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Contribution of the deep seabed mining legal regime to space resource activities

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Introduction

- Relevance of the analogy between Law of the Sea, law of Outer Space and Antarctica
- Historical background of the establishment of a Seabed international regime.

Relevance of the analogy

The High Sea and its Seabed and Outer Space have fundamentally the same legal status: They are not under the territorial jurisdiction of any State.

This analogy is quite interesting because despite what I hear from some space lawyers the Seabed regulation mechanism under the International Seabed Authority works rather well and may be an example for exploration and exploitation of mineral resources in Outer space

A successful endeavour

168 States parties

Observers

- 30 non member States
- IGO
- NGO

29 fifteen years plans for exploration

22 different countries

1,3 million SQ/Km of the seabed

17 for Polymetallic nodules

7 Polymetallic Sulphides

5 Cobalt rich crusts

Adoption of a “mining code” in the making

Every decision adopted by consensus

This reasoning by analogy should of course be done with consideration to the similarity of the situation.

Mineral resources are mineral resources in the Seabed as in Outer Space.

The comparison with the legal status of fishes is of course irrelevant.

- Fishes reproduce but it is not the case of mineral resources.
- Special provisions for mineral resources exist in the law of the sea

History of the establishment of an international regime

The discovery of the resources

Jules Verne 1869

HMS Challenger 1870

Claim of a special regime for common resources: Common Heritage of Mankind (declaration of Ambassador Pardo 1st November 1967)

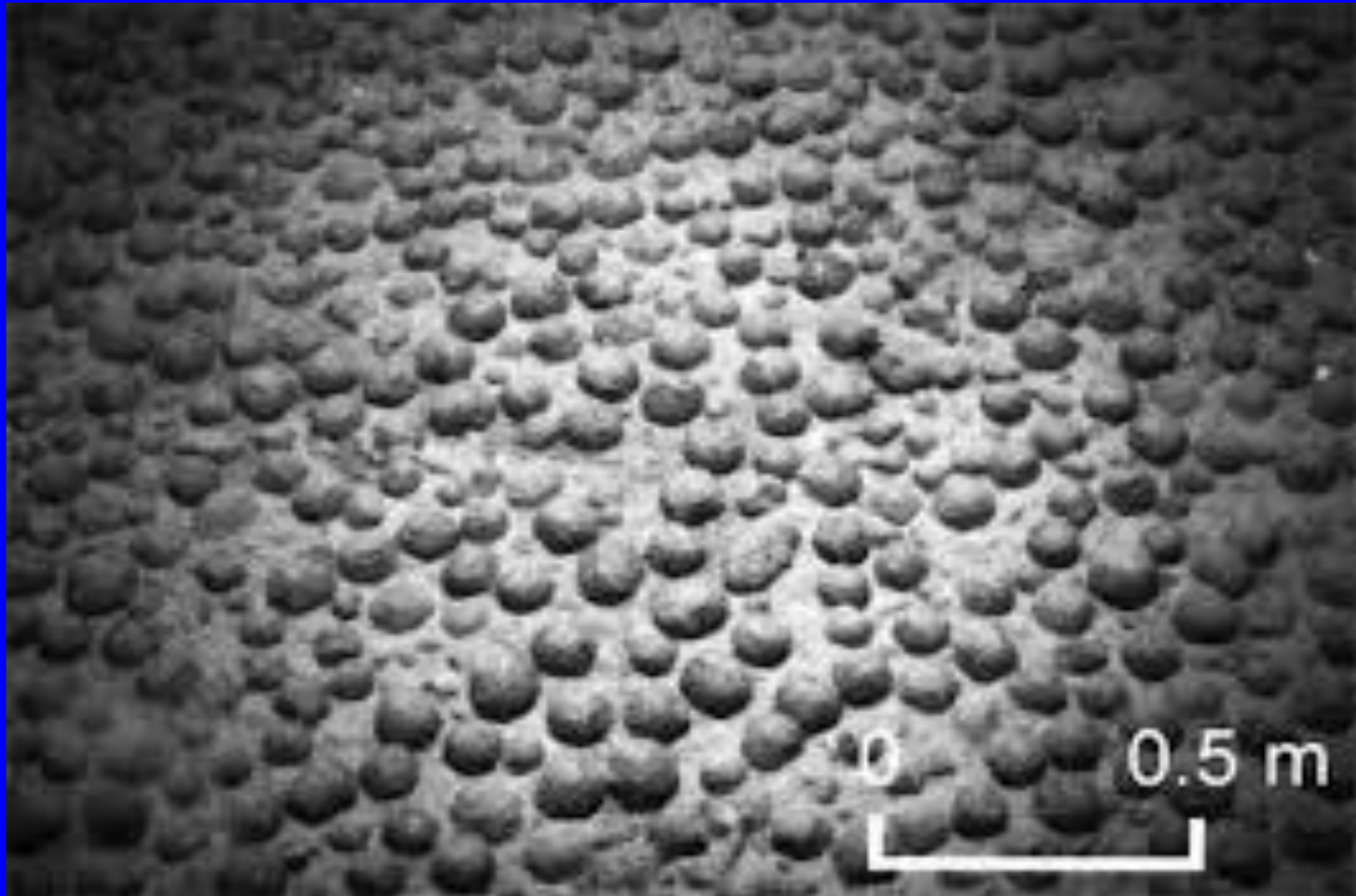
The third Conference on the law of the Sea 1970-1982

The Montego Bay convention 1982

The New York agreement 1994

Polymetallic nodules

The first discovered on the profound seabed



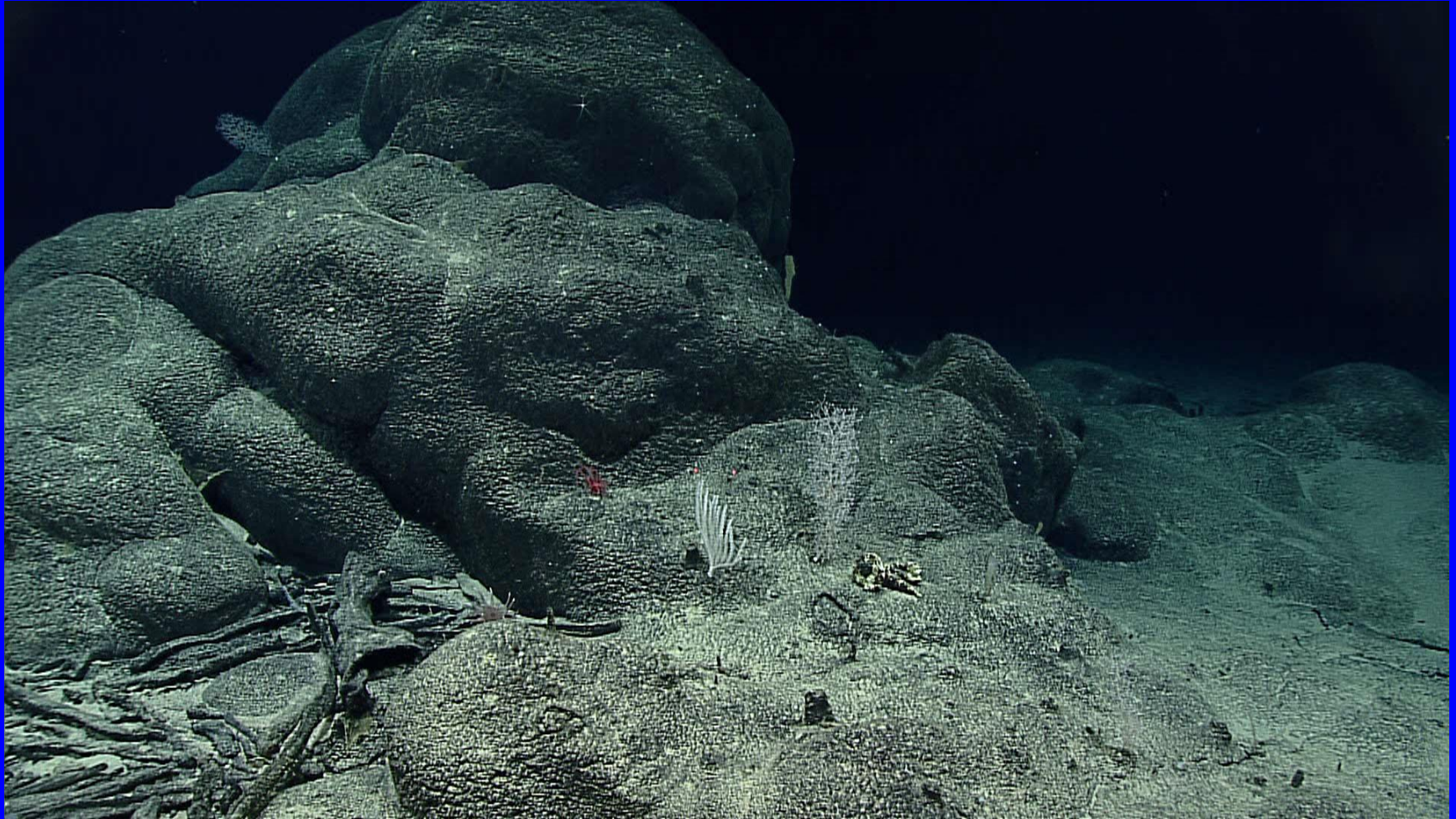
Polymetallic Sulphides

Connected with the mid ocean riffs



Ferromanganese Crust

<400 to about > 5000 meters in areas of significant volcanic activity



Part 1

The International Seabed Authority

The Assembly

The Council

The Finance Committee

The Legal and Technical Commission

(The Enterprise)

The Assembly

168 member States

“Supreme Organ of the Authority”

Vote: in principle consensus

If not 2/3 for substantive questions

1/2 for procedure

one State one vote

In practice : always consensus

The Council

- **36 members elected by the Assembly**
 - 4 Consumers/ importers
 - 4 among 8 States having the largest investments directly or by their nationals
 - 4 among States parties exporters of the minerals (including 2 developing States)
 - 6 Developing States representing special interests
 - 18 according to geographical distribution (at least 1 per region)
- **2 chambers**

The council (2)

**The executive organ of the Authority
In charge of the major decisions**

Decision making :

- Consensus
- or if not : $2/3$ majority
- Including $1/2$ of each Chamber

The finance Committee

15 members elected by the Assembly for 5 years according to their capacity

- Their role is important
- They should have no financial interest in any activity related to seabed mining
- Their advice is needed for every financial issues including the obligations of member States and the future sharing of the benefits of the activity.

The Legal and Technical Commission

A subsidiary body of the Council

30 members appointed by the council for 5 years

- Review of applications for plans of work
- Supervision of exploration or mining activities,
- Assessment of the environmental impact of the activities
- Advice to the International Seabed Authority's Assembly and Council

(The Enterprise)

An important element of the mechanism created by the Montego bay Convention (article 158)
Annexe IV of the LOS convention

1994 Agreement:

The Secretariat of the Authority shall perform the functions of the Enterprise

The Enterprise shall conduct its initial deep seabed mining operations through joint ventures.

During the last meeting of the Assembly some States supported the activation of the Enterprise but some others were more reluctant.

II Part Issues to be considered

- Use for the benefit of all countries
- Protection of the interests of investors
- Protection of the environment
- Protection of the interest of land based mining activities

- Use for the benefit of all countries
- A major principle
 - Responsibility of the sponsoring States in case of activities conducted by private entities
 - The necessity to protect the interest of developing countries
 - The necessity to protect the interests of future generations
 - Sharing the financial benefit of the activity

- Protection of the interests of investors
 - The point is always considered as important
 - Constant consideration of a balance between the interests of Mankind and of the investors
 - The main advantage : the guaranty of legal exclusivity of the contractor
 - Legality of its possession and commercialisation of the minerals

- Protection of the environment
- It is of course a major issue because mining activities may have an important detrimental effect on the environment of the Ocean.
- Environmental impact assessment before the contract
- Control of the effects of the activity.

- Protection of the interest of land based mining activities
- This point was a major concern during the discussions in the UN drafting Conference.
- The creation of financial fund was envisaged;
- Since the 1994 agreement it is no more the case
- Nevertheless, the council must consider this issue when authorising new mining contracts and have a look to the situation of the market of these minerals.

Settlement of dispute mechanism

The LOS convention creates a special chamber of the Law of the Sea tribunal to deal with the issues related to deep seabed activities

Advisory opinions may be asked by the Authority

Evolution of the mechanism

After exploration we are at the eve of exploitation.

I hope and I am very confident that the good relationship which has been the rule for the work of the International Seabed Authority will go one and open the way to an activity which will really be conducted for the benefit of all countries and respectful of the environment

Conclusion.

My conclusion will be very simple:

“The exploration and use of outer space, including the Moon and other celestial bodies, shall be carried out for the benefit and in the interests of all countries, irrespective of their degree of economic or scientific development, and shall be the province of all mankind.”

Thank you for your attention

