

A Reply to "Deepsea's Adventures: Grotius Revisited"[†]

I find myself in disagreement with the conclusions of Mr. Biggs' article and I wish to address some thoughts on two points raised in it: (1) the attitude of developing nations in the law of the sea negotiations, and (2) the apparent change of U.S. Government position on the seabed mining issue.

I. Developing Nations' Attitude in the LOS Negotiations

In his now famous article, "The United States in Opposition," Ambassador Moynihan points out quite lucidly the origins of the anti-development and anti-American bias of the vast majority of developing nations. He notes further their preoccupation with wealth redistribution as opposed to wealth creation. Although he did not specifically apply his thesis to the law of the sea negotiations, it is very much on point.

What Deepsea Ventures, Inc. has done by its claim and by its anticipated program of development is to *create* wealth. Wealth can only be created in a climate of intellectual and capital freedom with minimal restraint from government and bureaucracy. The amazing growth and development of Western industrial civilization is ample proof of this statement.

The position of the developing countries in the law of the sea negotiations has been one of opposition to development of deep seabed minerals or, in lieu thereof, in favor of establishing complete *control* over such activities. Control may be effective for the policy of redistribution of wealth, but it is inimical to creation of wealth. Thus, the fundamental difference in philosophy between the developed and developing countries turns on their perceptions of how we ought to go about dealing with the resources of this planet.

As has been amply pointed out in the law of the sea debates, developing countries tend to be adversely affected far more than developed countries by

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increases in the prices of raw materials. Since the development of a new source of minerals could provide a stabilizing influence against cartelized price rises for the commodities contained in manganese nodules, it would seem economically logical for the developing countries to support the activities of Deepsea Ventures, not to oppose them. That they have not done so seems incredible, yet the same approach was manifested in the developing nations' support of the OPEC oil price rise, which action hurt them far more seriously than it did the United States. Some possible reasons for this attitude were alluded to in an excellent article entitled "Seizing Arab Oil" which appeared in the March, 1975, issue of *Harper's Magazine*. It was suggested there that the non-representative character of most developing nations' governments to prefer to witness some slight discomfort on the part of the United States rather than to alleviate starvation and oppression in their own countries.

What the developing countries must (but apparently do not) realize is that their efforts in the law of the sea negotiations will not and cannot be permitted to impede those measures of freedom in the seas necessary to develop the bounty of the oceans. The technology to mine deep seabed minerals is not so sophisticated that it cannot be developed or acquired by any developing country wishing to participate in mining activities. Likewise, there are nodules of sufficient value in so many areas of the world ocean that the lead taken by mining companies in the industrialized nations need not prohibit later entry by the developing countries.

It is apparent, then, that the developing nations' position on deep seabed mining is ideologically motivated rather than being based on economic or political reason. Just as the United States and the Soviet Union are attempting to pursue more logical courses of economic cooperation, it behooves the developing nations to put aside their ideological attitudes toward wealth and to participate in a rational economic manner in the exploitation, enjoyment and distribution of all possible new sources of raw materials.

II. Change in the United States Government's Position on Seabed Mining

With respect to Biggs' comment about a perceived change in American attitude between its 1970 election to pursue an international regime rather than to take a flag-nation approach, on the one hand, and its 1974 acquiescence in the right of Deepsea Ventures, Inc. to pursue exploitation of deep seabed mineral resources under existing international law, I would first observe that there has in my view been no change in position. United States Government representatives have repeatedly stated in congressional testimony since 1970 that manganese nodules are *res nullius* and that American citizens are as free as the citizens of any other nation to mine them. Our government did not earlier, and has not now in response to the Deepsea Ventures claim, assert that exclusive rights to such resources can be obtained under present international law.

However, it is more important in my opinion to note that (1) in 1970 the United States made an extremely generous offer to share with developing nations the wealth not only of the deep seabed but also of the continental margin and its rich deposits of petroleum and natural gas; (2) the United States executive branch has actively opposed all efforts of Congress since 1970 to enact legislation authorizing the mining of deep seabed minerals by American companies; and (3) the United States Government has, with remarkable restraint, pursued both these policies in the face of foot-dragging tactics on the part of many developing nations and, worse, in face of the OPEC oil price rise and embargo outrages.

Only after four years of patient and good faith negotiations, thwarted at every turn by the insistence of developing nations on ideological positions which do not benefit even their own people, did the United States respond to an actual mining claim by recognizing the legitimate rights of its citizens to do what any other individual or nation in the world has a right to do—*viz.*, to mine resources which, in international law, are recognized as *res nullius*, subject to title vesting in him who first reduces them to his possession. Even at that, the United States Government continues to officially support the Law of the Sea Conference and its representatives have testified before Congress following the unsuccessful Caracas and Geneva sessions that it is in the national interest to do so. Only most reluctantly have government representatives indicated an intention to review earlier objections to domestic seabed mining legislation pending the New York session of the Law of the Sea Conference.

In my view, the developing nations of the world are badly misjudging the character of the American people and the responsiveness of their government to that character. The United States, through an economic and political system which is unmatched by any other in history, has achieved unparalleled levels of individual liberty and material prosperity. The American people are patient and understanding, and their generosity throughout the world has been demonstrated time and time again. But they will not indefinitely appease a group of nations virtually none of which has a representative government, freedom of the press, or any significant measure of individual liberty. They will in the very near future, I predict, use their political and economic structure to develop, under a free economic system, those resources which could be of benefit to all mankind. If the developing nations force the United States and other industrial advanced nations into a selfish distribution of the benefits of ocean resource development, they have only themselves to blame.

