

ISBA AT 20

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The attention to the seabed mineral resources actually started in the early part of the 20th century, particularly since scientists and humanity began to look more seriously at the resources of the seabed area. In fact, in 1918 American scientists had found it possible to exploit oil resources in the seabed at about 40 miles off the coast in the Gulf of Mexico. These efforts did not have much consequences at that time until the conclusion of the Anglo-Venezuelan Treaty of 1942 with regard to the exploration and exploitation of oil in the Gulf of Paria in the Venezuelan continental shelf. Three years later, on September 28, 1945, the US proclaimed the famous Truman Declaration which claimed the right to control the resources of the continental shelf of the US. The pertinent part of the Declaration stated that:

“...the US regards the natural resources of the subsoil and seabed of the continental shelf beneath the high seas but contiguous to the coasts of the US as appertaining to the US, subject to its jurisdiction and control. The character as high seas of the waters above the continental shelf and the right to their free and unimpeded navigation are in no way thus affected.”

This proclamation covered a wide area of seabed under the high seas, although there was no definition given as to the extent and the meaning of word ‘continental shelf.’ Some scientists estimated that the area claimed covers about 750,000 square miles, and that the width of the shelf in certain area could be at 250 miles from the coasts.

The Truman Declaration may be considered as a milestone in the development of the law of the bed of the sea, particularly on the natural resources therein. As the result of this declaration, other States hurried to claim ‘their’ continental shelves. Almost all American States claimed the continental shelf off their coasts. This was followed later by other countries, such as Pakistan, Iceland, Iran, Korea, Israel, the Philippines, and British colonies at that time, such as the Bahamas, British Guyana, British Honduras, Brunei, Jamaica, North Borneo, Sarawak, and Falkland Islands. The race to acquire the rights over the resources of the seabed of the continental shelf gained speed and significance.

Some of these claims exceed the Truman Declaration. If the Truman Declaration did not claim the waters above the continental shelf, some countries did. Argentine Declaration of Oct 9, 1946, for instance, declared that Argentine Epicontinental Sea (meaning the waters above the continental shelf) and continental shelf were subject to the sovereign powers of the Nation. Several questions arised as to the various claims.

First, what was a 'continental shelf'? Originally, the notion of continental shelf was purely geological, geo-graphical, and oceanographical. According to geographers, the continental shelf is "the part of the sea-bottom and the soil underneath, which is covered by shallow waters, up to a depth where the slope of the sea-bottom increases noticeably in steepness, which fringes large parts of the continents, over varying distances from the coasts. The depth of the water covering the continental shelf and its extension from the coasts are therefore varied. Generally, however, the depth is about 200 meters from the surface, and its extent from the coast varies from 1 to 1000 kilometers.

Several criteria in determining the legal extent of the continental shelf have been suggested. (1) Geographical criteria; that is to the depth of 200 meters or 100 fathoms from the surface. As long as the water covering the seabed does not exceed this depth, the seabed may be regarded as continental shelf. (2) Distance from the coast, regardless of the depth of the water covering it. The seabed may be regarded as continental shelf if it does not exceed certain distance from the coasts. (3) Possibility of exploitation. The seabed may be regarded as continental shelf if the exploitation of the resources on and in that seabed is possible (the 'exploitability' criteria).

The Geneva Conference had achieved a legal definition of the continental shelf. By joining together criteria 1 and 3, Article 1 of the Convention on the Continental Shelf, adopted at Geneva on April 29, 1958, stated:

"...the term 'continental shelf' is used as referring (a) to the seabed and 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; (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands."

Not long after the conclusion of the Geneva Convention in 1958, scientists again discovered the possibility of exploring and exploiting the mineral resources at the bottom of the ocean. It was Ambassador Arvid Pardo of Malta that raised the question in the UN-GA in 1967 as to who own those resources and what rules govern them. Some opinions stated that the resources were free for all who had the technology and ability to explore and exploit them. Their line of thinking would certainly exclude the developing countries which did not have the technology and the capacity to make use of the resources. After some debates the UN-GA finally adopted a resolution in 1970 that the resources 'are **the common heritage of mankind**', and that an international regime should be established to manage the resources. An international authority should be established and that a Preparatory Conference should prepare the new law of the sea regime. The Conference, after being prepared by the Preparatory Commission, and again, after lengthy preparations, adopted the UNCLOS in Montego Bay on December 10, 1982.

The Law of the Sea Convention 1982 (UNCLOS 1982), in Article 76 para 1 extended the legal regime of continental shelf beyond the territorial sea "throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend to that distance. The outer edge of the continental margin beyond 200 miles could extend to where "the thickness of sedimentary rocks is at least 1% of the distance to the foot of the continental slope or 60 miles from the foot of the continental slope, as long as they do not exceed 350 miles from the baselines of the territorial sea, or not exceed 100 miles from the 2,500 meters isobaths".

The seabed area beyond these limits is regarded as 'the Common Heritage of Mankind' (Article 136 of UNCLOS) and would be managed by the International Seabed Authority (ISA) to be seated in Jamaica (Article 156 (4) of UNCLOS) which today celebrates its 20 years of existence, namely since the entry into force of the Convention in 1994. On this occasion, I would like to remember and express my respect and admiration to Mr. Kenneth Rattray and the delegation of Jamaica who worked hard and diplomatically assured that the ISBA would be headquartered in Jamaica.

It should be remembered, however, that by 1990, the fear was that the Convention might appear to be the Convention of developing countries since by approaching the number of 60 ratifications, the number required for the entry into force of the Convention, practically all the ratifiers were developing countries, except Iceland. This was because the 'dislike' of the developed countries with the provisions of UNCLOS on the international seabed mining. For this reason, some of us, including Indonesia, undertook to engage the developed countries to discuss this matter in 1990s, and after 4 years of negotiations, we finally agreed on the 'Implementing Agreement on Part XI' in 1994, thus opened the way for the advanced industrialized countries to ratify the Convention, except the US, which, so far, 20 years later, still has not ratified the Convention. Indonesia deposited its ratification of the Agreement to the UN on June 2nd, 2000, No. 98 of 145 countries that have ratified the Agreement by Oct 2013. I still hope, however, that someday the US and other non-ratifiers will see the benefits of ratifying the Convention rather than continue to stay away out of it.

After the entry into force of the Convention, our next efforts were how to establish the International Seabed Authority as one of the "executive organs" of the Convention. I was invited to be the pro-temp chairman in preparing the establishment of the Authority in 1995 and later on as President of the ISA in 1996. Some of the main problems at that time were the composition of the Council and the election of the first Secretary General of ISA.

After agreeing on the arrangement for the distribution of seats in the Council among the 5 regional groups - Asia, Africa, Latin America and the Caribbean, Eastern Europe, and Western Europe and others - we struggled with regard to the election of the Secretary General. I had to deal with difficult problems of competition, particularly between two prominent persons and friends, namely Mr. Warioba from Tanzania and Ambassador Nandan, both of whom had played major roles in bringing the Convention into force. Both of them had gained significant support from their respective regional groups. After lengthy and informal discussions and approaches, I suggested that we should do "indicative" voting only, and the one who gained less votes in the indicative voting was recommended to withdraw voluntarily so that the one that received the majority of votes could be elected unanimously. Both Satya and Warioba as well the Assembly of the ISA agreed to the suggestion. After the indicative voting, which was

counted in front of the candidates only, I informed both of them of the result, upon which Warioba withdrew his candidacy. This mechanism was implemented smoothly and up to now no one knows exactly how the votes in the indicative voting turned out, except Satya Nandan, Warioba and me.

Ambassador Nandan, as Secretary General of ISA was later assisted by a number of highly qualified persons, such as Mr. Nii Odunton (now the Secretary General of ISA) and Mr. Michael Lodge (now Head of Legal Office at ISA), contributed significantly to these efforts. They also contributed later on, to formulate and implement various rules on exploration and exploitation of the mineral resources of the International Seabed Area, particularly Rules and Regulations on Exploration of Polymetallic Nodules, Polymetallic Sulphides, and Metal Crusts on Seamounts. On the basis of these Rules and Regulations, several companies/countries have signed contracts for the exploration of the seabed minerals, such as from China, Japan, South Korea, France, Germany, Eastern Europe, Tonga and Nauru for the exploration of nodules in the Pacific Ocean, and India for the exploration of polymetallic nodules in the Central Indian Basin. In addition, China has also obtained a contract for the exploration of metal crusts in the Southwest Indian Ocean Seamount Ridge and Russia for polymetallic sulphides in the Central Atlantic mid-Ocean Ridge. Lately, other countries, such as Singapore, Kiribati, Cook Islands, have also indicated interests to participate in the seabed mining activities in the Pacific Ocean.

Finally, it should also be remembered that the problems of implementing the principle of Common Heritage of Mankind has resulted in the recognition of the rights (and obligations) of the 'pioneer investors' in exploring the seabed resources and the rights of 'developing countries' to participate in the exploitation of the 'reserved areas'. At the same time, to facilitate the participation of developing countries in the activities of the LTC (Legal and Technical Commission) and of the FC (Finance Committee) of the ISA, a Special Fund has also been established in the ISA Secretariat.

In the end, I wish to express my respect, admiration as well as appreciation to those academics, experts, government officials and diplomats, as well as the people and the

government of Jamaica for having facilitated and welcomed the ISA in Kingston, hoping that more states around the world would ratify the Convention as well as its Implementing Agreements, and to continue to contribute to its implementation, including through the ISA. I am confident that the UNCLOS 1982 and ISA have contributed very substantially to the development of peace, stability, marine scientific research, and the sustainable use of marine resources, including in the international seabed area and their environment.