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The sea up for grabs

Pérez Guerrero, father of Opec, speaks out

Sanctions: the Zimbabwe lesson

AFRICA'S WAR OF WORDS

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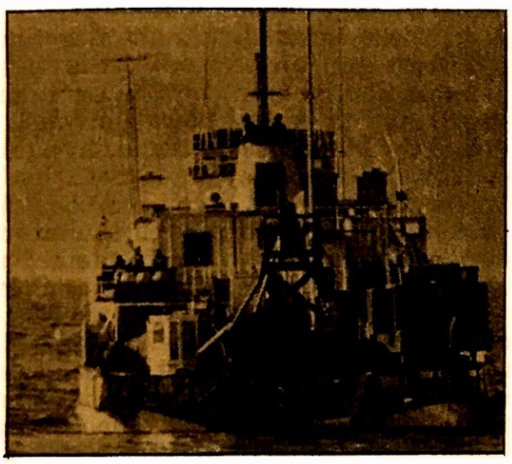

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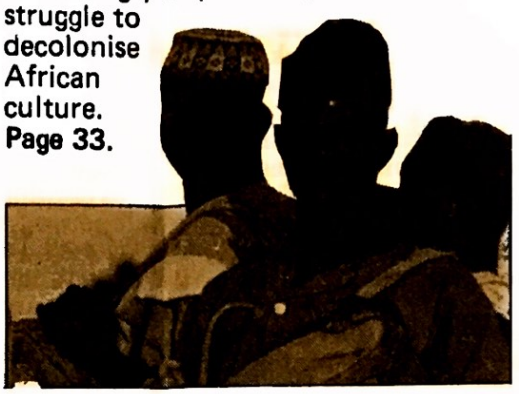

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Uganda: A state of economic chaos prevails in the country once known as "the pearl of Africa". At a time when the flow of foreign aid is slowing to a trickle, Ugandan officials believe that the country needs a "mini Marshall Plan" to boost development and reconstruction after the disastrous reign of Idi Amin. R. Lanser, however, is not without optimism, despite the general gloom. **Page 57.**

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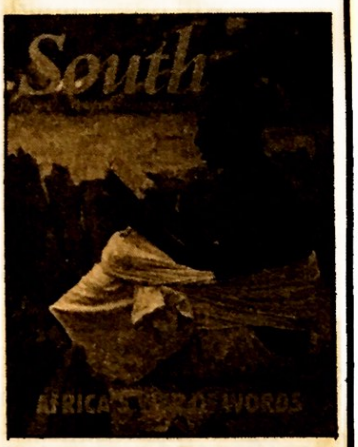

Cover picture: Alan Hutchinson

Who is afraid of sea law?

A Hold-Up

The colonial era is over, kaput. And no amount of post-colonial bluster can spring it back to its rapacious form. The resources of the oceans will not be allowed to be exploited exclusively by a few nations who currently have the technological means to do so. So Tommy Koh of Singapore, (successor to the late Ambassador H. S. Amerasinghe of Sri Lanka as Chairman of the UN law of the sea conference) does not have to admit defeat now or later. The Reagan administration cannot snap its fingers at seven years of work. The final text of the convention awaiting approval is the result of careful and painstaking negotiations among sovereign states, and the US administration (which we hope represents a continuing entity and not a series of isolated four year tenures) cannot turn its back on commitments made by US delegates in an international forum.

Let us get the facts straight. It was the United States which wanted a comprehensive Law of the Sea Treaty in the first place. It was Elliot L. Richardson, chief US delegate, who said if we do not have sea law we will have "jungle law", and added "rarely has any generation had so clear a choice between order and anarchy". There followed solemn negotiations in an international conference which has been in session since December 1973. After detailed examination and discussion a single negotiating text emerged in 1975, a revised text in 1976 and a single informal composite negotiating text in 1977, which was given its first revision in 1979 and its second and third revisions in 1980. The final document, consisting of a preamble, 320 articles and eight annexes, was christened "Draft Convention on the Law of the Sea". Now what was the US administration doing all this time, when responsible US delegates were entering into commitments with other nations — extracting concessions, trading off benefits and making and receiving promises?

Waiting for Ronald Reagan?

The conference is in its tenth and final session to finalise the convention and suddenly the US administration remembers that it should undertake "a thorough review" of the text. This is, at least, bad form, if not bad faith.

Lord Ritchie-Calder said it was a signal to the so-called Like-Minded States to go ahead with "the biggest carve-up since the Conference of Berlin in 1885 divided up Black Africa". A sacked US delegate, John Temple Swing, feared: "The administration may be in for a surprise if they think that by throwing away what has already been accepted, it will get more by taking a hard line". Opening the current session the UN Secretary-General Kurt Waldheim expressed "deep regret" at the US decision to stall the conference, and the Soviet delegate did not miss the opportunity to condemn, with Group of 77, "the actions of the United States aimed at prolonging the work of the conference". But it was an official from a NATO country who hit the target: "By changing horses in mid-stream the new administration in Washington had dealt a very serious blow to the negotiating process". Should every domestic change of government lead to the reopening of agreed positions in international negotiations? Delegates representing a sovereign government act under a mandate and proposals are formulated and response offered on the understanding that negotiating parties are acting and entering into commitments on behalf of their government, not a particular administration. And these commitments do not change every time a particular head of government is replaced. So what? says William Safire, Republican Party ideologue: "Let the rest of the world cluck-cluck at our late-awakening ... and then the astonishing claim. "Like Supreme Court decisions, treaties follow the election results."

With whom and when?

If this were so, with whom should one negotiate and when? During the prolonged crisis over American diplomats held in Iran the United States often complained they did not know who was in power in Iran. And the Iranians countered, probably using William Safire's logic, they could not rely on the word of America's president because it could be disowned by his successor. Delegates in the law of the sea conference now face a similar dilemma. The provisions of the convention were closely examined, every article subjected to a minute scrutiny, and all points of view fully heard at all levels. Why this itch for an exhaustive review? Even the Washington Post on 9 March admitted that "not a single specific defect in the old terms has been identified". The London Times on 10 March found the US decision to withhold final agreement "unnecessary, short-sighted". Why, then, this delay?

The arrogance of power

An article by Richard G. Darman, Vice Chairman of the US delegation to the 1977 Session, published in Foreign Affairs Quarterly (Summer 1978) provides the answer. According to Darman the US no longer needs any law of the sea treaty or convention. Let the conference fail. The United States can impose its will through unilateral action, and no one has the power to resist its will. As simple as that. Nation states, Darman argues, just do not have the power "to close a strait, set a prohibitive fee, impose an unreasonable environmental standard on otherwise limit transit". The conference, he says, was seeking "to establish a system of governance — political,

economic, administrative and judicial — for two thirds of the earth's surface" and an international seabed authority would destroy the present economic system based on free trade, free access and free competition. A dangerous precedent, he declares, with even more dangerous "future potential for cartelisation or political abuse of market power".

The transnationals fight back

With so much "fire-power" why did the United States embroil itself in elaborate international negotiations? The reason is that in the early 60s the US and other maritime powers thought it in their interest to establish the maximum breadth of the territorial sea and to have a regime to govern the passage of ships through the straits. They hoped to get an international agreement to suit their purpose. As the deliberations and investigations proceed, a mass of information on the oceans and their resources became available. Territorial limits were soon determined: territorial sea (12 nautical miles), contiguous zone (24 nautical miles from the shore), exclusive economic zone (200 nautical miles from the shore), continental shelf (350 nautical miles from the shore). Beyond these limits were the oceans' nautical resources, which were recognised as the "common heritage of mankind". The transnationals were thoroughly alarmed by this development. Several US companies together with their partners had invested more than US$200 million to develop ocean mining technology. They wanted a free run of the seas to make their profit. Who were these Third World countries to tell the transnationals how to conduct their business? They would not accept an international code of conduct or an international seabed authorities to supervise and regulate the exploitation of the deep seabed resources.

The US had initiated the conference, it now proceeded to scuttle it with the support of Germany, France, Italy, the UK and Japan. In June 1980 the United States Congress passed an act "to promote the orderly development of hard mineral resources in the deep seabed, pending adoption of an international regime relating thereto and for other purposes". During the hearings before the Senate Foreign Relations Committee the same Elliot Richardson who had earlier identified the choice between order and anarchy now testified that there were clear reasons for the US to act unilaterally to protect the interests of American mining companies. A Copper Corporation director said in his testimony: "the way the treaty is now set up, it results in almost total domination by the Third World of the machinery of the treaty". The G77 in the conference declared: "Any unilateral measures, legislation or agreement restricted to a limited number of states on seabed mining are unlawful and violated well-established and imperative rules of international law". This did not deter the Federal Republic of Germany from following the American lead. Meanwhile, France, Japan and Italy are drafting their bills as the United States Congress passed an act "to promote in the House of Lords.

Third World concessions

The concessions which the US and the "Like-Minded States" have extracted from the developing countries through negotiations in the conference no longer interest them. Nor does it matter that many of these countries agreed to sacrifice their own interests to establish an orderly international arrangement on an equitable basis. Third World countries should have insisted on proper safeguards for the exploitation of the food potential of the high seas, which they did not. They conceded too much in respect of the freedom of navigation, innocent passage and transit passage. More importantly, they yielded to pressure from the industrialised states not to insist on full and effective control on marine scientific research, when everyone knows that research ships are often spy ships in disguise. In respect of the transfer of technology, too, the developing countries agreed to a vague and highly flexible formulation. Third World analysts have pointed out that the treaty will "legitimise and enhance corporate power to the detriment of the Third World sovereignty over the common heritage of mankind" (Economic & Political Weekly, India, 14 February, 1981).

Limits of unilateralism

As in all international negotiations, all parties gain something and lose something. That is the essence of consensus. For the Like-Minded States, now to delay the ratification of the convention, with the object of frustrating the conference is sheer affrontery. Public opinion in Britain recognises this and one hopes that the government will not prepared any further with what Lord Ritchie-Calder calls "a shameless bill". France, Italy and Japan would be well-advised to drop their pretentions of being able to act in defiance of world opinion. Leader-writers in Washington and New York are pressing their government to review its attitude. The Reagan administration's second thoughts, it has been noted, are better than its first thoughts. It is possible that after "a thorough review of the text" the administration may recognise its merits and the conference may still be able to finalise the text for signature next year. The Like-Minded States would then find it easier to give their support to the text, which many of them know to be in their long term interests. Should that happen, the current interruption in the conference would be forgotten and the world will establish an effective organisation to regulate the utilisation of the immense resources of the ocean for the benefit of mankind. Such an organisation would serve as a model for other international institutions.

Should that not happen, then the only course available to the Third World would be to insist that the text be approved and a formal treaty signed next year by as many states as agree to subscribe to it. Neither the United States nor any of the Like-Minded States can exercise a veto in this. A treaty signed by nearly all the countries would be a formidable challenge to the United States" — a challenge which they will not be able to resist. William Safire and Richard Darman notwithstanding!

Reflecting on US foreign policy, George W. Ball, former Under Secretary of State, has suggested that the US should "abjure unilateralism" and "pursue clear and steady lines of policy that will re-established the World's faith in our judgment". That way lies salvation.

Altaf Gauhar

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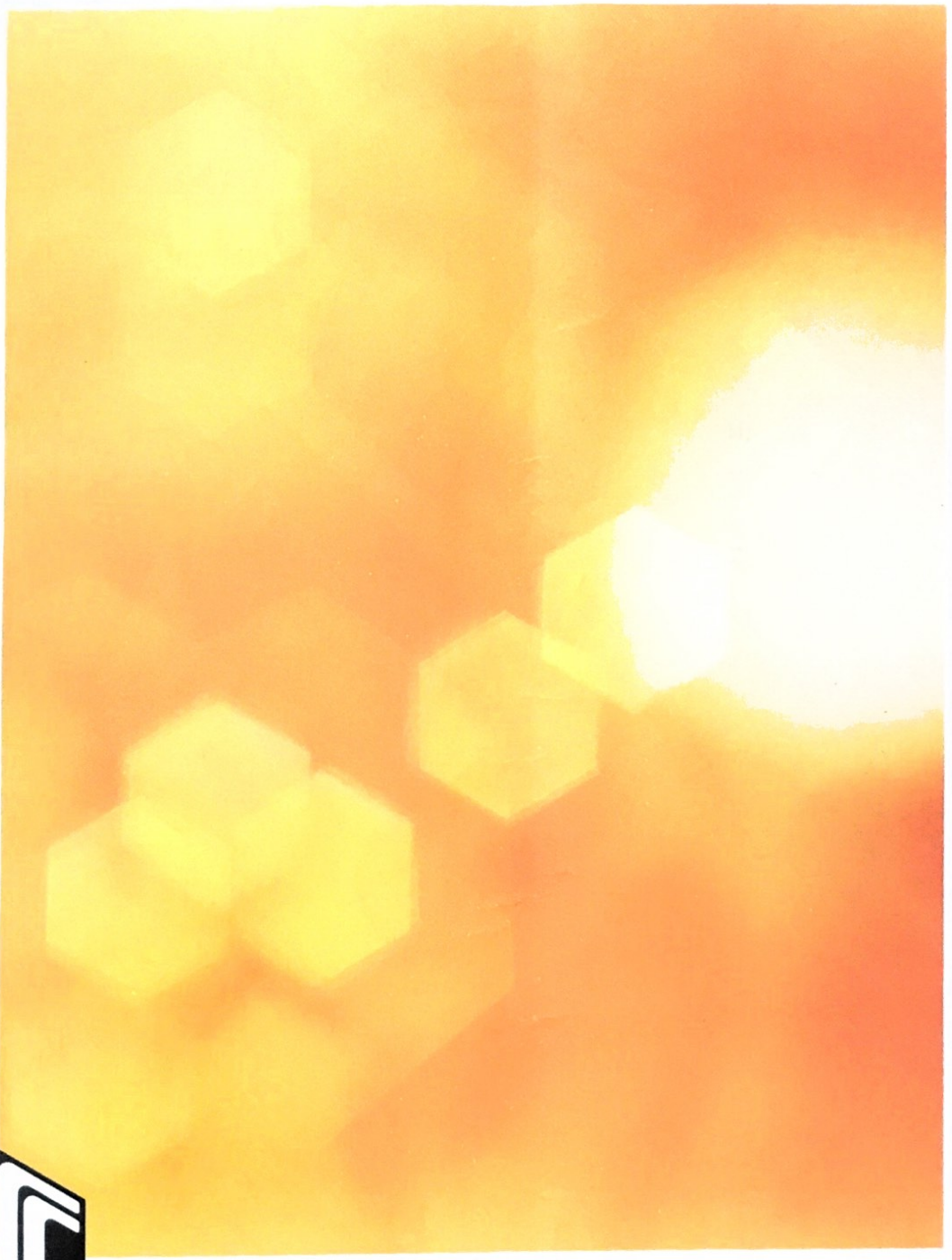

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