the resources deriving from the deep-sea-bed and ocean floor would be mainly mineral such as manganese, cobalt, nickel and copper or even petroleum and natural gas, the Secretary-General, upon request of the General Assembly, issued another study concerning the economic implications of the extraction of these resources from the sea-bed on the primary producers of the same products from land. The objective of this study is to avoid adverse effects on the economy, particularly of the developing countries primarily dependent on the production and export of the said mineral and non-mineral resources. This has an important bearing on the exploration and exploitation of the sea-bed resources because the unregulated exploitation of such resources instead of producing benefits for mankind may have the contrary effect of ruining the economy of those countries mainly dependent on the production of copper, nickel, cobalt, manganese, and even of oil products.

Another guiding principle in the shaping of the international regime is the prevention of pollution and the preservation of the marine environment. The United Nations Conference on the Human Environment last year has not only alerted the international community but has also made them keenly aware of the dangers of disturbing the balance of the ecological system which supports life on this earth. As the oceans form a vital part of that ecological system, it is, therefore, absolutely essential that in exploring and exploiting the resources of the ocean depths, the prevention of pollution and the preservation of the marine environment should be of utmost consideration.

Relevant to the principle of the preservation of the marine environment is the principle that the sea-bed and the ocean floor beyond the limits of national jurisdiction should be reserved exclusively for peaceful purposes. In this connection, the Declaration of Principles provides, as follows:

> "The area shall be reserved exclusively for peaceful purposes, without prejudice to any measures which have been or may be agreed upon in the context of international negotiations undertaken in the field of disarmament and which may be applicable to a broader area. One or more international agreements shall be concluded as soon as possible in order to implement effectively this principle and to constitute a step towards the exclusion of the sea-bed, the ocean floor and the subsoil thereof, from the arms race."

Other important principles taken up in the draft of the treaty on the international regime and which were also considered in the working papers submitted to the Sea-Bed Committee are those relating to scientific research, the transfer of technology from the developed countries to the developing countries, and the training and education of

personnel in the developing countries, so as to enable these countries to participate fully in the exploration and exploitation of the sea-bed resources.

The Working Group in the International Regime has also been given the mandate to draft treaty articles on the international machinery. Most of the working papers we have referred to earlier embody proposals that the international machinery (to be known either as the International Sea-Bed Resource Authority, the International Sea-Bed Resource Agency, the International Ocean Space Institutions, International Authority for the Sea-Bed or merely as the Authority) should have the following four (4) organs, to wit: an Assembly composed of all Member States, which would be the supreme organ of the Authority with overall supervision of its activities, to meet yearly or every other year or even once in three years; a Council of restricted membership based on either equitable geographical distribution, or technological know-how of sea-bed exploration and exploitation of resources, to execute policy decisions of the Assembly; a Secretariat which would be composed of international civil servants chosen on the basis of merit, fitness and integrity, to service the organs of the Authority; and a Tribunal for the settlement of disputes between Member States or between a Member State and the Authority.

The international machinery would be vested with a juridical personality such that it would have legal capacity and immunities and privileges similar to those of the Specialized Agencies of the United Nations.

A question of much controversy in the past two years is the extent of the Authority's participation in the exploration and exploitation of the sea-bed resources. Should the international authority be limited merely to registering claims by those interested in exploring and exploiting the resources? Would it also be authorized to issue licenses, grant concessions, or approve leases to those who have decided to engage in the exploration or exploitation of the resources? Or would the authority itself engage in the exploration or exploitation of the resources? There are diverse proposals on this problem. For instance, the Soviet draft provides for supervision by the international authority of the exploration and exploitation. The proposal of Tanzania and that of Malta would of licenses. The U.S. draft, on the other hand, would grant the international authority the right to issue licenses to carry out exploration and exploitation. The proposal of Tanzania and that of Malta would allow the international authority to issue licenses as well as to engage itself in the exploitation business, if it is in a position to do so; whereas, the 13-Power draft of the Latin American countries would reserve exploration and exploitation of the sea-bed resources exclusively to the international authority. Not only can the authority enter into arrangements or joint ventures with companies or with contracting parties but it is also solely empowered to decide the ways and means by which the exploration and exploitation should be carried out. The Latin American group is of the belief that giving the Authority the sole power to explore and exploit resources finds its basis in the concept of the common heritage of mankind.

It should be noted that although the proposals for the structure of the international machinery would appear to be similar to those of the Specialized Agencies of the United Nations and of the United Na-

tions itself, in actuality the institution that will emerge would be radically different from anything now being undertaken in the UN system, and so perhaps, new approaches are in order.

Thus, many vital issues on the law of the sea have come out as it were from Pandora's box as a result of the debates on the subject of the sea-bed and ocean floor. However, the Sea-Bed Committee takes heart from the fact that a consensus more or less has emerged on the following:

a. that (as already stated above) there is an area of the sea-bed and ocean floor beyond the limits of national jurisdiction;

b. that this area is the common heritage of mankind; and

c. that there is a need for an international regime and machinery to govern this area."

The success of the forthcoming Conference on the Law of the Sea could mean a new era in international cooperation heretofore unknown in the annals of international relations. A new law of the sea would have far-reaching influence on international peace and security and the development of equitable political, economic and technical intercourse between developed and developing countries. On the other hand, the failure of the Conference could result in endless instability, disorder, tension and conflict, in an area which covers 70% of the planet in which we live. The stakes are high and as is voiced quite often in the halls of the United Nations and elsewhere, it is hoped that sanity, goodwill and the true spirit of international cooperation would prevail.

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Voluntary Arbitration of Labor Disputes: Proposed Guidelines

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Problems in industrial relations become meaningful with the accelerated pace of industrialization in the Philippines. Before the Pacific War, our people were more or less anchored to the soil and led comparatively simple lives. The latest census report, however, shows that some four million Filipinos are members of the complex industrial society.[1] The dependence of these people upon industry multiplies in geometric proportions when we consider their families and dependents who are entirely dependent for their survival on a job and a wage. Industrial Relations problems involve the economic well-being of the industrial worker and his family, so much so that such problems are generally bitter, colored with prejudice, and oftentimes attended by innumerable side issues.

As a result of the gradual shift from agriculture to industry, labor assumed greater importance to the nation, and complemented by protective labor laws, it acquired additional strength to enable it to stand side by side with capital on an equal footing. However, the rights of labor are generally denied due recognition by management or abused by labor itself, and as a result, disputes between the two invariably break out and develop into costly strikes. The statistics shown in the table at the end of this article indicates the alarming increase in the number of work stoppages caused by the situation referred to above.

The number of labor disputes shown in the table is not an accurate index of the amount of disputes between labor and capital in the Philippines. Nor can any statistical representation be relied upon to adequately reflect labor problems.

It is not always safe to say that the absence of strikes or lockouts implies an ideal labor-management relationship in a firm. It may be possible that one of the parties is so weak that it is forced to accept whatever the other dictates, or a union may have signed a "No strike" pledge, and is observing it.

Whenever labor problems arise, they must be settled at the earliest possible time to avoid serious trouble to either party. Unfortunately, the parties, in most cases, solve their problems by traveling through the rough road of ill-will and open conflict, and as a result, both sides suffer miserably.

Efforts to adjust industrial disputes are either peaceful or belligerent, with the latter being apparently favored in most cases. The basic methods of amicable settlement are direct negotiation, mediation or conciliation, arbitration, and litigation. On the other hand, the instruments of open combat most frequently used by labor are boycott, strike, and picket. Employers on the other hand may resort to lockout or shutdown, or discharge or blacklisting of employees.

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1 Martin, Philippine Labor and Social Legislation, Vol. I, 1970 edition).