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Letter dated 5 May 1978 from the representative of Nepal to the President of the Conference

Extract from the Official Records of the Third United Nations Conference on the Law of the Sea, Volume IX (Summary Records, Plenary, General Committee, First, Second and Third Committees, as well as Documents of the Conference, Seventh and Resumed Seventh Session)

"The delegation of Nauru, although not a signatory of this letter, wishes to be associated with the views expressed in it."

In view of your intention that the Conference should take up the question of the final clauses in plenary session on Friday, 5 May, I should be grateful if you would arrange for

this letter to be circulated as a Conference document in good time for consideration by the participants in these meetings.

(Signed) M. J. C. TEMPLETON
 Head of the Delegation of New Zealand
 to the Third United Nations Conference
 on the Law of the Sea

DOCUMENT A/CONF.62/65

Letter dated 5 May 1978 from the representative of Nepal to the President of the Conference

[Original: English]
 [8 May 1978]

I have the honour to submit a memorandum relating to the establishment of a common heritage fund in the interest of mankind.

I should be most grateful if you would arrange to circulate this letter and the accompanying memorandum as a conference document.

(Signed) S. K. UPADHYAY
 Head of the Delegation of Nepal
 to the Third United Nations Conference
 on the Law of the Sea

MEMORANDUM RELATING TO THE ESTABLISHMENT OF A COMMON HERITAGE FUND IN THE INTEREST OF MANKIND AS A WHOLE BUT PARTICULARLY IN THE INTEREST OF DEVELOPING NATIONS

In a world facing the problems of scarcity in all directions and the mounting problem of ever increasing needs of the growing population, the untapped riches of minerals and energy of the oceans and their immense potentiality of producing food for survival as well as nutrition as a result of development of mariculture are of such importance that they cannot be settled without international co-operation among nations on a grand scale.

For the first time, the potentiality of exploitation and the possibility of sharing the resources of the oceans are providing mankind with a great opportunity to co-operate on a global scale, by making possible the establishment of a new world order and by giving rise to new political and economic theories to give a new dimension to human collaboration. It provides mankind with an opportunity to make tangible progress in the establishment of a new international economic order and a new international political understanding that will strengthen global co-operation, making conflict obsolete and understanding among nations imperative, thus paving the path to progress for all mankind.

The present exercise involved in developing a new and lasting convention cannot be separated from the essential need of establishing an intertwined relationship between the new law of the sea and the establishment of a new international economic order as well as a new political concept of common ownership based on the principle of the common heritage of mankind. The concept of common ownership in certain areas of the globe introduces a new and revolutionary régime hitherto unknown in the annals of human history and quite different from the concept of national sovereignty. It underlines the imperativeness of a new type of régime in that part of the globe which has not been under any national jurisdiction. This is based on the grand vision of a human society in a supra-national state. This is a forward-looking

concept which points to the eventual evolution of a world order for man on this planet. This requires a bold and imaginative outlook in order to strengthen such an essential concept for the survival and progress of mankind. However, this can be done only with the establishment of an inseparable link between the element of co-operation and the element of sharing the benefits of co-operation. For all these reasons the authors of the new convention must realize that the rules of the past could no more meet the challenges of the present or the requirements of the future.

So in order to make the law of the sea convention a meaningful step toward the new international economic order it is essential that it contain a meaningful implementation of the principle that inspired the holding of the Third United Nations Conference on the Law of the Sea: the principle that the oceans are "the common heritage of mankind." For the principle of the common heritage is a new and revolutionary approach to international law, an approach full of promise for the human family, promise of justice and peace as well as a healthy and fruitful ocean environment.

Future generations will judge the Conference by its success or failure in implementing the common heritage principle. They will judge it especially by its success or failure in seeing that a substantial portion of ocean mineral wealth is used to build a just and peaceful world society.

Unfortunately in the more than 10 years since it was enunciated by Mr. Arvid Pardo in the fall of 1967, the common heritage principle has suffered from misinterpretation, from attrition and from neglect. As the concept of the economic zone increased in popularity, some nations insisted, wrongly and tragically, that the economic zone and the common heritage were mutually exclusive. That idea makes a cruel hoax of the concept of the common heritage. For the overwhelming proportion of ocean mineral wealth and of marine species are found within the economic zone. And under traditional international law all that area, except for a narrow territorial sea, was traditionally regarded as *res nullius*, i.e. no one's property, or as *res communis*, i.e. common property.

The concept of the common heritage of mankind has been damaged by those who contend that there is a necessary incompatibility between the idea of the common heritage and the idea of the economic zone. We believe that both ideas are essential and we believe that they are necessarily intermixed, i.e. the economic zone can and should make a substantial contribution to the implementation of the concept of the common heritage.

It must be stressed that the economic zone is a very desirable concept and one which must be institutionalized. It has an important role to play, in guarding off-shore resources against the kind of indiscriminate exploitation which was common under the régime of *res nullius*, a régime which was

heavily biased in favour of developed nations and against developing nations. The concept of the economic zone can play a useful role in protecting the marine environment and in other important tasks. However, an exaggerated interpretation of this concept, especially an interpretation which hands over all this wealth to the coastal State without any obligations to the rest of mankind, will not only deprive poor countries but will instead enrich the rich and make the poor poorer.

It is ironic that the emerging concept of the economic zone was at first opposed by the developed countries, and particularly by the United States of America and the Union of Soviet Socialist Republics. This helped persuade many developing countries that a very broad concept of the economic zone must necessarily be in the interest of developing countries. It is certainly true that the concept would prevent the exploitation of their zones by developed States without the permission of the developing coastal States. This protection from indiscriminate exploitation by foreign nations was—and is—an essential achievement of the concept of the exclusive economic zone. However, it does not—and should not—follow that the coastal State should be the only one to benefit from the immense treasure of resources in the zone. In our view, mankind as a whole, and especially countries of low incomes, have a right to some share in the resources.

In the interest of mankind as a whole, and especially in the interest of developing countries, it is essential that the provisions in the informal composite negotiating text³ with respect to the exclusive economic zone be modified so as to provide for some sharing with the international community in the great wealth within the economic zone.

This need was brought home by Mr. Pardo when he made comments on the informal composite negotiating text. Focusing on the economic zone provisions in the text he said: "This means that one third of ocean space, by far the most valuable part in terms of resources and in terms of use, is immediately appropriated by coastal States, all off-shore hydrocarbon, all commercially exploitable minerals in unconsolidated sediments—from sand and gravel to tin, gold and diamonds—all commercially exploitable hard minerals, a substantial portion of the known manganese nodules deposited over 90 per cent of all living resources of the sea and nearly all marine plants, all this will become, if and when the treaty is signed, the exclusive property of coastal States. The value of these resources must be estimated at many trillions of dollars."

It is certain that if some will be gainers, others will have to be losers. So let us examine how this process of erosion of the concept of common heritage of mankind benefits the developing countries. Does it benefit most of the developing countries or even many of them? Data based on available information reveal that only 25 nations in the world would gain control of 76 per cent of the world economic zone. Out of these 25 nations, 13 are developed nations such as the United States, Australia, New Zealand, Canada, the Union of Soviet Socialist Republics, Japan, Norway and South Africa. These 13 developed nations will acquire 48 per cent of 76 per cent of the world economic zone, while among the developing nations 12 among the lucky 25 will get only 28 per cent of the same. It will make the rich richer and the poor poorer, thus making the task of the establishment of the new international economic order well nigh impossible.

There is a growing realization among the countries of the world that what was supposed to be advantageous to an overwhelming majority of States in the world, in fact, is advantageous to a few rich and fewer developing nations. Most of those who may gain advantages among the developed nations are very sparsely populated countries with

vast resources in the extensive land-mass of their own territory.

Thus it is essential to save the concept of the common heritage from further erosion, to strengthen the concept and in particular to see that it provides immediate and substantial help to developing countries. To accomplish this, the Conference must devise new treaty articles which provide for equitable and graduated sharing of off-shore mineral revenues as well as those of the deep ocean.

For all these reasons, my delegation would like to propose the establishment of a "common heritage fund" as part of the law of the sea convention now being negotiated. The treaty articles we are proposing would require that States use some of the mineral revenues derived from the exclusive economic zone in order to assist developing countries and thus to narrow the gap between the rich and the poor nations, without prejudice to their geographical location, but on the basis of their needs. Some portions of the fund's revenues could and should be used to help protect the marine environment, to assist in the transfer of marine technology and to support, at least in some measures, the work of the United Nations and its specialized agencies.

We are, therefore, submitting for your examination a draft of 10 articles on the proposed common heritage fund. We believe they should become a new part of the informal composite negotiating text.

DRAFT ARTICLES ON THE COMMON HERITAGE FUND

Part XVI.* Common Heritage Fund

SECTION 1. GENERAL

Article 298. Nature, purposes and fundamental principles of the Common Heritage Fund

1. There is hereby established a Common Heritage Fund which shall function in accordance with the provisions of this Part of the present Convention.
2. All States Parties are *ipso facto* members of the Fund.
3. The headquarters of the Fund shall be located at the same place as the headquarters of the International Sea-Bed Authority.
4. The basic purpose of the Common Heritage Fund shall be to ensure that a substantial portion of the mineral revenues of the ocean is used to promote human welfare, to nourish world community and world peace and to preserve and protect the marine environment. To this end revenues from the Fund shall be used principally to assist developing nations. They shall also be used in limited amounts to protect the marine environment, to aid the transfer of marine technology and to assist the work of the United Nations, especially in peace-keeping.
5. All States members of the Fund shall fulfil in good faith the obligations assumed by them in this Part of the Convention.
6. The organs and officers of the Fund shall work in close co-operation with the International Sea-Bed Authority, the United Nations and other international organizations and agencies dedicated to the same or similar purposes.

SECTION 2. ADMINISTRATION OF THE FUND

Article 299. General principles

1. The fund shall be administered by a Board of Governors, a Secretariat and by the Assembly of the Interna-

³*Ibid.*, vol. VIII (United Nations publication, Sales No. E.78.V.4).

*It is proposed that these articles should constitute part XVI of the convention and that the present part XVI be renumbered accordingly.

tional Sea-Bed Authority. Their respective powers and duties shall be detailed in this Part of the Convention.

2. Such subsidiary organs as may be found necessary may be established in accordance with this Part of the present Convention.

Article 300. Composition, procedure and voting of the Board of Governors and the Assembly

1. The Board of Governors shall consist of 36 members of the Fund who shall be elected by the Assembly in the following manner:

(a) Eighteen shall be elected according to the following distribution by geographical regions: Africa, five; Asia, four; Eastern Europe (Socialist), two; Latin America, three; and Western Europe and others, four;

(b) Nine shall be made up of members who are "net contributors", that is, States which have, during the preceding four years, contributed more to the Fund than they have received from it;

(c) Nine shall be made up of members who are "net recipients", that is, States which have, during the preceding four years, received more from the Fund than they contributed to it;

(d) In choosing members of the Board in the categories of net recipients and net contributors, due regard shall be given to an equitable distribution of States within different ranges of income.

2. Member States of the Board of Governors shall be elected to six-year terms with one third being chosen each two years. However, the member States represented on the initial Board of Governors shall be designated in an annex to the present Convention. That annex shall also indicate which members of the initial Board shall have two-year, four-year, and six-year terms.

3. Members of the Board of Governors shall be eligible for re-election, but due regard shall be paid to the desirability of rotating seats.

4. The Board of Governors shall function at the seat of the Authority and shall meet twice a year or as often as required for the efficient performance of its duties.

5. Each member of the Board shall have one vote. All deliberations on questions of substance shall be decided by a two-thirds vote of those present and voting, provided that the affirmative vote includes a majority of the members participating in that session and provided also that the majority of the Board includes, to pass, majorities within each of the three categories in paragraph 1 above.

6. When the issue arises as to whether a question is one of substance or procedure, the question shall be treated as one of substance unless otherwise decided by the majority of the Board, required to decide questions of substance. Decisions on matters of procedure shall be decided by a majority of the members present and voting.

Article 301. Powers and functions of the Board and the Assembly

1. The Board of Governors shall be the executive organ of the Fund and shall act in conformity with this Part of the present Convention, including those provisions indicating that certain actions shall require the concurrence of the Assembly. Where such concurrence is required, the Board shall ordinarily take the initiative in proposing a course of action, after which the Assembly will decide whether it approves or disapproves such action.

2. Among the powers of the Board shall be the following:

(a) To propose the annual plan for the disbursement of revenues;

(b) To ensure that the annual plan, when adopted, is properly carried out;

(c) To carry out appropriate research in order to determine, in the light of criteria established in this Part of the Convention, the yearly contributions which each member State shall be required to make to the Fund;

(d) To notify each member State of its required contribution;

(e) To receive and hold revenues until disbursed in accordance with the present Convention;

(f) To request and examine reports from member States and international organizations and agencies as to how disbursements from the Fund were spent;

(g) To make an annual report to the Assembly on the work of the Board;

(h) To propose to the Assembly for its approval one or more candidates for the position of Administrator of the Fund;

(i) To oversee the work of the Secretariat;

(j) To propose to the Assembly, for its approval, an annual budget.

(k) To develop co-operative relationships with all relevant international organizations;

(l) To propose to the Assembly, for its approval, suspension of the right of a member State to receive disbursements from the Fund for gross and persistent violation of the obligations undertaken under this Part of the Convention.

3. In addition to the powers indicated in paragraph 2 above, the Assembly shall have the power to make recommendations on any matter within the scope of this Part of the Convention.

Article 302. The Secretariat

1. The Secretariat shall consist of an Administrator and such staff as the Board and the Assembly shall authorize. The Administrator shall be appointed by the Assembly upon the recommendation of the Board. He shall be the chief administrative officer of the Fund.

2. The staff, which shall be kept to a minimum, shall be appointed by the Administrator in accordance with regulations made by the Board and the Assembly. While the paramount consideration in choosing the staff shall be excellence, due regard shall be paid to the importance of recruiting staff on as wide a geographical basis as possible. The Administrator and the staff shall not seek or receive instructions from any Government or from any other source external to the Fund.

SECTION 3. INCOME OF THE FUND

Article 303. Sources of revenue

1. The sources of the Common Heritage Fund's revenues shall be:

(a) The revenues earmarked by the International Sea-Bed Authority for distribution by the Fund;

(b) The revenues due to the Fund from the exclusive economic zones of member States, according to the schedule which is outlined in this section of the Convention;

(c) The revenues due to the Fund from those portions of the continental margins beyond the exclusive economic zones of member States, according to the schedule which is outlined in this section of the Convention.

Article 304. Revenues from the exclusive economic zone

1. The Common Heritage Fund shall receive a share of the net revenues from the mineral exploitation of the sea-bed and subsoil of the exclusive economic zone according to the schedule outlined in this article.

2. Net revenues shall be defined as the difference between the cost of bringing the minerals to the surface and their selling price. The term "cost" shall include operating costs and amortization costs but not national royalties and taxes.

Alternative A

3. Each State shall contribute not less than 1 per cent and not more than 20 percent of the indicated net revenues to the Common Heritage Fund. The percentage required of it will be in approximate proportion to the income *per capita* of the State in question. In the first five years of the Fund's operation, the base figure for determining the percentage contribution required of a State shall be 300 dollars, that is, the particular State's contribution obligation will be 1 per cent of its net revenues for each 300 dollars of income *per capita* or major fraction thereof up to a maximum contribution of 20 per cent. After the first five years, a comparable base figure shall be determined by the Board and Assembly, taking into account changes in the value of currency.

4. However, during the first five years after the present Convention enters into force the contributions of States shall be one half of the above figures.

5. During the first 20 years after the present Convention enters into force, the Board and the Assembly may, by joint action, for reasons of hardship, reduce the required contributions of individual States by an additional one half or some fraction thereof.

Alternative B

3. The contribution rate on net revenues shall vary according to:

(a) Whether production is ongoing at the time the present Convention enters into force;

(b) Whether a lease for exploitation has been signed even though production has not started;

(c) Whether the resources were undiscovered at the time the Convention enters into force.

In the first case, the rate is 1 per cent; in the second, 10 per cent; in the third, 20 per cent.

4. The contribution rate on net revenues shall also vary according to the gross national product *per capita* of the State in whose economic zone the mineral resources occur. For purposes of computation, all States will be ranked every five years according to gross national product *per capita*. The classes of States for purposes of this section shall begin with the lowest tenth of all States according to gross national product *per capita*, followed by the second lowest tenth, etc.

The following table will indicate the percentage of its net revenues which each of the classifications of States shall contribute from each of the classifications of resources:

Classification of States by <i>per capita</i> gross national product	Percentage of net revenue to be contributed to the Fund from:		
	Ongoing production	Areas under lease but not yet in production	Deposits undiscovered at time Convention enters into force
Lowest tenth.....	.01	1.0	2.0
2nd tenth.....	.02	2.0	4.0
3rd tenth.....	.03	3.0	6.0
4th tenth.....	.04	4.0	8.0
5th tenth.....	.05	5.0	10.0
6th tenth.....	.06	6.0	12.0
7th tenth.....	.07	7.0	14.0
8th tenth.....	.08	8.0	16.0
9th tenth.....	.09	9.0	18.0
Upper tenth.....	.10	10.0	20.0

* * *

Article 305. Revenues from the portion of the continental margin beyond the exclusive economic zone

1. The Common Heritage Fund shall receive a share of the net revenues from the mineral exploitation of the sea-bed and subsoil of the portion of the continental margin beyond the exclusive economic zone, except that contribution shall be 50 per cent larger than according to the same principles and schedules for the exclusive economic zone.

SECTION 4. DISTRIBUTION OF REVENUES FROM THE FUND

Article 306. Schedule of distribution

1. Until the year 2020 at least 70 per cent of the revenues appropriated by the Fund must be used for development, whether in direct grants to States or through appropriate international agencies.

2. The percentage of development funds received by individual States, whether directly or indirectly, shall be set by the Board and the Assembly, acting jointly, according to the following criteria:

(a) States with the lowest *per capita* income would get the largest amounts *per capita*;

(b) In any one year no State shall receive more than 15 per cent of the revenues distributed by the Fund for development purposes;

(c) Forty per cent of the annual appropriation for development will go to States whose population falls within the lowest tenth in terms of income *per capita*;

(d) Thirty-two per cent of the annual appropriation for development will go to States whose population falls within the second lowest tenth in terms of income *per capita*;

(e) Sixteen per cent of the annual appropriation for development will go to States whose population falls within the third lowest tenth in terms of income *per capita*;

(f) Eight per cent of the annual appropriation for development will go to States whose population falls within the fourth lowest tenth in terms of income *per capita*;

(g) Four per cent of the annual appropriation for development will go to States whose population falls within the fifth lowest tenth in terms of income *per capita*;

(h) Until the year 2020 as much as but no more than 30 per cent of the annual distribution may be used for: protecting the marine environment; assisting the transfer of technology to developing countries; assistance to the United Nations and its specialized agencies for peacekeeping and other programmes.

SECTION 5. CHANGES IN SCHEDULES

Article 307. Changes in schedules for contributions and disbursement as well as in the basis of representation on the Board of Governors and in voting procedures on that Board

Changes in schedule for contributions and disbursement as well as in the basis of representation on the Board of Governors and in voting procedures on that Board shall require the concurrence of five sixths of the members of the Board and three quarters of the members of the Assembly. However, in the year 2000 and every twentieth year thereafter, such changes will require only a three-quarters vote of the Board and a two-thirds vote of the Assembly.

DOCUMENT A/CONF.62/66

Note verbale dated 11 May 1978 from the delegation of Yugoslavia

[Original: English]
[11 May 1978]

The candidature of Yugoslavia for the seat of the future Law of the Sea Tribunal was first officially announced by the note verbale, dated 29 August 1977, which the Permanent Mission of Yugoslavia to the United Nations sent to the Secretary-General at the end of the sixth session of the Third United Nations Conference on the Law of the Sea and which was issued as an official document of the Conference.⁴

The note stressed, in brief, the long maritime tradition of Yugoslavia, especially in areas of shipping and fishing, and its convenient geographic location which ensures excellent communications and makes it an ideal host country for the seat of an international forum, such as the Law of the Sea Tribunal. It recalled, further, that the Yugoslav Government had always, during the deliberations at the Conference, supported the establishment of the Tribunal, as well as the fact that, for the time being, despite its longstanding active interest in the United Nations, no international body from the United Nations system has its seat in Yugoslavia.

⁴*Ibid.*, vol. VII (United Nations publication, Sales No. E.78.V.3), document A/CONF.62/58.

It will also be recalled that the note indicated that the Yugoslav Government will, in due time, supply information on the precise location offered for the seat of the Tribunal. The Yugoslav delegation would now like to inform that a city has been selected, whose excellent facilities would be at the disposal of the Tribunal. It is the city of Split, the largest Yugoslav city on the Adriatic Coast, a well-known port, a strong shipbuilding centre and one of the most ancient cultural centres of Yugoslavia. It is also the seat of various domestic courts, the university centre with the Oceanographic Institute and the Hydrographic Institute, and the city is, as a whole, one of the main tourist attractions on the Adriatic Coast.

It is perhaps worth mentioning also that Split was selected to be the host city for the Mediterranean Games that will take place in 1979, through which it will certainly attain considerable publicity.

The Delegation of Yugoslavia has prepared documentation which offers additional information necessary and which will be submitted for the consideration of all delegations.

DOCUMENT A/CONF.62/L.19/ADD.1

Interested non-governmental organizations invited in accordance with paragraph 9 of General Assembly resolution 3029 A (XXVII) and paragraph 8 of General Assembly resolution 3067 (XXVIII)

[Original: English]
[14 April 1978]

At its 91st meeting, on 13 April 1978, the Conference approved the inclusion of the following in the list of interested non-governmental organizations having consultative status with the Economic and Social Council and the extension of invitations to them in accordance with the above-mentioned General Assembly resolutions and in conformity with rule 66 of the rules of procedure.

CATEGORY II

Arab Lawyers Union
International Co-operation for Socio-Economic Development
World Young Women's Christian Association