



**Statement by**

**The Pacific Parliamentarians' Alliance on Deep Sea Mining**

**At the**

**United Nations Oceans Conference, 27<sup>th</sup> June – 1<sup>st</sup> July, 2022**

At the United Nations Ocean Conference (UNOC) 2022, global attention is drawn once again to our ocean, and more specifically to humankind's ongoing efforts to govern this 'global commons'. This conceptualisation of ocean spaces, more generally referred to as the '*common heritage of mankind*', was thrust into deliberations of the 22<sup>nd</sup> session of the United Nations General Assembly (UNGA) in 1967 via a submission by the representative of Malta, Ambassador Arvid Pardo.

Ambassador Pardo (Pardo 1.0) highlighted "the necessity of establishing a new international regime for the management of the ocean resources of our planet that was to challenge the very foundations of economic thinking and international law." The 'common heritage of mankind' principle, although not defined in the Convention, is widely credited as a watershed development in the evolution of international law to rectify the unequal distribution of global wealth between developed and developing nations.

We are once again at a crossroads similar to that confronted by Malta and other developing states in the 1960s-70s, demanding fundamental changes to the international political, economic and legal order. Whilst the intent of the 'common heritage of mankind' principle underlying UNCLOS remains relevant, drastic changes in the context of its application now demand a broader interpretation (Pardo 2.0). Maintaining the status quo now would not only perpetuate the unfinished business of redressing the legacies of the imperialist economic order, but also poses existential risks on a planetary scale.

Ambassador Pardo's introduction of the CHMP at the UNGA in 1967 must be viewed in relation to the most pressing issues of that time: decolonization and hostile international relations between developed and developing states with the formation of the Organisation of Petroleum Exporting Countries (OPEC) in 1960, the nationalization of other resource industries by newly independent states, and the emergence of the demand by developing states for a New International Economic Order (NIEO) from 1964. The recovery by newly

independent states of ownership and control of national resource industries from multinational corporations that had long profited from the extraction of natural resources appropriated under colonial regimes was especially significant.

The intentionality of Pardo's intervention in trying to prevent a resource grab over ocean resources by developed states and their corporations is clear. He was, after all, the envoy of the newly independent and developing small island state of Malta. His submission (which we are coining as Pardo 1.0) promoted the idea that "the seabed and the ocean floor are the common heritage of mankind and should be used and exploited for peaceful purposes and for the exclusive benefit of mankind as a whole."

Accordingly, a new regime for oceans governance, especially access to deep seabed mineral resources, would prevent competitive appropriation of the deep ocean floor beyond national jurisdiction for national interest, give special consideration for the needs of developing countries, particularly the Small Island Developing States (SIDS); and the use of the seabed and its resources for peaceful purposes.

Properly applied, the principle would give legal impetus to the responsibility of the international community, embodied in the UN, to help rectify the imperialist system still dominating internationalism through continuing inequality and exploitative economic relations. Without it, the world's ocean sea floors would be at risk of being competitively appropriated and exploited for military and national purposes to an extent that would, not only repeat but potentially dwarf the scale and impacts of the colonial scramble for territories in preceding centuries.

As a means to remediating the cumulative effects of colonial injustice discussed above, the application of the CHMP remains unfinished business. Ironically, the International Seabed Authority (ISA), which was established under UNCLOS as the governing body with jurisdiction over the international seabed in the high seas area is overseeing and facilitating a corporate-led resource grab through the fiction of developing states benefiting, including by sponsoring and partnering with mining companies based in the global North.

Furthermore, in an effort to appease developed states and ensure universal buy-in to UNCLOS, the 'Agreement relating to Part XI of UNCLOS' (Implementing Agreement to Part IX) was agreed to in 1994. This compromise effected changes to the Convention, such as that to the governance system of the ISA, that has allowed market-oriented principles and the interest of individual, particularly developed, states to override and dominate the common heritage of mankind. Clearly, the interpretation and application needs to be corrected if the CHMP is to meet its initial objectives (Pardo 2.0).

Furthermore, the initial interpretation of the CHMP is also faulted for appearing to favour, even promote, a) a human-centered approach to the ocean as a global commons; and b) national interests over and above a more holistic conceptualization of the 'common heritage' and 'common responsibility' as inter-national and inter-generational.

The reinterpretation must not, therefore, be constrained within predominantly economic parameters. In the present-day context of planetary crises dominated by the climate emergency, biodiversity loss and mass extinction, COVID19 pandemic recovery, and economic devastation, the abovementioned flaws are compounded manifold. Climate change has showed us that the contemporary understanding of 'beneficiaries' is, for instance, not limited to the human species but includes the entire ecology of living and non-living things, all of which must function together in balance, or risk global catastrophe.

Unfortunately, the health of our oceans is already under unprecedented threat from a multitude of human induced stressors such as overfishing, pollution, plastics, nuclear waste and radioactive material, and biodiversity loss. Climate change and its impacts of ocean warming, acidification and sea-level rise are now recognized as closely interconnected crises on a planetary scale. The potential release of sequestered methane and carbon on the ocean floor due to DSM activities, and potential undermining of the oceans' climate regulation functions are particularly concerning. It is no longer sufficient to merely meet current emission reduction targets; it is also now critical to remove carbon already in the atmosphere.

Even with the porosity of scientific investigations of deep ocean ecologies and ocean systems so far, the current scientific consensus about the serious risks of rushing to commence DSM is well established. Scientists increasingly warn of the serious risk of accumulated and trans-boundary harms such as devastating and irreversible biodiversity loss through damage to ecosystems and habitats; attendant risks to our already threatened fisheries; toxins entering our food chain via contaminated fisheries; and potentially devastating oil and toxic spills from vessels.

The latest warning of note was issued by the United Nations Environmental Programme (UNEP) in early June 2022, which states "there is no foreseeable way in which the financing of deep-sea mining activities can be viewed as consistent with the Sustainable Blue Economy Finance Principles." UNEP joins a substantial and growing number of prominent voices, such as the IUCN, European Parliament, and Microsoft, supporting either a moratorium or total ban on DSM until associated risks are more clearly understood.

Aside from a broad base of civil society organisations and grassroots movements in the Pacific, a number of Pacific island states have already taken measures including a ban or a moratorium on DSM within their national jurisdictions. They are the Federated States of Micronesia, Fiji, Papua New Guinea and Vanuatu. This year, Tuvalu joined the ranks of Pacific SIDS on DSM. In March, it rescinded its DSM sponsorship application, becoming the first ISA member state to reverse an earlier intention to participate in DSM in the Area.

Despite widespread opposition, there continues to be a rush by industrial corporations, backed by powerful governments and inter-governmental institutions, foremost among which is the ISA, to commence exploitation. And, all this is predicated on the promise of highly speculative economic returns to Pacific Islands States which are frontline sponsors of the first companies pushing to commence mining as early as 2023. In a cash-strapped post-pandemic world facing a climate emergency, the promise of wealth for small island states from seabed extraction is opportunistic, and the argument that DSM is necessary for a global green-blue transition spurious.

In June 2021, Section 1 of the (1994) Agreement relating to the Implementation of Part XI of UNCLOS was triggered by the Republic of Nauru, which requested that the ISA Council complete the adoption of mining rules, regulations and procedures and agree on benefit sharing to enable the approval in June 2023 of full-scale mining by the company it has sponsored. This now sets a ticking clock to fast-track the commencement of deep-sea mineral exploitation as early as July 2023, with or without internationally adopted legislation and regulations. Sadly, this is the legacy of a diluted interpretation of the CHMP – an oceans governance regime that favors DSM, supposedly in deference to the preferential consideration of developing state interests, but fail to give due consideration to the realities of today.

Clearly, a review of the regime currently governing the seabed and seabed minerals is urgent. Such a review would provide the opportunity to re-interpret the CHMP in the context of planetary crises of the mid-20<sup>th</sup> century.

To ensure consistency or compliance with the current raft of international legal principles and standards, the review must consider key developments in modern law, such as the Precautionary Principle, which calls on states to err on the side of caution in the absence of conclusive scientific evidence of consequent harm to human health or the environment, and application of Free Prior and Informed Consent (FPIC), derived from an indigenous rights legal framework which recognizes indigenous peoples as vulnerable members of society and thus accords them special rights, based on indigenous peoples' right to determine for themselves their own development. FPIC provides the requisite space for consulting other knowledge forms such as indigenous knowledges that value ecosystem-wide and inter-generational stewardship perspectives.

Pacific indigenous knowledge perspectives could, for instance, contribute to the review of oceans governance its conceptions of 'community', 'oneness and interconnectedness', 'sufficiency'. These and other such culture-based community values and principles would provide important and timely alternative approaches to reimagining the CHMP.

It would also examine specifically mounting concerns of the ISA as a regulatory body and its conflicting mandates, about corporate-capture of its Secretariat, of the composition, power and non-transparency of its Legal and Technical Commission, and its facilitation of an effective resource grab by private mining companies based in the global North.

Whilst we pursue a global moratorium on DSM, we also continue to seek solidarity within the Pacific and with partners in the global South, including those that are considering DSM as a development option. As evidenced with climate change, Covid19 pandemic, and in the wake of the Russia-Ukraine war, 'local' events and decisions, whether they be at the centers of the developed world or in the so-called 'periphery', can easily have extreme impacts afar-off. In today's global community, development choices such as DSM, although pursued by sovereign states within 'local' jurisdictions, similarly run the risk of inflicting harmful impacts on a regional and even global scale. Moreover, such potential impacts do not merely implicate humankind but indeed the environment, including oceans and crucial ocean systems that transcend human spatial boundaries and time scales.

We therefore call on governments and intergovernmental organisations, non-state actors and global community at large to make and/or support the following commitments for new and ambitious oceans action:

- a) in regard to a global moratorium on deep sea mining
    - i. support the call for an immediate global moratorium on deep sea mining;
    - ii. in support of the submission by the Republic of Chile to the 32<sup>nd</sup> session of the Meeting of the State Parties to UNCLOS, agree that such a moratorium should not be less than 15 years;
  
  - b) recognising the current lack of scientific knowledge and limited understanding of the potential impacts of DSM
    - i. call for new scientific research to understand the impacts of DSM on the world's largest and most stable carbon and methane sink;
    - ii. call for new scientific research to understand the impacts of DSM on fisheries and fishing grounds;
  
  - c) considering the weaknesses in the existing regime governing oceans and the need for a reinterpretation of the common heritage of mankind
    - i. call for a second level of due diligence on human rights, and in particular rights of indigenous peoples and rights of nature;
    - ii. call on all parties to support an evidence-based approach to oceans governance policy making, in concordance with the principle of Free, Prior and Informed Consent and the precautionary principle;
    - iii. call for appropriate reforms to the ISA that would strengthen transparency, ensure accountability and due diligence in its operations in response to widespread concerns about the lack thereof;
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