

Common Heritage of Humankind and benefit-sharing under UNCLOS

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Workshop on the Participation of Land-Locked Developing Countries in the Regime of the Area
and the Benefit-Sharing Mechanism under UNCLOS

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Early notions

Andrés Bello, *Principios de Derecho de Gentes*, 1832:

Things that could not be held by one nation without detriment to the others ought to be considered by the international community as common patrimony.

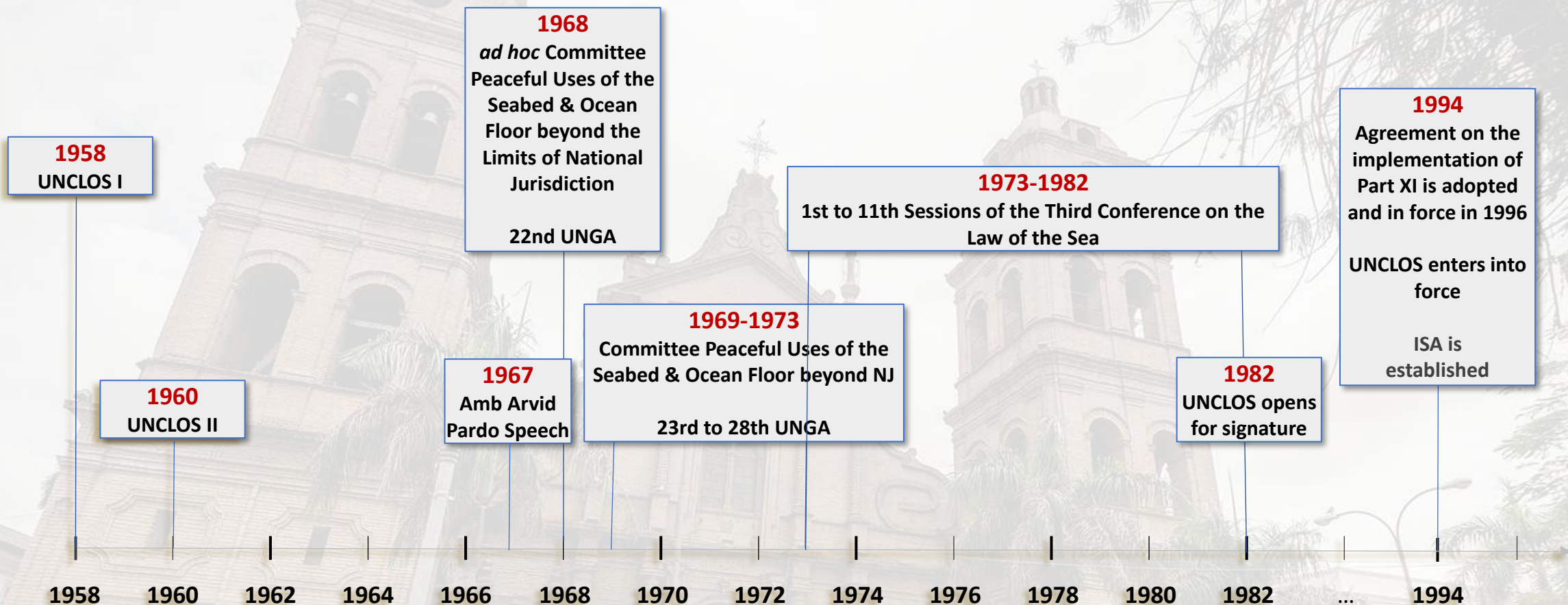
Albert G. de Lapradelle, *La mer territoriale*, 1898:

Oceans should be le patrimoine de l'humanité and said that such resources should be administered by the society of nations.

George Scelle, International Law Commission member, *Plateau Continental et Droit International*, *Revue générale de droit international public*, 59, 1955:

Proposed creating an international concession system for exploiting the seabed, advocating for the establishment of a competent an international organ within the United Nations framework to manage it.

Evolution of the concept of *Common Heritage of Humankind*



UNCLOS I, **Prince Wan Waithayakon** of Thailand:

The sea is the common heritage of mankind and that is in the common interest.
The law of the sea should ensure the preservation of that heritage for the benefit of all.

Note Verbale introduced by Malta Ambassador Arvid Pardo Speech

Title of the Note Verbale requesting the introduction of an agenda item in the 22nd UNGA:

Declaration and treaty concerning the reservation exclusively for peaceful purposes of the seabed and the ocean floor, underlying the seas beyond the limits of present national jurisdiction, and the use of their resources in the interest of mankind.

UNGA, GAOR 22nd Session Annexes, Agenda Item 92, 1, and U.N. (Doc. A/6695), 17 August 1967

Arvid Pardo Speech:

the seabed and the ocean floor are a common heritage of mankind and should be used and exploited for peaceful purposes and for the exclusive benefit of mankind as a whole.

United Nations, General Assembly, (Doc. A/C.1/PV. 1515, 1516), 1 November 1967.

The core of the original proposal by Ambassador Arvid Pardo

The **common heritage of mankind** was proposed as a foundational principle of international law by Ambassador Arvid Pardo in 1967, establishing that certain global areas and resources belong to all humanity, rather than being subject to national appropriation or sovereignty. It established that exploitation of a natural area should be of benefit to all humankind.

It involved three fundamental elements:

- the area was to be used exclusively for peaceful purposes;
- the international community was to have jurisdiction, but not sovereignty over the common heritage of mankind area and resources; and
- equitable sharing of benefits.

It also proposed the creation of an agency which would act as a trustee for all countries over the oceans and the ocean floor to regulate, supervise and control all activities on or under the oceans and the ocean floor.

Declaration of Principles Governing the Seabed and the Ocean Floor, and the Subsoil thereof adopted by the United Nations General Assembly

Ambassador Pardo's proposal was discussed intensively in the *Committee on the Peaceful Uses of the Seabed and the Ocean Floor beyond the Limits of National Jurisdiction*, and in the *First Committee of the General Assembly* leading to the UNGA Declaration:

the sea-bed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, as well as the resources of the area ...

United Nations, General Assembly, Res. 2749 (XXV), 17 December 1970.

Discussions relating to the definition and eventual codification of the Principle of Common Heritage of Humankind were transferred by the Committee to the Third Conference on the Law of the Sea in 1973.

The Third United Nations Conference on the Law of the Sea, 1973 - 1982

Throughout eleven sessions of the Third Conference, the principle of the **Common Heritage of Mankind** transformed from a broad philosophical declaration into a concrete, legally binding international regime (with definitions, principles, rights, obligations, operationalisation and dispute resolution provisions) for the deep seabed and subsoil under international codified law.

Whereas the three original fundamental elements proposed by Ambassador Pardo were preserved, and an agency which would to act as a trustee for all countries over the oceans and the ocean floor was successfully created, it did **not** include the ability to regulate, supervise and control **all activities on or under the oceans** and any other resources other than resources on the ocean floor and subsoil.

The Common Heritage of Humankind in the 1982 Convention

Preamble

Part XI

Articles 133 to 135 General provisions relating to the Area;

Articles 136 to 149 Principles governing the Area;

Article 150 to 155 Development of resources in the Area, including policies;

Articles 156 to 185 The Authority; and

Articles 186 to 191 Settlement of disputes and advisory opinions.

Part XVII

Article 311 (6) provision relating to no amendments of the principle.

Preamble to the 1982 Convention on the Law of the Sea

...

Bearing in mind that the achievement of these goals will contribute to the realization of a just and equitable international economic order which takes into account **the interests and needs of mankind as a whole and, in particular, the special interests and needs of developing countries, whether coastal or land-locked,**

Desiring by this Convention to develop the principles embodied in resolution 2749 (XXV) of 17 December 1970 in which the General Assembly of the United Nations solemnly declared inter alia that **the area of the sea-bed and ocean floor and the subsoil thereof, beyond the limits of national jurisdiction, as well as its resources, are the common heritage of mankind; the exploration and exploitation of which shall be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States,**

...

Throughout the Convention, the Principle was meant to counter the idea that the ocean was a *res communis* and the seabed and subsoil was *res nullius* open for appropriation.

Article 1 (1)

Use of terms and scope

1. For the purposes of this Convention:

- (1) "Area" means the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction;
- (2) "Authority" means the International Seabed Authority;
- (3) "activities in the Area" means all activities of exploration for, and exploitation of, the resources of the Area;

...

Article 136

Common heritage of mankind

- 1. The Area and its resources are the common heritage of mankind.

Part XVII

Final Provisions

Article 311

Relation to other conventions and international agreements

...

6. States Parties agree that there shall be no amendments to the basic principle relating to the common heritage of mankind set forth in article 136 and that they shall not be party to any agreement in derogation thereof.

Obligations, including benefit sharing

The common heritage principle comprises also

- the obligation to co-operate, this obligation goes beyond the obligation to co-operate under general international law;
- **the obligation to actively share benefits;**
- the obligation to preserve the area and resources in question for future generations, which includes the concept of sustainable development.
- the obligation to use the area in question for peaceful purposes only.

The principle also includes the establishment of an international management system based on equitable utilization of shared resources and equal non-discriminatory treatment of States. ISA acts on behalf of humankind.

*In 2010, the ISA General Assembly requested an advisory opinion from the Seabed Disputes Chamber of ITLOS on three questions concerning: **Responsibilities and Obligations of States Sponsoring Persons and Entities with respect to Activities in the Area***

Article 140

Benefits of mankind

1. Activities in the Area shall, as specifically provided for in this Part, be carried out for **the benefit of mankind as a whole**, irrespective of the geographical location of States, whether coastal or **land-locked**, and taking into particular consideration the interests and needs of developing States and of peoples who have not attained full independence or other self-governing status recognized by the United Nations in accordance with General Assembly resolution 1514 (XV) and other relevant General Assembly resolutions.
2. The Authority shall provide for the **equitable sharing of financial and other economic benefits derived from activities in the Area** through any appropriate mechanism, on a non-discriminatory basis, in accordance with article 160, paragraph 2(f)(i).

The ISA Finance Committee has considered questions relating to Article 140 and Article 82 (4) of UNCLOS in parallel, and decided to keep the matter of Article 82 (4) on its agenda, with a view to compiling a clear recommendation in due course.

(ISBA/28/A/4-ISBA/28/C/13) available at <https://www.isa.org.jm/wp-content/uploads/2023/07/2313300E.pdf>.

The absence of practical mechanisms under an agreed legal regime for the operationalisation of Article 82 (4) and Article 140 of UNCLOS means that they are still pending implementation.

The International Seabed Authority General Assembly and the Finance Committee

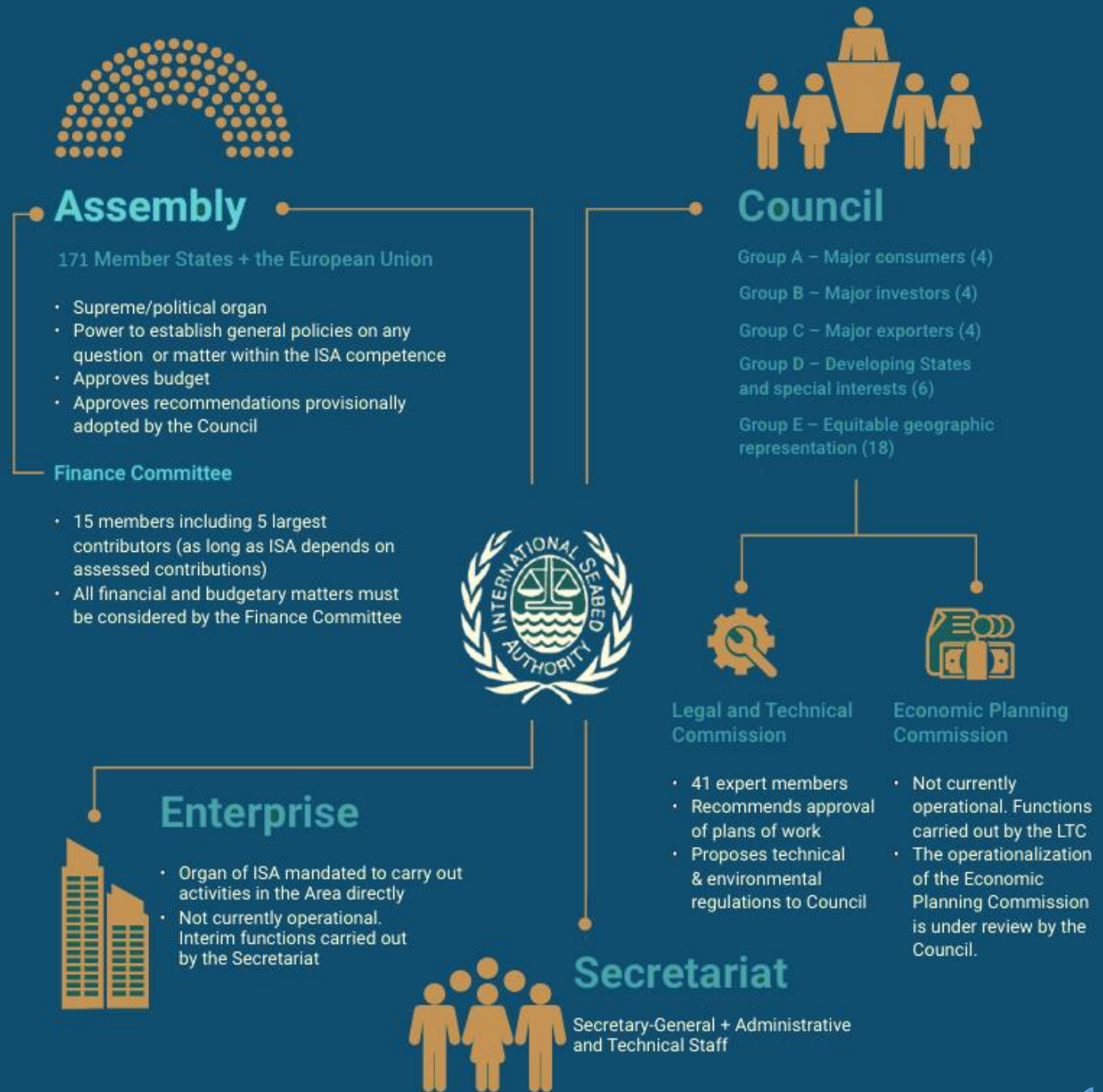
Part XI Agreement Section 9. The Finance Committee

...

7. Decisions by the Assembly and the Council on the following issues shall take into account recommendations of the Finance Committee:

(a) ...

(f) Rules, regulations and procedures on the equitable sharing of financial and other economic benefits derived from activities in the Area and the decisions to be made thereon.



Recommended UN, ISA and others literature

The Law of the Sea. A Bibliography on the Law of the Sea 1968-1988. Two Decades of Law-Making, State Practice and Doctrine. Division of Ocean Affairs and the Law of the Sea, Office of Legal Affairs, United Nations, 1991, Section 12, pp.169-198, E/F.91.V7.

The Law of the Sea. Concept of the Common Heritage of Mankind. Legislative History of Articles 133 to 150 and 311 (6) of the United Nations Convention on the Law of the Sea. Division of Ocean Affairs and the Law of the Sea, Office of Legal Affairs, United Nations, 1996, E.96.V3.

The development of the regime for deep seabed mining, authored by S. N. Nandan, M.W. Lodge, and S. Rosenne, Introduction to Volume VI of the University of Virginia, Center for Oceans Law and Policy, Commentary on the 1982 United Nations Convention on the Law of the Sea, 2002, available at <https://isa.org.jm/wp-content/uploads/2022/06/regime-ae.pdf>.

The Law of the Sea. Obligations of States Parties under the United Nations Convention on the Law of the Sea and Complementary Documents. Division of Ocean Affairs and the Law of the Sea, Office of Legal Affairs, United Nations, 2004, E.04.V5.

Common Heritage of Mankind. Rüdiger Wolfrum. Max Planck Encyclopedia of Public International Law, 2009, available at <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1149>.