

## Case study: The politics and economics of poverty

### The UN Convention on the Law of the Sea, the plunder of the natural resources of the sea-bed and the perpetuation of inequity between nations

*By David McCoy (based largely on material from a book by Thomas Pogge, 'World Poverty and Human Rights')*

The 1982 Convention on the Law of the Sea declared, in an exquisite moment of global solidarity, that the natural resources on the ocean floors beneath the international waters “are the common heritage of mankind” (Article 136) to be used “for the benefit of mankind as a whole”, taking into particular consideration the interests and needs of developing States [through an] “equitable sharing of financial and economic benefits” (Article 140), which was to have been effected by sharing of seabed mining technologies and profits (Annex 3, Articles 5 and 13) under the auspices of the International Seabed Authority, or ISBA.

These noble intentions have however come under systematic attack by successive US administrations. Shortly before the Convention was due to have come into force in 1996, the Clinton Administration succeeded in pushing through a superseding *Agreement*<sup>1</sup>, which qualified the common heritage principle to mean that the oceans and their resources “are open to use, by all in accordance with commonly accepted rules”.<sup>2</sup>

The objections of the US were that Part XI of the Convention “established a structure that ... does not accord the industrialised States influence in the regime commensurate with their interests; incorporated economic principles inconsistent with free market philosophy; and that its specific provisions created numerous problems from an economic and commercial policy perspective that would have impeded access by the US and other industrialised countries to the resources of the deep seabed beyond national jurisdiction”.<sup>3</sup>

Accordingly, it freed mining companies from having to share seabed-mining technologies, and greatly reduced the obligation to share profits. The *Agreement* further accommodated US demands for a US seat on the executive Council of the IBSA to be guaranteed and to allow the US and a few other industrialised nations to act “in concert to block decisions in the Council”.

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<sup>1</sup> The Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea.

<sup>2</sup> Article 2(1) of the Agreement says “in the event of an inconsistency between this agreement and Part XI, the provisions of this agreement shall prevail.

<sup>3</sup> US Department of State. Commentary on the Law of the Sea Convention including the 1994 Amendments.

The US managed to gain these concessions by threatening to found a competing seabed resources scheme with a few like-minded countries, thus winning a great victory for those nations with the capital and technologies for profitable seabed mining. In spite of being the ones who can least afford to be shut out from this common heritage of mankind, the rulers and governments of the poorer countries went along with the US amendments.

The annex to the agreement further states that the sharing of profits be limited to 'economic assistance' to "developing countries which suffer serious adverse effects on their export earnings or economies resulting from a reduction in the price of an affected mineral or in the volume of exports of that mineral, to the extent that such reduction is caused by [seabed mining]". Other amendments to the Convention included a halving of the application fee for exploration and the exploitation of sites and the elimination of a \$1 million annual production fee as well as the profit-related financial contributions, all of which were mandated in the Conventions Annex III (Article 13).

The citizens of the US and rich countries, for the sake of relatively trivial advantages, allowed the US government to take us further away from an international order in which the rights and freedoms set forth in the UDHR can be fully realised.

This case study clearly illustrates how the rich countries of the world, in particular the US in this instance, are able to take advantage of their financial, political and economic superiority to benefit disproportionately from global resources and to not just maintain the international political and economic inequities, but to widen them.