EQUITABLE BENEFIT-SHARING UNDER UNCLOS | Michael W. Lodge

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STATUS OF DEEP SEA MINERAL RESOURCES AS THE COMMON HERITAGE OF MANKIND MEANS THEY MUST BE EXPLOITED FOR THE BENEFIT OF MANKIND AS A WHOLE
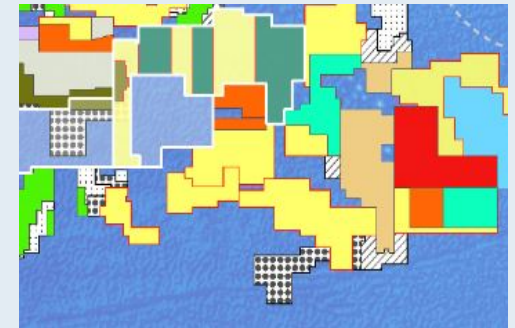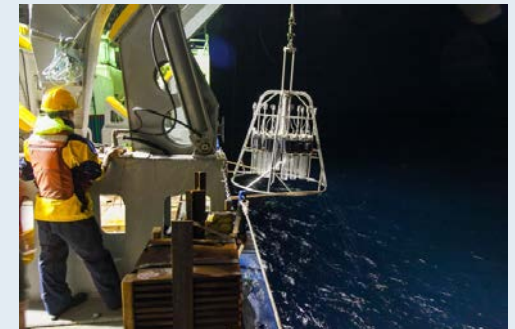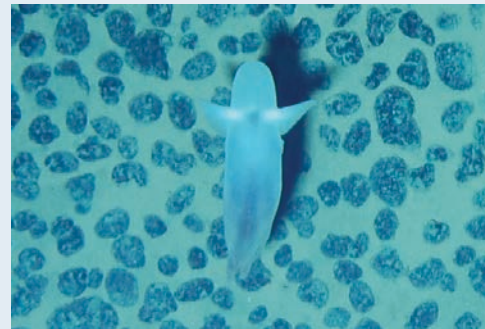
What is a benefit?

What is 'mankind as a whole'?

What is 'equitable sharing'?

Monetary and Non-Monetary Benefits

Forms of non-monetary benefits recognized in Part XI

1. **Training**
2. **Capacity-building**
3. **Environmental protection**
4. **Increased scientific knowledge**
5. **Expansion of world mineral resources**
6. **Preferential access rights for developing countries**

Monetary Benefits

(1) Equitable sharing of **benefits** from activities in the Area – Article 140(2)

(2) Equitable sharing of **payments and contributions** from continental shelf - Article 82(4)

- ❖ **Funds received under Article 140 and 82(4) must be kept separate**
- ❖ **Classes of beneficiaries under each article may be different**
- ❖ **Under Article 82(4), ISA is to serve as a conduit for transmissions of payments and contribution in kind to State Parties**

Monetary Benefits (Art. 140)

Revenue stream from DSM payment mechanism

1. **ISA Administrative expenses**
2. **Prior contributions of members**
3. **Economic Assistance Fund (Art. 151(10))**
4. **Funds allocated to the Enterprise**
5. **Seabed Sustainability Fund**

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MANKIND AS A WHOLE

Article 140.

Activities in the Area shall be carried for the benefit of mankind as a whole irrespective of geographic location of states, whether coastal or landlocked, and taking into particular consideration interests and needs of developing states and peoples who have not attained full independence or self-governing status [as recognized by the UN]

What is a developing State?

What interests and needs should be taken into consideration?

Which non-independent and non-self-governing peoples?

The Authority shall provide for the equitable sharing of financial .. benefits through any appropriate mechanism on a non-discriminatory basis ...

What is equity?

Formula for equitable benefit-sharing

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1. **Share of population**
2. **GDP/GNI (corrected for PPP)**
3. **Human Development Index**
4. **Low, Medium, High (World Bank)**
5. **Redistributive goals (Bentham/Rawls)**

Article 140 Equitable Share

$$S_i = \frac{\left[\frac{\overline{GNI}}{GNI_i}\right]^{\eta=1} * P_i}{\sum_{i=1}^{N}\left[\frac{\overline{GNI}}{GNI_i}\right]^{\eta=1} * P_i}$$

- $\eta > 1$ distribution more progressive
- $\eta < 1$ distribution less progressive

Direct or indirect distribution?

SPECIAL PROBLEM OF ARTICLE 82(4)

Equitable sharing criteria to be developed must take into account the **interests and needs** of developing States, but particularly 'the **least developed and land-locked** among them'.

Remedial effect is **socio-economic** and **geographic**.

Can apply different social distribution weight to favour specified countries (but others will lose out)

$$S_i = \frac{\left[\frac{\overline{GNI}}{GNI_i}\right]^{\eta} * P_i * \boxed{C_i}}{\sum_{i=1}^{N} \left[\frac{\overline{GNI}}{GNI_i}\right]^{\eta} * P_i * \boxed{C_i}}$$

Least Developed Countries

N=37

Least Developed Countries
N=27

Angola
Bangladesh
Benin
Comoros
DR Congo
Djibouti
Gambia
Guinea
Guinea-Bissau
Haiti

Kiribati
Madagascar
Mauritania
Mozambique
Myanmar
Sao Tome &
Principe
Senegal
Sierra Leone
Solomon Islands
Somalia
Sudan

Timor Leste
Togo
Tuvalu
United Republic
of Tanzania
Vanuatu
Yemen

Developing Landlocked and Least Developed
N=10

Burkina Faso
Chad
Lao PDR
Lesotho
Malawi
Mali
Nepal
Niger
Uganda
Zambia

Developing Landlocked Countries
N=10

Armenia
Azerbaijan
Bolivia
Botswana
Mongolia
Paraguay
Eswatini
The Former Yugoslav
Republic of
Macedonia
Zimbabwe

PROCESS

Equitable benefit-sharing rules must be approved by ISA Assembly on recommendation of Council.

But Council and Assembly must take into account recommendations of Finance Committee.

Study considered by Finance Committee in 2019.

To be continued ….

THANK YOU!