

The United Nations Law of the Sea Convention at Thirty

The work of the International Seabed Authority

1. In the late 1960s, oil exploration was moving further and further from land, and deeper into the bedrock of continental margins. The oceans were being exploited as never before. Activities unknown barely two decades earlier were in full swing around the world. Tin had been mined in the shallow waters off Thailand and Indonesia. South Africa was about to tap the Namibian coast for diamonds. Potato-shaped nodules, found almost a century earlier and lying on the seabed some five kilometres below were attracting increased interest because of their metal content.

2. On 1 November 1967, during the Twenty-second session of the United Nations, the First Committee of the General Assembly at its 1515th meeting, the general debate on Agenda item 92, under the title: **“Examination of the question of the reservation exclusively for peaceful purposes of the sea-bed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction, and the use of their resources in the interests of mankind”** heard the statement that has the greatest impact on the rule of law in the oceans.

3. The statement of Ambassador Arvid Pardo in his capacity of Chairman of the Maltese delegation was supplied by abundant factual data enlightened on a high scientific level. The substantial part of the long statement focused on a comprehensive evaluation of the current state of the oceans and the political, technological, economic, legal, military and institutional aspects of the new regime of exploration, exploitation, conservation and management of the seabed and ocean floor beyond national jurisdiction, and the use of their resources exclusively for peaceful purposes in the interests of mankind. Special emphasis was placed on the continental shelf and the deep ocean basins including the resources of the seabed, in particular mineral resources of the ocean floor with large deposits of polymetallic nodules containing nickel, copper, cobalt and manganese with enormous economic potential.

4. In his examination of the state of the oceans, in particular, the seabed and its resources, he emphasized two major issues. First, the large potential resources of the seabed, mainly the continental shelf, and the deep ocean floor, made accessible due to the impact of modern technology; and second, the novel concept of the principle of the common heritage of mankind and the establishment of a “Special agency” for the regime of the international seabed area. Mr. Pardo also said that the needs of poor countries, representing that part of mankind which is most in need of assistance, should receive preferential consideration in the event of financial benefits being derived from the exploitation of the seabed and ocean floor for commercial purposes.

5. With regard to the concept of the common heritage of mankind, this statement is the basic source of what are now articles 136 and 137 of UNCLOS. Article 136 stipulates that “The Area (i.e. the international seabed area beyond national jurisdiction) and its resources are the common heritage of mankind”. Article 137 defines the legal status of the Area and its resources, in accordance with the principle of common heritage, setting out the rules of non-appropriation and non-alienation, determining that these rights are vested in mankind as a whole on whose behalf the Seabed Authority shall act and that no state or natural or juridical person shall claim, acquire or exercise rights with respect to the mineral resources from the Area.

6. The speech set in motion a process that spanned 15 years and saw the creation of the UN Seabed Committee, the signing of a treaty banning nuclear weapons on the seabed, the adoption of a declaration by the General Assembly that all resources of the seabed beyond the limits of national jurisdiction are the common heritage of mankind, and the convening of the Stockholm Conference on the Human Environment. These were some of the factors that led to the convening of the Third UN Conference on the Law of the Sea during which the

UN Convention on the Law of the Sea (UNCLOS) was adopted and opened for signature on 10 December 1982. With the objections to some of the provisions of Part XI that deals with the Area, the United Nations promoted a new negotiation on this part which resulted in the Agreement Relating to the Implementation of Part XI of the UNCLOS, which was annexed to Resolution 48/263, adopted by the General Assembly on 17 August 1994.

7. The Special Agency that he envisioned is now the International Seabed Authority, an autonomous international organization with 162 member states, headquartered in Kingston, Jamaica that was established upon the entry into force of the Convention on 16 November 1994, almost twelve years after the opening for signature of the Convention. Charged with, inter alia, administering the mineral resources of the International Seabed Area, adopting rules, regulations and procedures for the conduct of activities in the Area, promoting and encouraging marine scientific research in the Area, and protecting and conserving the natural resources of the Area and preventing damage to the flora and fauna of the marine environment, the organization has since its establishment taken significant steps towards making mining and other activities associated with the Area a reality.

8. Since its establishment phase (putting in place the general institutional framework to implement the Convention and the Agreement), the International Seabed Authority has evolved into a substantive organization that has gone a long way to meeting much of the vision enunciated by Mr. Pardo.

9. It has adopted two sets of rules, regulations and procedures for prospecting and exploration for polymetallic nodules (nickel, copper, cobalt and manganese) and polymetallic sulphides (copper, lead, zinc, gold and silver) in the Area, and the Council is in the process of completing its consideration of rules, regulations and procedures for prospecting and exploration for cobalt-rich ferromanganese crusts deposits in the Area. Ten plans of work for exploration for polymetallic nodules in the form of contracts have been signed by the Authority and two plans of work for exploration for polymetallic sulphides in the form of contracts have been signed by the Authority. At the forthcoming 18th session, five applications for approval of plans of work for polymetallic nodules (2) and polymetallic sulphides (3) will be considered by the Legal and Technical Commission and Council. If they are approved, it would mean that three developing states (Nauru, Tonga and Kiribati) have joined eleven other states in directly participating in exploration activities in the Area. The Council will continue its consideration of the third set of regulations, that for cobalt-rich ferromanganese crusts deposits in the Area, at the eighteenth session.

10. With regard to the protection of the marine environment from activities in the Area, during 2013 and 2014, it is planned to convene three workshops with contractors, to standardize the megafauna, micro fauna and meiofauna associated with polymetallic nodule deposits. The international scientific community has identified fauna associated with these deposits as the component of the environment that would be most impacted by future mining. It is proposed to publicize the standards developed during these workshops through the Authority's web site, and to encourage other marine scientific researching organizations to utilize them for faunal identifications, thus increasing the size of the required database for robust assessments of the environment both before and after mining commences, and to validate the environmental management plan adopted by the Council at the seventeenth session.

11. Finally, at the seventeenth session, I was requested to prepare a strategic plan for the development of an exploitation code for polymetallic nodules for the consideration of the Council at the eighteenth session. Such a plan has been prepared. It is expected that during the consideration of the exploitation regulations, attention will be turned to the equitable-sharing criteria for the revenues that derive from mining. It will be recalled that in his speech, Mr. Pardo requested that "poor countries, representing that part of mankind which is most in need of assistance, should receive preferential consideration in the event of financial benefits being derived from the exploitation of the seabed and ocean floor for commercial purposes." When the regulations for the exploitation of polymetallic nodules are adopted and mining turns out to be profitable, this significant component of Ambassador Pardo's vision would then be realized.