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Toward a Principled Approach to the Distribution of Global Wealth: An Impartial Solution to the Dispute Over Seabed Manganese Nodules*

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Throughout the dispute over the allocation of seabed manganese nodules, each interest group has relied on disingenuous legal positions. This Article discusses the major economic and political conflicts that underlie the seabed dispute, argues that no legal position is compelling, and urges the conferees to distribute manganese nodules according to a rigorously defined impartial scheme. Such action will provide the impartial legal precedent urgently required to avoid more serious conflicts over the distribution of global wealth.

INTRODUCTION

The Third United Nations Conference on the Law of the Sea (UNCLOS III)1 remains burdened by the inability of its First

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Committee (Committee I) to negotiate a legal regime governing the peaceful exploitation of manganese nodules, potato-shaped concretions of seawater minerals found in deposits on the ocean floor. Committee I has taken great strides toward reaching a negotiating text that would accommodate the often conflicting interests of the developed nations, which use the minerals contained in the nodules, and of the less developed countries (LDCs), which include many countries currently exporting these minerals from terrestrial deposits. These two interest groups, however, have proffered three solutions to the seabed nodule dispute, each more extreme than the current negotiating text. First, the United


2. The substantive discussions at UNCLOS have been structured around three main committees. U.N. Doc. A/CONF. 62/29 (1974). Committee I's concern is an international regime for the seabed, Committee II addresses general aspects of the law of the sea, and Committee III focuses on marine environment, research, and technology transfer. Id. Although this Article will not discuss the work of Committees II and III, it should be recognized that UNCLOS hopes to produce a comprehensive treaty, one governing every aspect of the law of the sea. This Article will focus on seabed mining, an issue that has proven to be so intractable that many observers have advocated separating it from the bulk of UNCLOS in order to enhance prospects for ratifying a treaty, albeit a less than comprehensive one. See, e.g., Smith, The Seabed Negotiation and the Law of the Sea Conference—Ready for A Divorce?, 18 VA. J. INT'L L. 43 (1977).

At the seventh session of UNCLOS III, in the Spring of 1978, seven negotiating groups were established to resolve outstanding issues. The first three were designated to address various seabed mining issues. Law of the Sea Conference Status Report Summer 1978: Hearings Before the House Comm. on Int'l Relations, 95th Cong., 2d Sess. 2-3 (1978) [hereinafter cited as Status Report Summer 1978] (statement of U.S. Ambassador to UNCLOS Elliot Richardson).

3. CONGRESSIONAL RESEARCH SERVICE, 94TH CONG., 2D SESS., OCEAN MANGANESE NODULES 3 (2d ed. 1976) [hereinafter cited as OCEAN MANGANESE NODULES]. See generally id. at 1-12 (describing nodules' composition, formation, and geographic distribution).

4. On April 18, 1975, the Conference in plenary session decided to request from the chairman of each of the three main committees a "single negotiating text" covering the subjects entrusted to his committee. In May, 1975, these three reports were joined as the Informal Single Negotiating Text (ISNT), U.N. Doc. A/CONF.62/WP.3 (1975), reprinted in 14 INT'L LEGAL MATERIALS 682 (1975). In July, 1977, the Conference produced the Informal Composite Negotiating Text (ICNT), U.N. Doc. A/CONF.62/WP.10 (1977), reprinted in 16 INT'L LEGAL MATERIALS 1108 (1977) [hereinafter cited as ICNT]. Part XI and Annexes II and III of the ICNT, which contain the work of Committee I, were drafted by Paul Bamela Engo of the Cameroon and allegedly do not reflect the positions reached during the negotiations. The text apparently distorts many provisions in favor of the LDCs.
States Congress currently is considering a bill\(^5\) that would encourage the unilateral exploitation of the nodules by the technologically capable consortia that are based exclusively in developed countries.\(^6\) The second and third solutions derive from the LDC's belief that unilateral exploitation violates the legal notion that the nodules are the common heritage of mankind and therefore are not subject to unilateral exploitation. The LDCs prefer either continued negotiation, which perpetuates their profits from terrestrial mining, or, finally, a solution entailing a significant redistribution of technology to the LDCs.

These three extreme self-interested solutions are inherently unstable. First, unilateral mining would create a potentially violent atmosphere that undoubtedly would strain North-South relations.\(^7\) Second, the LDCs' strategy of continued negotiation merely increases the likelihood of unilateral mining. Congress apparently believes that the consortia will not invest in seabed mining technology if conference delays continue. Because it also believes that mining is necessary for our economic well-being, Congress probably will approve unilateral mining legislation if the LDCs continue their strategy of delay.\(^8\) Finally, a large redis-

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\(^7\) *Law of the Sea, supra* note 6, at 8-9 (Elliot Richardson); Hardy, *The implications of alternative solutions for regulating the exploitation of seabed minerals*, 31 INT'L ORGANIZATION 313, 346 (1977).

tributive authority will have difficulty coercing the redistribution of technology.\textsuperscript{9}

A problem more fundamental than the instability of the extreme solutions is the orientation of the negotiations around self-interested bargaining positions. This Article will argue that Committee I should not settle the seabed dispute with even a moderate compromise if that solution is derived from negotiations in which all parties bargain from self-interested perspectives. Such a solution would be unstable because the ultimate outcome would reflect current political, economic, and military power. While this sufficed for stability in the past, today's constant alterations in the balance of power,\textsuperscript{10} coupled with the growing disjunction between military power and the ability to maintain world order,\textsuperscript{11} make such a bargained solution inherently unstable.

\textsuperscript{9} Law of the Sea, supra note 6, at 216 (Phillip Hawkins) (unsure his consortium could legally transfer its technology); \textit{id.} at 170 (Marne A. Dubs) (forced technology transfer may preclude private investment in ocean mining). \textit{But see} Spring 1980 Delegation Report, supra note 4, at 9-14 (new ICNT Rev. 2 rules governing technology transfer appear substantially workable).

\textsuperscript{10} E.g., the rise of OPEC and the use of one nation, one vote in international fora. \textit{See} text accompanying notes 48-51 infra.

\textsuperscript{11} For example, in November, 1979, Iranian students were able to neutralize U.S. military power through a combination of hostage-taking and the U.S. fear that armed action would alienate other OPEC countries. \textit{See} R. TUCKER, THE INEQUALITY OF NATIONS 80-95 (1977) (current disjunction between military power and ability to maintain "order," coupled with absence of legal norms for resolving conflicts, produces tremendous potential for economic and armed disruptions).
Because bargaining is more difficult when the participants are numerous and possess relatively equal power, this type of negotiated solution is rapidly losing its utility in the global arena. Accordingly, western Committee I delegates should not approach the negotiations with the sole objective of furthering short term western interests. Instead, they should negotiate from a moral and principled position sufficiently general to be employed in other similar situations. This would facilitate the development of a moral and consistent western approach to questions of wealth redistribution. Such an approach will be useful in the future because the redistributive problems looming on the horizon, such as the efficacy of the New World Economic Order (NWEO) and the just distribution of the world’s resources, will be significantly more volatile, and thus less susceptible to a reasoned and peaceful solution, than is the problem of allocating manganese nodules. Fortunately, a principled approach to the Committee I dispute is feasible precisely because the problem of equitable distribution presented by seabed nodules is one of the least painful distributive questions on the international horizon. Establishing a principled stand is urgently required because the enormous demands that the LDCs are making on developed country wealth threaten to trigger potentially violent confrontations that possibly could be averted if the developed nations’ position were based on a general principle rather than on short term self-interest.

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12. While this Article addresses western delegates, many of its suggestions are equally applicable to all delegates.
13. The series of demands and resolutions made by LDCs for reorganizing the world economy to close the gap between rich and poor nations is often called the quest for a New World Economic Order. See text accompanying notes 40-55 infra.
14. Manganese nodules present a problem more akin to the distribution of new wealth than a redistribution of existing, titled wealth. Because initial distributions are less painful than redistributions, the atmosphere surrounding the nodule debate is less volatile than the atmosphere potentially surrounding future questions of redistribution.
15. E.g., N.Y. Times, Oct. 13, 1979, at 1, col. 1 (Castro calls on wealthy imperialist nations to pay $300 billion to develop poor countries).
16. See notes 90-91 infra.
17. For example, while one might argue that the November, 1979, situation at the U.S. Embassy in Teheran could not be resolved on a rational basis, there were indications that a major component of the anti-U.S. feeling (distinct from the anti-Shah feeling) was the perception that the U.S. acts only according to its own self-interest. When the U.S. froze Iranian assets in the U.S., for example, a prominent member of the Revolutionary Council proclaimed that the action showed “that laws are made only for the interests of the United States and it breaks them when it feels that it will be hurt.” N.Y. Times, Nov. 15, 1979, § A, at 16, col. 5.
This Article will demonstrate how the western Committee I delegates can use the session to begin constructing a moral and principled negotiating stance to replace the current approach that is based primarily on self-interest. First it discusses the economic conflict between LDCs that currently produce the minerals found in seabed nodules and the developed countries that both consume those minerals and have the technology to exploit the seabed. After demonstrating the critical importance of the seabed nodule debate in the campaign for a New World Economic Order, this Article continues by arguing that the law of the seabed, which is used disingenuously by both sides to support their self-serving claims to seabed entitlements, does not provide a convincing resolution of the nodule debate. Instead, the Article maintains that this legal void should be filled by articulated principles sufficiently general to be useful in resolving future disputes over the proper distribution of global wealth. Specifically, it suggests that the law of the seabed should be derived from philosophical theories of distributive justice. Finally, these theories are used to provide insight into the structure of a just solution of the seabed nodule problem and into the components of a more equitable world economic order.

THE SEABED MANGANESE NODULES DEBATE

The Committee I debate is not a classic struggle over a scarce resource but is both a battle by national actors for the role of mineral producer and a critical test of the emerging New World Eco-

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18. Self-interest in the seabed nodule debate is often disguised by undefined terms intended to lend moral weight to self-serving arguments. See, e.g., ICNT, supra note 4, art. 151(9) (advocating an “equitable sharing” of seabed bounty that gives special consideration to developing, landlocked, geographically disadvantaged, and colonized countries); Id. art. 153(3) (regime designed to ensure “equitable exploitation” of seabed for benefit of all countries, “especially the developing countries”). Compare Deep Seabed Mining: Hearings on H.R. 3350, H.R. 4832, H.R. 3652, H.R. 4922, H.R. 5624, H.R. 6846, and H.R. 6784 Before the Subcomm. on Oceanography of the House Comm. on Merchant Marine and Fisheries, 95th Cong., 1st Sess. 189-90 (1977) [hereinafter cited as Deep Seabed Mining] (Joel Pritchard) (arguing “best interest of mankind” to exploit seabed minerals) with id. at 190 (John Quigley) (asking in response which part of mankind will be helped) and Biggs, Deepsea’s Adventures: Grotius Revisited, 9 INT’L LAW. 271, 277 (1975) (contending that arguments for seabed mining are unconvincing to LDCs that depend on export of terrestrial production to feed their population). See generally Thompson, Moral Values and International Politics, 88 POLITICAL SCI. Q. 368, 370 (1973) (national claims of morality often larger than actions warrant ).

19. Principles should be “universal” in the sense that they apply to all cases of a certain sort, such as all cases concerning the distribution of global wealth. Second, they must be “general” in the sense that they make no reference to individual people or entities and are not “rigged” so as to describe a unique situation in general terms. R. BRANDT, ETHICAL THEORY 19-20 (1959); J. RAWLS, A THEORY OF JUSTICE 131-33 (1971).
The debate is centered on the exploitation of manganese nodules, which contain about twenty-seven minerals,21 the most valuable being nickel (1.5%), copper (1.3%), and cobalt (.25%).22 The nodules under scrutiny are those located within what the Informal Composite Negotiating Text (ICNT)23 calls “the Area,”24 which is “the seabed and ocean floor and subsoil thereof beyond the limits of national jurisdiction.”25 National sovereignty in the ocean floor is limited to the continental shelf,26 which extends either 200 miles from the relevant baselines or to the end of the continental margin, whichever is farther seaward.27 Because those nodules in the Area lie beyond the limits of national jurisdiction, entitlements to them are not readily apparent. Despite this uncertainty of legal title, the various mining consortia have developed plans and technology for nodule exploitation. The execution of these plans has been challenged by LDCs which, though lacking the technology to exploit the nodules, claim entitlements to them.28

The Economics of the Seabed Nodule Debate

The narrow economic conflict in Committee I arises because seabed mining will reduce mining revenues of current terrestrial producers. The demand for cobalt and manganese is rather inelastic because they are necessary for their current uses yet have no attractive alternative uses or any reasonably priced substi-

20. See text accompanying notes 40-55 infra.
21. OCEAN MANGANESE NODULES, supra note 3, at 5.
22. Deep Seabed Mining, supra note 18, at 86. Percentages are those found in economically viable deposits. Although the nodules on average contain 25% manganese, the combination of demand limitations and processing difficulties thus far have restricted all ventures save one to a three-metal process. Id. at 97. The economic viability of ocean mining is primarily based on nickel. Id. at 192-93 (statement of B. Gill Clements). U.N. Doc. A/CONF.62/25 at 31-32, 50 (1974), reprinted in UNITED NATIONS SOURCE DOCUMENTS ON SEABED MINING 34, 62-63, 81 (Ocean Science News ed. 1974) [hereinafter cited as U.N. SEABED MINING]. The exploitable minerals contained in the nodules are used primarily in industry.
23. Supra note 4.
24. Committee I's Part XI of the ICNT applies to the “Area,” ICNT, supra note 4, art. 134, although it may also have applicability to other zones.
25. Id. art. 1.
26. See id. arts. 76, 86, 89, 137.
27. Id. art. 76. Agreement on the outer limit of the continental margin was reached at the Ninth Session. See Spring 1980 Delegation Report, supra note 4, at 31.
28. See text accompanying notes 56-59 infra.
tutes. In the absence of seabed mining, the supply of these minerals is limited to the content of terrestrial reserves, which apparently contain amounts sufficient to meet world demand for decades. However, because many of these deposits are under the control of governments that are unstable or economically unfriendly toward the developed countries that use the minerals, an artificial limit on supply could be imposed. In contrast, if the supply of cobalt and manganese includes the readily exploitable


There is conflicting testimony as to the likelihood of cartelization in these commodity markets. Industrial leaders who desire congressional support for seabed mining tend to stress the specter of cartelization and its effect on the United States import-dependent steel industry. See, e.g., Deep Seabed Mining, supra note 18, at 132-33 (statement of Jack Carlson); id. at 207-08 (James G. Wenzel). Academia appears to be divided on this issue. See, e.g., id. at 416-17 (Robert A. Kilmarx) (spectre of producer-consumer agreements); id. at 555-61 (Robert S. Pindyck) (price increases or supply interruptions unlikely). For a favorite alleged indicator of the LDCs' intent to cartelize, see Charter of Economic Rights and Duties of States, G.A. Res. 32/21, 29 U.N. GAOR, Supp. (No. 31) 50, 52, U.N. Doc. A/9631, art. 5 (1974) reprinted in 14 INT'L LEGAL MATERIALS 231, 255 (1975) [hereinafter cited as Charter] (asserting right of all states to associate in organizations of primary commodity producers to further their national goals). The Department of Commerce study finds cartelization is unlikely to be successful. DEP'T OF COMMERCE, supra note 30, at 39-40.

nODULES ON THE OCEAN FLOOR, THE SUPPLY WOULD BE VIRTUALLY UNLIMITED.33

THE SUPPLY AND DEMAND DATA INDICATE THAT EXISTING LAND-BASED PRODUCERS, MANY OF WHICH ARE LDCS, STAND TO LOSE SIGNIFICANT REVENUES SHOULD SEABED MINING BECOME A REALITY. THE PRICE THESE TERRITORIAL PRODUCERS NOW CHARGE AND RECEIVE FOR THEIR MINERALS CONSISTS IN PART OF A MONOPOLY RENT IN EXCESS OF THE REVENUE THEY WOULD RECEIVE IN MORE COMPETITIVE CIRCUMSTANCES.34 BECAUSE THE SEABED MINERS WILL HAVE SIGNIFICANT COST AND STRATEGIC ADVANTAGES OVER TERRITORIAL PRODUCERS,35 SEABED MINING WILL INCREASE COMPETITION. MOREOVER, SEABED MINING WILL RETAIN THESE ADVANTAGES EVEN IF NEW HIGH GRADE TERRITORIAL DEPOSITS ARE DISCOVERED.36 THE CONTINUED PROFITABILITY OF SEABED MINING IS THUS ENSURED. THIS INCREASED COMPETITION WILL ELIMINATE THE MONOPOLY RENTS CURRENTLY ENJOYED BY TERRITORIAL PRODUCERS. FURTHER, THE NEW SUPPLY WILL

Note 18, at 68-69 (post-testimony submission of Marne A. Dubs) (industry spokesman arguably citing conservative figures because submission made while asking House committee for indirect subsidy in the form of insurance against an adverse treaty). Primarily because the consortia have not obtained financing for large scale commercial operations, development is still in the prototype state. E.g., id. at 205-10 (James G. Wenzel). The purported reason for this failure to obtain financing is the threat that the treaty that will emerge from UNCLOS may strip the consortia of exclusive rights to their seabed minesites. E.g., id. at 53-58 (Marne A. Dubs); id. at 169-78 (C. Thomas Houseman). The consortia apparently have been unable to obtain insurance against this risk of an unfavorable UNCLOS outcome. E.g., id. at 199-200 (B. Gill Clements); id. at 370-96 (James W. Dawson). In its Informal Working Paper IA/1 of April 2, 1980, the Administration noted these considerations and presented them to UNCLOS. Informal working paper by the United States, An approach to interim protection of investment, IA/1, 2 April 1980, reprinted in Spring 1980 Delegation Report, supra note 4.


35. The developed countries that consume these minerals would prefer to deal with stable, friendly suppliers than with the less stable and less trustworthy LDC producers. Moreover, because its nationals may participate in the consortia, the typical developed nation would enjoy other real economic advantages such as an improvement in its balance of payments, the creation of new jobs, and various spinoff benefits. Deep Seabed Mining, supra note 18, at 122 (William Fisher); id. at 208-12 (James G. Wenzel); Law of the Sea, supra note 6, at 159-60 (Marne A. Dubs).

cause an erosion of the LDCs' non-monopolistic revenues. For those terrestrial producers able to remain in business the increased supply coupled with inelastic demand will trigger a large price decrease.\(^3\) Other high cost land-based output will be displaced by less costly ocean floor production.\(^3\) Accordingly, it is not surprising that the LDC terrestrial producers have fastened on a legal argument to delay or bar the exploitation of seabed nodules.\(^3\)

The Ideological Element in the Seabed Nodule Debate

Although initially the Group of 77's position at UNCLOS III was significantly dictated by the economically threatened terrestrial producers,\(^4\) the current argument is more of an ideological

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\(^3\) In the case of the more elastic demand for nickel, the price drop will be less drastic; the new supply will be gobbled up by ravenous consumers at a price just slightly below the old competitive price.

\(^4\) This general theoretical scenario is borne out by the available econometric studies. U.N. Doc. A/CONF.62/25 at 39-43, reprinted in U.N. SEABED MINING, supra note 22, at 70-74 (cobalt); Adams, supra note 29 (cobalt); Manganese Ore, supra note 29 (manganese); UNCTAD, The effects of production of manganese from the sea-bed, with particular reference to effects on developing country producers of manganese ore, U.N. Doc. TD/B/483 at ¶ 33 (1974), reprinted in U.N. SEABED MINING, supra note 22, at 147-48 (manganese); UNCTAD, The effects of possible exploitation of the sea-bed on the earnings of developing countries from copper exports, U.N. Doc. TD/B/484 (1974), reprinted in U.N. SEABED MINING, supra note 22, at 174 (copper). Seabed nickel production should not seriously affect the few terrestrial producers. U.N. Doc. A/CONF.62/25 at 34, reprinted in U.N. SEABED MINING, supra note 22, at 65; OCEAN MANGANESE NODULES, supra note 3, at 48-49. Although various assumptions built into these models, such as the timing of nodule exploitation, are obsolete, the scenarios they predict are still valid. Because manganese would be processed as a by-product, U.N. Doc. A/CONF.62/25 at 33, reprinted in U.N. SEABED MINING, supra note 22, at 64, the manganese model is quite tenuous. The manganese model also appears to assume the displacement of terrestrial production by seabed production rather than showing this as a result. For a general discussion of the economic impact of nodule mining, see OCEAN MANGANESE NODULES, supra note 3, at 41-56. For a description of the havoc caused by revenue losses in an LDC terrestrial producer, see N.Y. Times, Nov. 13, 1979, § A, at 2, col. 3 (shrinking of copper revenues contributes to Zaire's bankruptcy).

\(^\text{39.} \) See text accompanying notes 56-59 infra. Both developed and developing terrestrial producers also have sought to limit any seabed mining via production ceilings that tie seabed production to the growth of demand for nickel. See, e.g., Breaux, The Diminishing Prospects for an Acceptable Law of the Sea Treaty, 19 Va. J. Int'l L. 257, 256-59 (1978). They appear to have succeeded: a general consensus on a ceiling on nodule production was reached at the Ninth Session. While the proposed revisions of ICNF Rev. 1, supra note 4, art. 151, also include a production floor, it is unclear from the Delegation Report whether the consortia can proceed under the suggested ceiling. See Spring 1980 Delegation Report, supra note 4, at 17-19.

\(^\text{40.} \) The Group of 77 is the organized caucusing group of LDCs in the U.N. system that attempts to coordinate member positions on issues of general interest to LDCs. Friedheim & Durch, The International Seabed Resources Agency negotiations and the New International Economic Order, 31 Int'l Organization 343, 344 n.2 (1977).

\(^\text{41.} \) Morris, The New International Economic Order and the New Law of the

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debate over the appropriate structure of the world economy. The Group of 77, a sympathizer of which drafted Part XI of the Informal Composite Negotiating Text (ICNT), would like the regime that will govern the exploitation of seabed nodules to conform to the norms of the New World Economic Order. For example, the New Order demand that “all States should avoid prejudicing the interests of developing countries” so profoundly affected the ICNT that the United States contemplated withdrawing from UNCLOS. As the New Order ideology took effect, developing nations asserted control over their own natural resources by expelling and expropriating assets from capitalist entities. The Group of 77 has introduced this spirit into the seabed nodule debate by insisting that the “Area,” as the “common heritage of mankind,” cannot be exploited at will by the developed nations. Further, although the world traditionally has been dominated by


42. ICNT, supra note 4.


44. Charter, supra note 31, art. 2. The Charter urges that the LDCs should receive preferences with regard to, inter alia, general economic progress (art. 11), access to the scientific and technological achievements of others (art. 13), welfare and living standards (art. 14), tariffs (art. 18), and financial inflows (art. 22).

45. Oceanography Miscellaneous, supra note 4, at 40-42 (Elliot Richardson) (maintaining that ICNT was “fundamentally unacceptable” and urging President of United States to review utility of continued negotiations).

46. For an official expression of this ideology, see Charter, supra note 31, arts. 2, 5 (a State has the right to cartelize and to “nationalize, expropriate or transfer ownership of foreign property”).

47. ICNT, supra note 4, art. 136.
a consensus of the strong, the New Order's advocacy of one-nation, one-vote threatens to topple the older order by giving power to the weak but numerous. The Group of 77 has demanded that the International Sea-Bed Authority (ISA), an entity to be established to organize and control activities in the Area, be governed by "the sovereign equality of all its members." Indeed, the composition of the ISA's executive organ, the Council, seems to deny the developed countries even so much as a veto power. Perhaps most troubling to the developed nations is that the New Order insistence on socialist, centrally-controlled systems of economic development now dominates the ICNT regime for exploiting seabed nodules. The ISA's operating arm, the Enterprise, is to oversee access to the Area and is mandated to permit exploitation by "joint arrangements" only.

As the ideological struggle at UNCLOS continues, it becomes more apparent that what emerges from Committee I will be instrumental in the success or failure of the broader campaign for a New World Economic Order. Because this legal precedent will carry considerable weight in resolving future conflicts over the distribution of global wealth, it should be based on a principle sufficiently general to be useful in the peaceful adjudication of these future disputes. After examining the current law of the seabed and finding no compelling legal precedent, this Article will

48. R. Tucker, supra note 11, at 48; see Charter, supra note 31, art. 10.
49. ICNT, supra note 4, arts. 154-56.
50. Id. arts. 155, 157(5).
51. Id. arts. 159-64; ICNT Rev. 1, supra note 4, arts. 161-65. The Council will consist of 36 members, each member having one vote. Decisions on matters of substance shall be taken by a three-fourths majority. The composition of the Council, dictated by ICNT art. 159(1) (ICNT Rev. 1 art. 161(1)), does not seem to assure developed nations the ten sympathetic voices required for a veto. This remains a most controversial point and may preclude treaty signature or ratification. See Spring 1980 Delegation Report, supra note 4, at 26-27. For a discussion of the manifestation of the one nation, one vote concept in the ICNT, see Breaux, supra note 39, at 278-81.
52. ICNT, supra note 4, art. 169 & Annex III.
53. Id. Annex II(5)(l). The general trend at the 1979 sessions was toward a more certain socialist regime that denies unreasonable flexibility to the administrators of the Enterprise. The earlier version permitted the administrators to alter the terms of contracts between the Enterprise and consortia even after the consortia had sunk capital into a particular minesite. The developed countries managed to excise clauses such as "[n]othing in this paragraph shall in any way limit the discretion of the Enterprise." ICNT Rev. 1, supra note 4, Annex II, art. 3 (revising ICNT, supra note 4, Annex II(3)).
54. See, e.g., Law of the Sea, supra note 6, at 29.
suggest one based on a notion of impartial justice that could be useful in resolving the seabed dispute and serve as a precedent in future conflicts.

SEABED NODULES AND PUBLIC INTERNATIONAL LAW

Seeking to retain existing terrestrial mining profits and to reap the benefits of emerging New Order norms, the LDCs have attempted to thwart unilateral exploitation of seabed nodules by invoking a legal argument that denies the consortia free access to the nodules. The developed countries disagree, arguing that unilateral exploitation is permissible under current public international law. Neither the LDCs' nor the developed countries' legal arguments are persuasive: there are no clear prior entitlements to seabed nodules.

The arguments on both sides of the nodule debate appear to be disingenuous, self-serving claims. The Group of 77 argues that the nodules are the "common heritage of mankind," as defined by the Declaration of Principles, also referred to as the Common Heritage Resolution, passed unanimously in 1970 by the United Nations General Assembly. This Resolution maintains, inter alia, that no person or State may appropriate or exercise sovereignty over any part of the seabed, and that all exploitation of the seabed "shall be carried out for the benefit of mankind as a whole ... taking into particular consideration the interests and needs of the developing countries." The Resolution further stipulates that all activities in the seabed area are to be carried out under the auspices of the ISA and that all entities are bound to refrain from exploitation until an international regime is established.

If this legal argument were valid, the nodules could not be ex-

57. Id. ¶ 2.
58. Id. ¶ 7.
60. Similar arguments have been made with regard to outer space and Antarctica. Deep Seabed Mining, supra note 18, at 181-82 (John Quigley). For a comprehensive analysis of Antarctica as a "common space," see Honnold, Thaw in International Law? Rights in Antarctica under the Law of Common Spaces, 87 YALE L.J. 894 (1978).
exploited unilaterally by the consortia and the LDCs would prevail. The argument fails, however, because these U.N. resolutions are not binding law but only recommendatory.\(^6\) Moreover, many commentators, including the U.S. Department of State, believe that the Group of 77 has misinterpreted the term “common heritage” as used in the Common Heritage Resolution. They argue that “common heritage” does not require the ownership of nodules by a world authority for the benefit of all nations, but only that the seabed, or at least the nodules, is “commonly” available to all.\(^6\) These commentators argue that the nodules are not owned by the community of states as a res communis,\(^6\) but are unowned things, res nullius,\(^6\) capable of being reduced to owner-

\(^6\) See Deep Seabed Mining, supra note 18, at 426 (H. Gary Knight) (stating that conditions behind unanimous approval of Common Heritage Resolution indicate unilateral seabed exploitation still legal); id. at 443 (H. Gary Knight) (vote on resolution merely indicates expectation); N. Ely, INTERNATIONAL LAW APPLICABLE TO DEEPSEA MINING 52-65 (1974) (opinion of The Law Offices of Northcutt Ely submitted to Deepsea Ventures, Inc.) (General Assembly resolutions merely are invitations or recommendations to enter treaties); Pietrowski, Hard Minerals on the Deep Ocean Floor: Implications For American Law and Policy, 19 Wm. & Mary L. Rev. 43, 67-69 (1977) (United States view rejects contention that resolutions are binding and prohibit unilateral seabed exploitation). But see Deep Seabed Mining, supra note 18, at 181-84 (John Quigley) (unanimous adoption of Common Heritage Resolution enables it to legally bind all voters). See generally Texaco Overseas Petroleum Company (International Companies v. Libya) (1977), reprinted in 17 INT'L LEGAL MATERIALS 1, 28-31 (indicating that the precedential value of General Assembly resolutions depends, inter alia, on voting conditions).


63. A res communis “is a thing belonging to everybody.” If title is vested in the community of States, the seabed qua res communis could theoretically be carved up after proper authorization. C. Colombos, THE INTERNATIONAL LAW OF THE SEA 66 (6th ed. 1967). Until such authorization is given by the international community, however, there can be no unilateral exploitation of the nodules. L. Henkin, LAW FOR THE SEA'S MINERAL RESOURCES 29 (ISHA Monograph No. 1, 1968). The Group of 77 advocates a variant of res communis by arguing that there can be no legal exploitation of the seabed nodules until UNCLOS produces a treaty with a definitive regulatory regime, an argument also in keeping with the New Order philosophy. See the Moratorium Resolution, supra note 59. The concept of the seabed as a res communis has not been popular among the theorists, however. See, e.g., N. Ely, supra note 61, at 17-22; L. Henkin, supra, at 25; Burton, Freedom of the Seas: International Law Applicable to Deep Seabed Mining Claims, 29 Stan. L. Rev. 1135, 1159-61, 1167-68 (1977). But see C. Colombos, supra, at 65-69 (seabed is common and open to all nations).

64. For definitions of res nullius, see C. Colombos, supra note 63, at 66; Deep Seabed Mining, supra note 18, at 425 (H. Gary Knight). Historically, res nullius has been the favored conception of the seabed. L. Henkin, supra note 63, at 25. The application of this concept to seabed nodules would favor the developed nations that have the technology necessary to exploit the nodules. E.g., R. Dupuy, THE LAW OF THE SEA 128 (1974). This laissez-faire attitude is an anathema to the New Order philosophy, however, because it exacerbates existing economic disparities. See R. Tucker, supra note 11, at 60-72. Thus, it is not surprising that the
ship on a first come, first serve basis. These res nullius arguments also fail, however, because they are based on dubious customary law precedents concerning the continental shelf.65

Alternatively, it has been argued that the nodules are neither res communis nor res nullius,66 but that their exploitation is restricted only by the usual duty to behave on the high seas with reasonable regard to the similar rights of others.67 Because the high seas, which include the seabed, are not subject to unilateral claim by any sovereign,68 this argument must draw the astonishing distinction between laying a claim to the seabed and merely exploiting the nodules as a high seas freedom.69 Once it is per-

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65. Before 1945, when the continental shelf was still beyond the limits of national jurisdiction, various states tended coral, pearl, sponge, chank, and oyster beds on the shelf. These states, it is argued, had a right to exploit those resources lying beyond national jurisdiction. N. Ely, supra note 61, at 15-21. Those beds, the argument continues, accordingly must have been res nullius. Because the nodules also lie beyond national jurisdiction, it is concluded that they too must be res nullius, and thus are exploitable by the first comer. This argument assumes that the res nullius status of those resources was the factor legitimating their exploitation. This assumption is questionable, however, because it is possible to find other sources of legitimation, such as usage from time immemorial, that are inapplicable to seabed nodules. C. Colombos, supra note 63, at 67-68; see Burton, supra note 63, at 1154-55 (precedents based not on res nullius but on historic usage and contiguity of sedentary species to coastal state). In addition to questioning the validity of the precedents, various writers also argue that today those precedents are easily distinguishable. E.g., L. Henkin, supra note 63, at 29 (factual distinction between pearl fishing and mid-ocean nodule mining); Biggs, Deepsea's Adventures: Grotius Revisited—A Rejoinder, 10 INT'L LAW 309, 313-14 (1976) (mining technology unknown when alleged precedents set).

66. Burton, supra note 63, at 1161-69.

67. Id. at 1169-80.


69. See, e.g., H.R. 2759, 96th Cong., 1st Sess. § 101 (1979); H.R. Rep. No. 96-411 (Part 2), supra note 32, at 42 (unilateral mining bill allows issuance of permits for commercial recovery of nodules but asserts no U.S. sovereignty over or ownership of seabed nodules); Deep Seabed Mining, supra note 18, 188-89 (John B. Breaux) (apparently arguing that because seabed miners make no actual “declaration of ownership against the world,” they violate international law only in a “de facto” way, but not “from a legal standpoint”); N. Ely, supra note 61, at 6-7 (“The right sought is an exclusive right to take, use, and sell a deposit of manganese nodules . . . [but] does not constitute the acquisition of permanent title, comparable to fee
ceived that mining the nodules appropriates virtually all of the seabed’s known enjoyment value, this distinction is reduced to a cosmetic “legal contrivance”; the high seas argument becomes equivalent to the doubtful res nullius argument because claiming a thing’s full enjoyment value is the de facto equivalent of claiming the thing itself.

Adherents to either the res nullius or the high seas arguments contend that nodule exploitation is governed by the regime of the high seas and point for support to Article 2 of the 1958 Geneva Convention on the High Seas. Article 2 does list several items that comprise the freedom of the high seas, but the freedom to exploit the seabed is not mentioned. The developed countries argue that because the list was not intended to be comprehensive, it should embrace seabed nodule mining. This textual argument is unpersuasive, however, because the International Law Commission’s commentaries appear to remove seabed mining from the regime of the high seas. Further, the argument fails to rebut

simple, in the seabed itself’); Burton, supra note 63, at 1178 n.179 (miners hold no right to area or its resources, but simply remove nodules for private use).

70. Darman, supra note 55, at 383; cf. Deep Seabed Mining, supra note 18, at 184 (John Quigley) (noting that under unilateral mining legislation, U.S. would be the lessor of sites it claimed not to own).

71. Biggs sarcastically remarks that “[p]erhaps there is a sophisticated procedure by which seabed resources may be taken, used, transported, processed and sold without establishing exclusive rights over the same.” Biggs, supra note 18, at 281. This remark misses the point. The consortia admit to be claiming the nodules but deny claiming the seabed from which the nodules are harvested. The spuriousness of this denial is apparent once it is realized that, today, nodule mining represents virtually the full enjoyment value of that seabed area.

72. Supra note 68.

73. E.g., N. Ely, supra note 61, at 23-28; Burton, supra note 63, at 1172-76; Finlay, United States Policy with Respect to High Seas Fisheries and Deep Seabed Minerals—A Study in Contrasts, 9 Nat. Resources Law. 629, 630-32 (1976). Article 2 reads as follows:

The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty. Freedom of the high seas is exercised under the conditions laid down by these articles and by the other rules of international law. It comprises, inter alia, both for coastal and noncoastal States:

(1) Freedom of navigation;
(2) Freedom of fishing;
(3) Freedom to lay submarine cables and pipelines;
(4) Freedom to fly over the high seas.

These freedoms, and others which are recognized by the general principles of international law, shall be exercised by all States with reasonable regard to the interests of other States in their exercise of freedom of the high seas.

Geneva Convention on the High Seas, supra note 68, art. 2. The debate centers on whether the “inter alia” incorporates seabed nodule mining.

74. In 1955, the International Law Commission (ILC) explicitly stated that seabed mining was a high seas freedom under its conception of the “inter alia” of article 2. 2 Y.B. Int’l L. Comm’n 21-22, U.N. Doc. A/CN.4/SERA/1955/Add.1 (1960). However, the following year the ILC consciously deleted seabed exploitation from
the LDCs’ argument that those LDCs not existing in 1958 should not be bound by a treaty biased in favor of maritime powers; and that the recent “Third World Revolution” obsolesces both old customary law and the 1958 treaty even as applied to LDCs existing in 1958.

its conception of “other freedoms” included in the “inter alia” of article 2. Y.B. Int’l L. Comm’n 276, U.N. Doc. A/CN.4/SER.A/1956/Add.1 (1957). The reason given by the ILC for the change of position was that “such exploitation had not yet assumed sufficient practical importance to justify special regulation.” Id. The clear implication of these words is that if and when seabed mining assumes practical importance, it will come under special regulation as opposed to the ordinary regime of the high seas. The explicit and conscious change of position between the 1955 and 1956 commentaries at the very least indicates that the ILC wanted to remove seabed mining from the realm of high seas freedoms and to say nothing about its status in conventional international law. But see Burton, supra note 63, at 1172-73 (asserting without argument that 1956 ILC statement isolates seabed mining as high seas freedom; failing to discuss explicit alteration of language by ILC between 1955 and 1956); Murphy, supra note 6, at 536-38 (arguing that ILC altered commentary language because seabed mining not important). Murphy’s position fails to discuss the notion of “special regulation.” He notes correctly that seabed mining was demoted from explicit mention in the commentary. His argument necessarily is that while the ILC’s 1955 commentary explicitly made seabed mining a high seas freedom, it deleted seabed mining from its 1956 commentary in order to leave unaltered the status of seabed mining as a high seas freedom. Presumably the reason for this odd procedure is that between 1955 and 1956, seabed mining lost practical importance in the opinion of the ILC. On the contrary, it is more plausible to interpret an explicit alteration of language as being made for the purpose of changing the previous position rather than leaving it unchanged. The 1956 indication that seabed exploitation is not a high seas freedom but is a budding candidate for “special regulation” arguably is the rationale behind the alteration of the commentary language. Cf. Law of the Sea, supra note 6, at 419 (letter from legal experts to Chairman of Group of 77) (asserting without argument that 1958 Convention does not include seabed exploitation as high seas freedom).

While a textual approach appears unconvincing, other arguments that the nodules are governed by high seas principles are conceivable. Indeed if the original thrust behind the concept of high seas freedoms is the notion that the seas’ wealth cannot be exhausted, C. Colombos, supra note 63, at 62-63, those principles seem peculiarly applicable to seabed nodules. Cf. Nigrelli, supra note 33, at 166 (nodules could provide millennia of mineral supplies).

75. See Nelson, supra note 41, at 42. Res nullius and high seas arguments favor developed nations. See text accompanying notes 64-71 supra.

76. See, e.g., Deep Seabed Mining, supra note 18, at 183-85 (John Quigley) (arguing that much of pre-1970 international law now obsolete); Law of the Sea, supra note 6, at 421 (letter from legal experts to Chairman of Group of 77) (Declaration of Principles obsolesces prior international custom); Biggs, supra note 18, at 277 (criticizing high seas arguments for ignoring “Third World Revolution”); cf. L. Henskin, supra note 63, at 29 (traditional freedoms may bow to new circumstances).

This theme appears in other facets of New World Economic Order philosophy. See, e.g., Declaration on the Establishment of a New International Economic Order, supra note 43, ¶¶ 1-2 (proclaiming that recently decolonized countries must participate equally in deciding all questions of international importance); cf. Guha
In short, the legal arguments on both sides of the Committee I debate are unconvincing, perhaps because they are designed primarily to produce self-serving results. This legal vacuum has deterred the consortia from exploiting the nodules unilaterally and thus sufficed, from the LDCs’ point of view, to enable them to achieve their dual goal of maintaining mining profits and providing the New World Economic Order with a better chance of acceptance. But time is running out. In all likelihood, the 96th Congress will pass legislation establishing an interim regime to promote the development of hard mineral resources in the deep seabed. This eventually could lead to great controversy because the mine sites that would be established under U.S. law would be independent of the ISA and justified by no compelling legal argument.

A PRINCIPLED SOLUTION TO THE SEALED NODULE DEBATE

Committee I has an opportunity to fill this legal vacuum and to avert dangerous unilateral actions by constructing a principled legal regime to govern nodules and, by analogy, global wealth. This section will first discuss reasons for recommending that western delegates approach the nodule debate from a moral and principled position. Then it will suggest to the delegates methods for designing a morally principled regime. Applying this regime to manganese nodules would dictate their probable exploitation by the consortia and the transfer of excess profits to impoverished countries, but not necessarily to the economically injured terrestrial producers.


77. See note 32 supra.


79. See note 7 supra. Congress’s apparent accession to the Administration’s request to postpone unilateral mining until 1988, see note 8 supra, should defuse this situation temporarily. However, once the unilateral mining bill becomes law, either failure at UNCLOS or the Senate’s refusal to ratify the treaty would reignite the controversy and perhaps fan the flames to new heights. Indeed it is not implausible that the consortia agreed to the 1988 compromise, see note 8 supra, solely in order to get the bill enacted into law, fully expecting to lobby for and successfully obtain the treaty’s defeat in the Senate. After the treaty’s defeat, the consortia, under the United States protection, arguably could exploit the nodules and retain the bulk of the profit. See text accompanying note 86 infra (profit sharing provisions of unilateral mining legislation).
The West Should Maintain a Principled and Impartial Position in the Committee I Debate

Because the West currently possesses economic and military superiority over the Third World, the resolution of the nodule debate most likely will reflect western interests. Currently the consortia, prompted by the likelihood that it will be some years before a treaty acceptable to the United States could enter into force, have slowed outlays for nodule mining projects and have begun to invest their capital elsewhere. Congress has reacted by introducing unilateral mining legislation, primarily because it is concerned that this disinvestment will cause the loss of nodule mining technology. The State Department, mindful of the vital role played by seabed minerals in our economic well-being and national defense, supports the early enactment of this legislation. Under this unilateral regime the West would appropriate all but .75% of the nodules' value and gain the consequent economic advantages, including a reliable supply of minerals and balance of payments savings. Because the formal negotiations have been unable to reach this power-based resolution, it might be reached unilaterally. Although the LDCs would condemn this action in the United Nations and invoke retaliatory measures, these sanctions are unlikely to damage western economic interests significantly because the West still retains economic and military superiority over the LDCs and their committed allies.

80. E.g., Smith, Changing configurations of power in North-South Relations since 1945, 31 INT'L ORGANIZATION 1, 7-18 (1977).
81. While significant progress was made at the resumed eighth and initial ninth sessions of UNCLOS, see notes 8, 9, 27, & 39 supra, serious problems remain. See Spring 1980 Delegation Report, supra note 4, at 14 (technology transfer), 23 (Enterprise financing), 26-27 (Council voting), & 41-42 (final clauses). Further, many States probably will not ratify the treaty, id. at 22, and in any event a lengthy interim period between signature and entry into force is expected. Foreign Affairs Testimony, supra note 8, at 6. Indeed the Administration is concerned that the current draft's 70 State threshold for entry into force is "unusually high." Spring 1980 Delegation Report, supra note 4, at 41.
82. Law of the Sea, supra note 6, at 147-48 (Marne A. Dubs).
83. See note 5 supra.
84. See note 8 supra.
85. Id.
87. See note 79 supra.
88. Law of the Sea, supra note 6, at 186 (Elliot Richardson) (LDCs' threats perhaps significantly discountable); id. at 230-31 (consortia executives) (retaliatory expropriations not a major concern).
This balance of power, however, appears to be moving toward equalization. Because of increasing global economic interdependence and the proliferation of destructive weaponry, there is an emerging disjunction between military might and the ability to coerce and to maintain order. Despite its apparent military superiority, the West's growing dependence on other regions for raw materials is neutralizing its military power. This increases the chance of violent disruptions of world order because no "police-man" is powerful enough to risk authoritative intervention. The slowing of economic growth is another factor increasing the likelihood of a violent disruption between the rich and the poor because growth lessens the potential of violence by permitting the mitigation of inequities without taking wealth from those currently possessing it.

In this environment of slowed growth and entities more equal in bargaining power, negotiated solutions will be more difficult to achieve if each party bargains solely from self-interest. Accordingly, another way of resolving disputes over global wealth will be required. An obvious candidate would be a forum, such as a court of law, that would impartially derive and apply general principles of justice to resolve disputes among self-interested entities. However, currently there is no world court able to settle disputes over global wealth and to enforce its decisions. Indeed the only entities that can do so are the western nations that currently have substantial but shrinking economic and military power. Thus, unilateral action by those western powers is required; not in the form of appropriating seabed wealth, but by voluntarily approaching the dispute from an impartial and principled perspective.

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89. R. Tucker, supra note 11, at 80-85.
90. The November, 1979, situation at the U.S. embassy in Teheran is a recent example.
93. See text accompanying note 19 supra.
94. Proponents of unilateral appropriation often try to couch their national self-interest in impartial terms. See note 18 supra. For example, Congressman Murphy, supra note 8, at 553, writes that seabed mining will result in lower min-
Western powers must take this unilateral action immediately because the growing importance of two trends will make it more difficult for the LDCs to perceive that the West is approaching negotiations over global wealth from a moral and principled position. First, in the slow growth environment of zero sum transfers, any argument made by a particular entity that results in that entity retaining or gaining wealth is likely to be viewed as a purely self-interested position. In a zero sum situation, therefore, the statement that one’s claims have been tempered by principle and morality is likely to be discounted. A similar discounting will occur if the second condition, relatively equal bargaining power, is manifested. An entity that does not possess the ability to dominate will have difficulty claiming that it is acting morally, instead of out of necessity, when it makes concessions. Accordingly, should either or both of these conditions exist, any claim to wealth will most likely be regarded as totally self-interested. Such a claim is likely to trigger an equally self-interested response from the threatened entity. In contrast, an argument perceived to be morally justified is less likely to inject fear into the other party and therefore is less likely to provoke as self-interested a response. A more peaceful and moral world would prevail.

This approach to the problem of global distribution of wealth is mandated by moral as well as practical concerns. Undoubtedly what emerges from Committee I will be an important precedent in international law. Arguably all law, including international law, should have a moral basis. A principled and impartial approach to the nodule debate would be moral because impartiality, the independence from a nation’s particular identity of its choice

eral prices for all and that all nations will benefit from an “equitable” unilateral mining structure. Unfortunately, he fails to provide the details of the theories underlying his assertion. For example, it is unclear how a poor terrestrial producer such as Zaire will benefit from lower mineral prices and the displacement of its production by seabed mining. Further, given that wealthy nations thus far have been unable to let even a “scarcely significant” amount of aid (1% of GNP as recommended by the Pearson Commission) trickle down to poor nations, Mr. Murphy must have in mind a unique mechanism that will facilitate the transition he foresees “of all—not just some—nations... into a world of truly abundant wealth.” Id.; cf. A. Atkinson, The Economics of Inequality 251-56 (1975) (citing Pearson Commission’s recommendation that rich nations should provide annual aid of 1% of GNP to poor; demonstrating that this target, while higher than current levels of aid, would have a “scarcely significant effect” on world income distribution).

95. See note 55 supra.
and application of principles, is an important component of a moral foreign policy. This procedural conception of morality differs from the result-oriented conceptions which provide that a moral approach is one that requires a redistribution of wealth from rich to poor. Clearly the result-oriented conception of morality is not impartial because a nation's attitude toward the rule is likely to depend on whether that nation is rich or poor.

The perception by the Third World that the West is approaching problems of global wealth distribution from an impartial rather than a purely self-interested point of view arguably will mitigate the threat of violence and promote more conciliatory and harmonious relations among world governments. Currently

96. See R. BRANDT, supra note 19, at 249-50, 263-64.
97. For examples of this perspective, see, e.g., B. BARRY, supra note 91, at 131-32 (failure of rich nations to devote even one percent of national income to aid poor “scandalously immoral”); Lewis, supra note 91, at 83 (substantial transnational redistribution of wealth “ethically necessary”). Pope John Paul II maintains that “Christ demands an openness that is more than benign attention, more than token actions or half-hearted efforts that leave the poor as destitute [sic] as before... [r]iches and freedom create a special obligation.” N.Y. Times, Oct. 3, 1979, § B, at 3, col. 2.
98. The procedural and result-oriented definitions of morality indicate that absent significant changes of approach to or ownership of global wealth, a war of redistribution would be ethical.
99. Because in the international arena virtually all positions are suspected of being based solely on self-interest, the usefulness of a principled position will be lost unless the LDCs perceive this moral component. Convincing articulation of the position therefore is required. For example, having a negotiator make issuespecific concessions based on unarticulated principles is unlikely to foster the perception of principled morality because most concessions made during negotiations easily can be interpreted as being involuntary or totally self-interested. In contrast, it is less likely that the same result will be characterized as exclusively self-interested if it clearly is derived from a well-articulated set of principles because the generality of the principles prohibits the powerful party from crafting a rule that furthers its self-interest in any specific, perhaps unforeseen situation. Cf. Getman, Labor Arbitration and Dispute Resolution, 88 YALE L.J. 916, 940 (1979) (prison arbitral awards based on ill-defined standards lack legitimacy that accompanies decision perceived based on neutral standards); Thompson, supra note 18, at 372 (perceptions of ourselves, our national interests, and interests and commitments of others are vital in international politics and are determined by interests and their value context).

Besides stressing the moral component of their position, western negotiators should take pains to demonstrate that their outlook is not that of a Good Samaritan bestowing charity on the destitute. Their moral and principled approach should be rooted primarily in the belief that the law governing global wealth should be just in the sense of being impartial. To characterize this approach as charity would only ignite the controversial demands for reparations and the dangerous politics of resentment. See note 115 infra.

The preceding argument relies on the rationality of world leaders. While counter examples may be identified, international relations generally are conducted by rational actors who can perceive and appreciate the difference between impartial and self-interested solutions. Given the military weaponry currently available, the contrary assumption of irrational global interactions emanating from resentment-based demands foreshadows a devastating outcome.
economic growth continues, power is not equalized, and the West is capable of influencing greatly the moral tone of international relations.100 Principled and impartial western negotiating stances plausibly will not have their roots in self-interest if they are convincingly articulated and especially if they result in concessions not required by the current balance of power. In a more equal and economically stagnant world of the near future, the West will be able to argue convincingly from a principled position only if it can demonstrate that historically, when it did hold dominating power, it acted according to the same principles. In short, establishing today a precedent for a principled approach to disputes over global wealth is important because of the potentially short-lived credibility of the position and the foreseeable need for the approach in the near future.101

100. E.g., President Carter's role in the Egypt-Israel negotiations and, arguably, his campaign for human rights.

101. Besides better conveying the West's moral commitment, the articulation of a principled negotiating position will stabilize the poor's expectations of the redistributions they can anticipate. While mandating greater transfers than what might otherwise occur, general principles also may place an impartial limit on the amount of redistribution in a particular case. In contrast, a succession of identical but unprincipled issue-specific concessions may foster excessively high expectations. The West's failure to satisfy these rising expectations for either moral or self-interested reasons could result in economic or violent disruption. The articulation by the rich of general principles, however, could temper the poor's expectations because those principles might specify precisely how much the poor should receive, not merely that they should receive a transfer of wealth. Given a clearly specified moral limit on transfers, frustration and resentment-based disruptions would be less likely when a request for redistribution is denied. For example, if the developed nations had articulated a tradition of morally principled responses to claims to wealth, Dr. Castro's recent demand for a $300 billion redistribution of wealth, see note 15 supra, may never have been made. The demand, apparently based on the rising expectations of the LDCs that large concessions from the West are forthcoming, might not have been made if it exceeded the amount designated by an articulated principle. In reality, because the rich have not yet articulated a principled stance, Dr. Castro's demand was made and could not be responded to in a convincingly principled and nonself-interested way. Indeed the apparent denial of the request most likely is perceived as being based solely on western material self-interest. Another example is the Committee I process itself. As discussed in the text accompanying notes 80-87 supra, the slowness of the negotiations does not reflect the realities of relative power. The West's ad hoc concessions in Committee I have fostered expectations of further concessions there and in other New Order spheres.

Thus there are practical and moral reasons for using the seabed nodule debate to construct a principled and impartial western approach to global economic concerns. The following section will suggest two methods for designing such an approach.
Theoretical Considerations

A moral principle must be impartial. Western philosophy offers two prominent means for achieving impartiality: the veil of ignorance and utilitarianism. The veil of ignorance, a concept most recently advocated by John Rawls, shields a representative group of people from knowledge of their identities. The distribution of wealth agreed upon by these veiled people will be impartial. Utilitarianism, on the other hand, is a decision rule itself. It guarantees impartiality by mandating an all-powerful Ideal Observer to arrange things in society impartially so that societal happiness is maximized.

The veil of ignorance can be used to construct an impartial forum in which representatives of the world's inhabitants meet to establish or alter the rules governing society. Rawls conceives of them as representing future inhabitants of a yet-to-be established world. The veil of ignorance operates by permitting them to know only general facts about human society and behavior, but not their personal class, status, natural assets, life plan, generation or even the historical setting of their society. Rawls argues that the veil of ignorance, by shielding the representatives from knowledge of who they will be in society, neutralizes selfish motivations and thus ensures that the distribution of wealth agreed on will be just. Distributive shares are uninfluenced by factors or traits that Rawls deems to be fortuitous and undeserved, or "arbitrary from a moral point of view."

Rawls maintains that the veiled representatives would choose "maximin," the maximization of the long-run expectations of the least advantaged class, as the operational principle for dividing up societal wealth and privileges. However, it is arguable that they would not choose maximin. Further, the veil Rawls uses to secure impartiality has been criticized for being unnecessarily "thick" because a more frugal or thin veil, one permitting the representatives to know everything about their society except their

102. See text accompanying note 96 supra.
103. See, e.g., J. Rawls, supra note 19, at 136-42.
104. They know, for example, that people generally prefer more to less. Id. at 142-43.
105. Id. at 136-42.
106. E.g., id. at 12, 136-37.
107. Id. at 72.
108. E.g., id. at 150-56, 302-03.
own identities, would suffice for impartiality purposes. Arguably, these thinly veiled representatives would, instead of choosing maximin as their decision rule, select a form of utilitarianism, the maximization of average utility. Rather than maximizing global utility, this rule maximizes the arithmetic average of all people’s utility. The two rules are identical only if population is constant.

A utilitarian decision rule can be justified on its own as well as by its selection by thinly veiled representatives. Traditional utilitarian theories generally are structured around an Ideal Observer who arranges things in society in order to maximize societal happiness, however that is defined. This Observer engages in a felicific calculus by surveying every person in order to ascertain how each person’s happiness is affected by various alterations in the

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10. Hare, Rawls’ Theory of Justice—I, 23 PHILOSOPHICAL Q. 144, 151-54 (1973). For a seminal piece on the thin veil of ignorance as a guarantor of impartiality, see Harsanyi, Cardinal Utility in Welfare Economics and in the Theory of Risk-Taking, 61 J. POLITICAL ECON. 434 (1953). Rawls responds to the thin veil argument by maintaining that a thin veil is unworkable because it would make the choice of a decision rule by the representatives “hopelessly complicated” and require interpersonal utility comparisons. J. RAWLS, supra note 19, at 139-40, 172-75; cf. Nagel, Rawls on Justice, in READING RAWLS 1, 10 (N. Daniels ed. 1975) (thinly veiled representatives unable to reach decision without a dominant conception of the good). Rawls’ argument fails, however, because workable approximations of interpersonal utility comparisons can be made (and indeed are made every day) if human beings’ preferences are assumed to be governed by similar, basic psychological laws. Harsanyi, supra note 109, at 600-01; cf. A. SEN, ON ECONOMIC INEQUALITY 78 (1973) (problem of assessing relative needs is very serious but often surmountable). There is no reason, therefore, why the thinly veiled representatives cannot make such comparisons and agree on an appropriate societal structure. Harsanyi, supra note 109, at 598-601.

11. See Harsanyi, Cardinal Welfare, Individualistic Ethics, and Interpersonal Comparisons of Utility, 63 J. POLITICAL ECON. 309 (1955) (thinly veiled, rationally self-interested representatives would have cardinal social welfare function equal to arithmetical mean of utilities of all individuals in society); Harsanyi, supra note 109, at 598 (representatives would opt to maximize that mean); cf. Hare, supra note 109, at 240-51 (discussing in intuitive terms decision rule that approximates maximization of average utility). The gist of Rawls’ argument against the selection of the principle of average utility by the representatives is that such a selection would be irrational. Rawls contends that the probabilistic reasoning needed to apply an average utility rule will be engaged in by rational representatives only if they have sufficient knowledge of the details of their society, something they do not have behind a thick veil of ignorance. J. RAWLS, supra note 19, at 172-75. An effective rebuttal to Rawls’ argument against average utility is that the use of a “thin veil” of ignorance allows the required objective bases to filter through while still preserving impartiality. Rawls must accordingly take refuge in his tenuous argument that the decisionmaking process behind the thin veil would be unworkable. See note 110 supra.

distribution of societal advantages. Impartiality is guaranteed quite simply by the mandate to the Observer to be impartial. 

In summary, two ways of guaranteeing impartiality are the thin veil method or traditional utilitarianism. Each method uses a different mechanism for achieving impartiality. The thin veil does so by tempering the representatives' selfish and rational motivation with ignorance of their ultimate identities. Utilitarianism, in contrast, achieves impartiality by combining in the Ideal Observer a rational but benevolent motivation with total knowledge of societal wants and the available means for achieving them.\textsuperscript{113}

The Theory Applied

In order to produce an impartial legal regime of seabed nodules, Committee I can thus proceed as if it were either a utilitarian Ideal Observer or a group of veiled representatives.\textsuperscript{114} As veiled

\textsuperscript{113} Hare, supra note 110, at 150-54.

\textsuperscript{114} Although both concepts produce impartial results, it is arguable that because reaching decisions behind the veil of ignorance obsolesces discussion of "reparations," utilitarianism agreed upon by veiled representatives is preferable to an independently derived utilitarianism, which arguably does require a discussion of reparations, one fraught with definitional and resentment-engendering difficulties. \textit{Cf.} R. Tucker, supra note 11, at 121-26 (problems of determining legitimate bases of claims for reparations); Smith, supra note 80, at 18-27 (legitimacy of demands for reparations unclear).

Unlike the Rawlsian representative, the utilitarian Ideal Observer accepts the current state of tastes and traits as just, and recommends redistributions according to some teleological, pleasure-maximizing decision rule. The content of these recommendations thus depends upon tastes acquired under current entitlements. If the present state of affairs is unjust because it was not impartially determined, the utilitarian Observer may exacerbate that injustice even though its current recommendations are impartial. For example, an impartial Observer might be justified in transferring a bottle of Chateau Lafite from a starving peasant who has never tasted wine to a French oenologist in exchange for a bowl of rice because, given each's acquired tastes, the exchange increases overall happiness. Because the historic development of these tastes may have taken place under an unjust regime, some sort of rectification or reparation arguably should be made before an impartial Observer makes marginal, utility-maximizing changes. The committed utilitarian would argue that reparations are relevant to his felicific calculus only if they generate increased happiness for whatever reason, but not solely to satisfy a theoretical need to rectify past injustice.

In contrast, using the concept of the veil of ignorance eliminates the need to discuss reparations. The veiled representatives view a historically unjust world without knowing who they will be. Because they do not know if they are the former exploiter or the formerly exploited party, their redistributive decisions will not be concerned with reparations for past injustices but instead will concentrate on creating a just world for the future. The act of going behind the thin veil of ignorance and rearranging the world from that perspective thus wipes the slate clean and, in that sense, rectifies past injustices. \textit{See} Amdur, \textit{Rawls' Theory of Justice: Domestic and International Perspectives}, 29 \textit{World Pol.} 438, 455 (1977) (showing of past exploitation irrelevant to application of maximin). Rectification's irrelevancy is rooted in the use of the veil of ignorance, not in the decision rule on which the representatives agree.
representatives, the delegates would be forced to structure a regime of seabed nodule exploitation as if they knew nothing of the interests they represent.\textsuperscript{115} Presumably they would select either maximin\textsuperscript{116} or average utility maximization\textsuperscript{117} as their decision rule. As an Ideal Observer, the Committee I delegates would employ a utilitarian decision rule with impartial benevolence.

The following application of these concepts to the seabed nodule problem makes certain assumptions concerning the power of Committee I to accomplish distributions of wealth. Committee I certainly has the power to distribute manganese nodules. Further, it is arguable that Committee I has the political power to effect nodule-related redistributions of income, such as the transfer of technology from developed nations to the Enterprise. Although

\begin{footnotesize}
\begin{enumerate}
\item[115.] Cf. Harsanyi, \textit{supra} note 109, at 598 (arguing that a person can make a moral decision by making "serious effort" to disregard his personal station in life).
\item[116.] The application of maximin is problematic. The primary difficulty is isolating the worst-off (least advantaged) class. Rawls himself notes that this problem is a "serious difficulty," the solution involving "a certain arbitrariness." J. \textsc{Rawls}, \textit{supra} note 19, at 98. Rawls recognizes the need for a theory of the good here, and tries to manufacture one that is as neutral as possible, \textit{see id.} at 395-452, although it has a strong liberal, individualistic bias. Nagel, \textit{supra} note 110, at 8-10. In addition, Rawls assumes a world of scarcity in which human wants exceed the means of satisfaction, J. \textsc{Rawls}, \textit{supra} note 19, at 4, a realistic but by no means necessary societal trait. Unless one is willing to stipulate that poor, unskilled workers are the worst-off class, \textit{id.} at 78, even though, as Rawls seems to admit, they may be a happier lot than certain white-collar workers, \textit{id.} at 93, 409, then maximin seems to suffer from definitional problems similar to utilitarianism’s measurement difficulties discussed at note \textit{117 infra}. Rawls unsuccessfully tries to avoid this problem by constructing an index of primary social goods. \textit{See J. \textsc{Rawls}, \textit{supra} note 19, at 90-95. Although some commentators have quibbled with his choice of primary goods, \textit{see, e.g.}, Nagel, \textit{supra} note 110, at 9, the major problem is in how to use the index to identify and aid the least advantaged. Rawls concludes that in "doing this we admittedly rely upon our intuitive capacities," J. \textsc{Rawls}, \textit{supra} note 19, at 94, not unlike what a utilitarian government does.\item[117.] Utilitarianism, however defined, suffers from the well known problems connected with measuring individuals' preferences and making interpersonal utility comparisons, problems similar to those encountered by maximin in the use of the index of primary social goods. \textit{See note 116 supra. Indeed, interpersonal utility comparisons may be unavoidable in any reasonable theory of morality. See }\textsc{Harsanyi, \textit{supra} note 109, at 600; cf. note 110 supra (approximations of interpersonal utility comparisons can be made). A second problem, the “utility glutton,” affects only traditional utilitarianism (derived independently without the use of the veil of ignorance). This form of utilitarianism is embarrassed by the possibility of utility monsters who get enormously greater gains in utility than others lose upon a transfer of wealth from them to the monster. R. \textsc{Nozick, Anarchy, State, and Utopia} 41 (1974). A utilitarian decision rule chosen by thinly veiled representatives would avoid this problem because they will see that the glutton exists and restructure institutions accordingly. If the glutton is allowed to persist, it does so with everyone’s consent.
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Committee I has no authority to mandate any other redistributions of wealth, it will be instructive to examine what it would do if it had such power. For convenience, the following discussion will use four hypothetical entities: Japan will represent a wealthy, developed country that uses the minerals; Zamba will stand for a low income LDC that is also a terrestrial producer; India will signify a terribly impoverished country; and Deepsea will symbolize a mining consortium incorporated in Japan. Each nation is assumed, for the sake of clarity, to have only one "class," so that all citizens in that state will be viewed as being equally well-off. The Committee I delegates qua veiled representatives do not know whether they represent Japan, Zamba, or India.

Actions By Committee I

The most limited task Committee I could undertake would be to distribute seabed nodules without altering any existing institutions. Under this arrangement, only the Japanese are capable of mining and processing the nodules, while nodule exploitation would portend severe revenue losses to Zamba. Because current institutions are taken as given, Deepsea will not put its capital into seabed mining without a reasonable certainty of earning an adequate return on capital. In this context Committee I must apply maximin or utilitarianism to determine whether Deepsea is entitled to mine the nodules and what should be done with any excess return.

118. This assumption makes it unnecessary to discuss the problem of internal redistributions in poor nations that might receive transfers of wealth from richer nations. For a discussion of this problem see J. Tinbergen, supra note 91, at 56-57, 211-16. In a world of multi-class nations, the West could embellish its redistributional decision rule to permit its refusal to aid nations that fail to distribute aid to the needy internally. See Rothstein, Inequality, Exploitation, and Justice in the International System, 21 Int’l Stud. Q. 319, 336-37 (1977); cf. Amdur, supra note 114, at 457 (veiled delegates would demand intervention against donee governments that fail to distribute aid to their worst-off).

119. While this hypothetical employs unitary class nations as proxies for classes of varying degrees of wealth, in reality neither a utilitarian nor a Rawlsian would necessarily embrace a world of different nations. In the global setting, it is unclear whether the worst-off class can be defined by statehood. Because a nation is a social institution, there is no prima facie reason for assuming that nations would even exist in a world structured by thickly veiled representatives. See B. Barry, supra note 91, at 133 (representatives may establish "an overriding international state"). A utilitarian would support the perpetuation of nations only if it produced a happier world than would other forms of organization. Indeed it has been generally argued that nations are rapidly losing their relevance, their boundaries being "highly artificial and anachronistic from any functional perspective." McDougal, Lasswell, and Chen, The Protection of Aliens from Discrimination and World Public Order: Responsibility of States Conjoined with Human Rights, 70 Am. J. Int’l L. 432, 439 (1976).

120. Deep Seabed Mining, supra note 18, at 202-03 (B. Gill Clements); id. at 336 (John E. Flipse).
Under maximin, the decision to allow Deepsea to exploit the nodules would rest solely on whether the least advantaged, India, ultimately will benefit from the mining. It is likely that under present economic conditions Deepsea will earn more than the required return. Any excess return could be taxed by a small regulatory authority and given to India. The revenue loss Zamba stands to suffer would be irrelevant if the loss does not so severely impoverish Zamba as to make it worse-off than India. The ICNT provisions mandating compensation to Zamba, therefore, are not required by maximin but stem from personal or national self-interest in violation of the procedural sense of impartial justice associated with the use of the veil of ignorance.

Utilitarian Committee I delegates (thinly veiled or independently utilitarian) would distribute nodules according to a utilitarian decision rule. A central working assumption of utilitarianism is that of decreasing marginal utility, that poorer people derive more utility from an extra dollar than do richer, more satiated people. It seems reasonable to assume that the people of India are sufficiently poor to influence the thinly veiled or independently utilitarian delegates to use seabed nodules to assist those impoverished lands. Because it is assumed in this section that institutions cannot be altered by Committee I, the

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121. See note 32 supra.
122. It is arguable that India's long term expectations would be better served by the establishment of a socialist, ISA-like entity, because it would set a precedent for similar organs and give impetus to the New World Economic Order. Given the heavy stress on sovereignty that imbues the NWEO rhetoric, however, see text accompanying notes 44-51 supra, and the New Order emphasis on compensating Zamba instead of improving the lot of India, see note 114 supra, it is unlikely that India would fare better under ISA, even in the long run, than it would as the direct recipient of Deepsea's excess profits.
123. See text accompanying notes 29-39 supra.
124. E.g., ICNT, supra note 4, arts. 140, 150.
125. The first thing that would occur to a rational delegate qua thinly veiled representative is the danger of turning out to be Indian. He would thus do what he could to improve the situation of Indians, but only to the point at which the decrease of Japanese and Zambanese quality of life, measured subjectively by their utility functions, ceased to be compensated for by the improvement of Indian quality of life. Each quality of life level would be weighted by the delegate according to his chance of emerging from behind the veil of ignorance as a citizen of each country, that is, according to each nation's population. This procedure simply reflects the maximizing of the average utility of the global population.

Rather than maximizing average utility, traditional utilitarians would maximize total global utility. Because it is assumed here that the delegates cannot alter institutions affecting world population, the two forms of utilitarianism are identical. See text accompanying note 112 supra.
available funds would be no more than Deepsea's excess return. This relatively small sum would all go to India because, even after the transfer, India would still have a low level of welfare. This utilitarian outcome would thus be identical to the one mandated by maximin.\textsuperscript{126}

Thus, under both maximin and utilitarianism, India would gain whatever excess return Deepsea earned. Also, Japan would transfer to India a sum equivalent to the pecuniary benefits it received from seabed mining, such as cheaper minerals, secure supplies, consumer surplus, tax revenues, and balance of payments savings.\textsuperscript{127} Zamba, however, would be dealt a severe blow. Its monopoly rents would vanish, while the revenues its obsolete mines once earned would flow into Deepsea’s coffers. There would thus be a \textit{de facto} redistribution from low income Zamba through Deepsea and Japan to destitute India. This sort of solution is typical of maximin, which focuses solely on helping the least advantaged class while failing to consciously alter relationships among better-off classes. A utilitarian Committee I would reach the same result, but only because it is constrained from altering global institutions.

In reality, Committee I may have some limited political power to redistribute wealth in connection with its construction of a seabed regime. For example, it might mandate transfers of technology to LDCs either directly or via the ISA.\textsuperscript{128} Applying maximin, Committee I could compel a transfer of technology from Deepsea to India, but not to Zamba, in order to permit least-advantaged In-

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  \item \textsuperscript{126} Harsanyi has argued that “in most situations Rawls' theory will have much the same policy implications as utilitarian theory does.” Harsanyi, supra note 109, at 605. Indeed, he conceives of maximin as an admissible approximation of the utilitarian outcome in many cases. \textit{Id.} at 606. He prefers utilitarianism nevertheless because in the few cases in which the results diverge, Rawls' maximin “consistently yields morally highly \textit{unacceptable} policy conclusions whereas utilitarian theory consistently yields morally fully \textit{acceptable} ones . . .” \textit{Id.} at 605. The extension of maximin from its use in distributing nodules to its employment as the basis of a regime for redistributing global wealth is, quite probably, precisely such an unacceptable use. See text accompanying notes 129-32 infra.
  
  \item \textsuperscript{127} This would moot the congressional debate concerning whether the unilateral mining legislation should require domestic nodule processing and U.S. construction and documentation of vessels used in mining operations because any gains accruing to the U.S. would have to be quantified and transferred to India. For a brief discussion of the debate, see the testimony of Ambassador Elliot L. Richardson before the House International Relations Committee, Subcommittee on International Organizations and Subcommittee on International Economic Policy and Trade (Nov. 1, 1979) (on file with the \textit{San Diego Law Review}).
  
  \item \textsuperscript{128} Although the questions of nodule entitlements and technology transfer often are discussed together, they actually are quite distinct. The problem of nodule entitlements closely resembles a question of initial allocation, while that of technology transfer concerns redistributing previously titled wealth, albeit for use in exploiting currently untitled resources.
\end{itemize}
dia to mine the seabed wealth on its own. Alternatively, the Committee could establish an ISA-like entity both to receive the initial nodule entitlements and to channel this new wealth to India. These redistributions by transfer of technology are separate from the de facto redistributions from Zamba to India effected by seabed mining itself. Similarly, the utilitarian solution would approximate the maximin-dictated result by redistributing some wealth from Deepsea to impoverished India according to the assumption of the decreasing marginal utility of income.

Redistribution of Global Wealth

If Committee I had the political power to effect a legal regime mandating redistributions of global wealth far more radical than transfers of technology, it would still apply the impartial decision rules of maximin or utilitarianism. In this broader context, however, maximin assumes more radical dimensions. Compliance with maximin would compel extensive transfers from both Japan and Zamba to India until there was equality or until further redistributions would decrease Japanese productive incentives so as to make India worse-off. In today's world, Japan would have tremendous difficulty arguing that a large Japan-India income gap works ultimately to India's favor.

Even if India were so desperately poor that everything Japan and Zamba could be induced to produce would still leave India and, consequently, Japan and Zamba, pathetically poor, these redistributions nevertheless would be required. Maximin's exclusive focus on the level of well-being of the worst-off class requires society to make all sacrifices that help improve that class's lot irrespective of the overall effect those redistributive transfers have on global happiness. One argument for this star-

129. J. Rawls, supra note 19, at 78, 150.
130. See Amdur, supra note 114, at 454-55.
131. Rawls at times speaks of deviating from his principles when a certain minimum level of well-being has not been reached. J. Rawls, supra note 19, at 152, 542. However, he does not mitigate the application of maximin but only permits the representatives to forego some liberty and justice in order to reach a minimum standard of economic well-being. Id. at 150-52, 302-03.
132. "Using the maximin principle in the original [veiled] position is equivalent to assigning unity or near-unity probability to the possibility that one may end up as the worst-off individual in society..." Harsanyi, supra note 109, at 599. There seems to be no rational reason for doing so. Id.
tling result is that equal poverty is preferable to unjustified wealth distinctions.

A global redistribution that maximizes average utility would differ markedly from that dictated by maximin. This divergence occurs once India reaches an acceptable level of welfare, as determined by the Indians' subjective utility function weighted by the likelihood that the delegate would emerge as an Indian. At this point there would be no reason to continue transferring wealth to India. Whereas maximin would focus on India's absolute level of well-being, utilitarianism would focus on differences of utility that various wealth transfers achieve. While maximin unrelentlessly would propel society toward equality, utilitarianism would apply the brakes when the move toward equality reduced production incentives so as to cause a decrease in average global utility.

Thus, if one had the full freedom to redistribute global wealth according to a utilitarian decision rule, seabed nodules themselves might be treated differently than they were in the more restrictive scenarios discussed in the previous section. Although Deepsea's capital probably can generate an equally adequate return at other uses, the obsolesced Zambanese miners may not have alternative jobs. If seabed mining causes the foregone Zambanese labor value to exceed Deepsea's excess return, the nodules should remain on the seabed, while Deepsea employs its capital elsewhere and the Zambanese terrestrial miners continue to toil. India would continue receiving appropriate transfer payments out of the general pool of world wealth, and global wealth would be as great as justice permits.

It follows from a global utilitarian analysis that the delegates would bar Zambanese threats to cartelize or place an embargo on the relevant minerals because such disruptions would decrease world wealth. Moreover, Zamba, having already received its fair share of wealth from the delegates, would be unable to retain any cartel-derived monopoly profits. Under present law, however, the Zambanese stand to gain by cartelization even if it decreases overall world well-being. This result, which arguably is irrational from a global perspective, is "legal" because public international law is not based on moral or rational considerations but primarily on power politics and rhetoric in international fora.

133. See note 120 supra.
134. Cf. note 31 supra (discussing threats to cartelize).
135. Cf. text accompanying notes 56-79 supra (discussion of law concerning seabed manganese nodules).
FURTHER CONSIDERATIONS

A duty to distribute nodules and other forms of wealth impartially would be only one component of an overall scheme of global justice. Intergenerational utility, for example, might be maximized by creating a duty on the part of each person or nation not to leave the world poorer than he found it. This duty might be manifested in a requirement that LDCs avoid self-debilitation by enacting strict birth control measures and internal development programs. Another component of a scheme of global justice concerns rules permitting wealthy nations to retain invested wealth for a certain amount of time provided that after the expiration of this time the appropriate amount of wealth (as determined by the veiled delegates or Impartial Observer) created by the investments trickles down to the poor. Similar timing rules might be required to govern internal redistributions in donee countries because arguably both utility maximization and maximizing the prospects of the worst-off require initial concentrations of wealth to facilitate economic development. Strict rules, however, must guarantee the required redistribution of this wealth.

136. Cf. B. ACKERMAN, SOCIAL JUSTICE IN THE LIBERAL STATE 202-04 (1980) (elders obliged to preserve enough wealth so next generation can receive initial endowment at least as large as endowment with which elders began life).

137. Besides arguably being required by a utilitarian or “Ackermanian” framework, this sort of duty might be required even in a Rawlsian world. See Amdur, supra note 114, at 456-57 (for global maximin meaningfully to achieve maximum prospects for worst-off class, affluent states must be able to tie aid to demands that recipient governments reduce internal population growth). Rawls believes that the current generation has a duty not only to maintain global wealth but to accumulate wealth for the next generation. J. RAWLS, supra note 19, at 284-93. However, his argument that the veiled delegates would select such a principle is most unpersuasive. See, e.g., B. BARRY, supra note 91, at 131 n.2.

138. See A. ATKINSON, supra note 94, at 250.