

# To the Deep End or Out of Their Depth?

## The Netherlands, Deep-Sea Mining and the United Nations Convention on the Law of the Sea (1967-1982)

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At the negotiations of the Third United Nations Convention on the Law of the Sea (1973-1982), industrialised states with the capacity to exploit the deep seabed had a fundamentally different vision of a regime regulating deep-sea mining than most developing countries. I investigate the Dutch engagement with the international regulation of deep-sea mining and show that officials of the Ministry of Foreign Affairs initially manoeuvred to position the Netherlands as a bridge builder between the two competing visions of regulating deep-sea mining. However, as Dutch companies ventured into the deep-sea mining business, conflicts between the ministries of Economic Affairs and Foreign Affairs became more prominent, and the Dutch position became more aligned with other industrialised states. Nonetheless, Dutch officials remained sceptical of plans to pursue an alternative legal regime favourable to business, which the Reagan administration championed. That is why the Netherlands ultimately signed the Law of the Sea, despite strong US opposition.

Tijdens de onderhandelingen over het Derde Zeerechtverdrag van de Verenigde Naties (1973-1982) hadden geïndustrialiseerde staten die de capaciteit hadden om de diepe zeebodem te exploiteren een fundamenteel andere visie op de internationale wetgeving omtrent de regulering van diepzeemijnbouw dan de meeste ontwikkelingslanden. Ik onderzoek de Nederlandse betrokkenheid bij de totstandkoming van internationale wetgeving rond diepzeemijnbouw en laat zien dat ambtenaren van het Ministerie van Buitenlandse Zaken aanvankelijk probeerden om Nederland te positioneren als een bruggenbouwer tussen de

twee concurrerende visies op het reguleren van diepzeemijnbouw. Echter, toen Nederlandse bedrijven ook betrokken raakten bij diepzeemijnbouw, ontstonden er meer conflicten tussen de ambtenaren van de ministeries van Economische Zaken en Buitenlandse Zaken en ging de Nederlandse positie meer lijken op die van de andere industrielanden. Desondanks bleven Nederlandse ambtenaren sceptisch over plannen om een alternatief wettelijk regime na te streven dat gunstig was voor het bedrijfsleven, zoals bepleit door de regering van Ronald Reagan. Daarom ondertekende Nederland uiteindelijk de Zeewet, ondanks sterke tegenstand van de vs.

## Introduction: The Dutch approach to deep-sea mining<sup>1</sup>

In the fall of 1978, *The Washington Star* reported on the repurposing of one of the US most well-known post-war ships: the *Glomar Explorer*.<sup>2</sup> The *Glomar Explorer* had been all over the news some years before as it had been used in a covert CIA mission to try to salvage a sunken Soviet submarine from a depth of around 5000 meters. To camouflage the operation, the public had been informed that the ship was operated by an American corporation that scoured the deep ocean floor for minerals.<sup>3</sup> In a twist of irony, what had been merely a cover story, now became the *Glomar Explorer*'s true purpose. The Ocean Minerals Company (OMCO), a US-based multi-national consortium that had been set up in 1976, now leased the ship from the US government (see Figure 1). The OMCO venture brought together Lockheed Martin, Amoco Oil, and the Dutch companies Shell and Boskalis to mine polymetallic nodules.<sup>4</sup>

These potentially valuable concretions of potato-sized minerals lie on deep seabed sediments across the globe. The nodules form over millions of years and bring together different kinds of metals such as manganese, copper, cobalt, and nickel.<sup>5</sup> These metals were – and still are – essential to industrialised economies, as they are either used for the production of alloys such as stainless steel or form a more direct part of the raw material make-up of all kinds of widely used products such as electronic appliances, telephones, cars, plumbing pipes and coins. With Dutch companies at the forefront of the

1 I would like to thank the anonymous reviewers and the editors of BMGN – LCHR for their helpful comments and suggestions, and Mats Ingulstad and Jos Carboex for commenting on the earlier versions of this paper.

2 'The Glomar Explorer undergoes refitting for deep-sea mining', *The Washington Star*, 6 September 1978.

3 'Glomar Explorer, built to raise Soviet Sub, faces decision: To be scrapped or to be a

deep-sea driller', *The New York Times*, 26 February 1978.

4 'The Glomar Explorer', *The Washington Star*.

5 Charles L. Morgan, 'Resource Estimates in the Clarion-Clipperton Manganese Nodule Deposits', in: David S. Cronan (ed.), *Handbook of Marine Mineral Deposits* (Routledge 2000) 145-170. DOI: <https://doi.org/10.1201/9780203752760>.



**Figure 1.** A picture of the *Glomar Explorer*. The ship was rented by OMCO from the us government to conduct on-sea mining tests of polymetallic nodules. us Government, *Color Photo of the Hughes Glomar Explorer* (date unknown). © Public Domain <https://nsarchive2.gwu.edu/nukevault/ebb305/index.htm>.

efforts to extract these minerals from the deep sea, the Dutch government found itself at the heart of tense discussions on this potential new ocean industry.

In the 1970s, OMCO was one of several multi-national consortia testing the waters for polymetallic nodule mining. The industrious efforts of the consortia at sea had wider ramifications, as questions on how to regulate deep-sea mining and who would come to reap the benefits became a hotly debated topic internationally. Disagreements on a legal regime for deep-sea mining dominated the negotiations of the United Nations Convention on the Law of the Sea (1973-1982) (UNCLOS), in which the Netherlands was an active participant.

There is an extensive body of literature – mostly by legal commentators – that analyses the UNCLOS and the conflicts over seabed minerals.<sup>6</sup> This work shows how the UNCLOS negotiations often centred on different views on regulating deep-sea mining. The industrialised states, such as the United Kingdom, the Federal Republic of Germany (FRG), Japan, and the US, wanted an international legal regime that would induce private investment in mining. On the other hand, the G77 – the UN coalition of developing states – feared losing out on this effort as they did not possess the capital and technological capabilities to mine the deep seabed. Countries from the Global South like Libya, Algeria and Tanzania were vocal in expressing their worries about the potential for this new industry to cement global economic inequalities further. Moreover, important land-based metal producers such as Brazil, Chile, Gabon, Peru, Zaire, and Zambia feared that unfettered access of industrialised states to nodules could harm their economic development.<sup>7</sup> While there were undoubtedly different views and interests among the developing countries, the G77 proved fairly cohesive on this topic and consistently called for a strong international body which competencies included the transfer of profits and technology, production policies limiting the output of seabed minerals. In addition, they wanted this international body to be capable of running its own mining operation – the so-called Enterprise. The legal uncertainty arising from these international disagreements, combined with slumping metal prices and technological obstacles, made the polymetallic nodule hype fizzle out by

6 See, for example, Lawrence Juda, 'UNCLOS III and the new international economic order', *Ocean Development and International Law* (ODIL) 7:3-4 (1979) 221-255. DOI: <https://doi.org/10.1080/00908327909545638>; Kazimierz Grzybowski, 'Reflections on UNCLOS III', *NYLS Journal of International and Comparative Law* 3:3 (1982) 581-589; David L. Larson, 'Deep seabed mining: A definition of a problem', *ODIL* 17:4 (1986) 271-308. DOI: <https://doi.org/10.1080/00908328609545807>; Douglas Yarn,

'The Transfer of Technology and UNCLOS III', *Georgia Journal of International and Comparative Law* 14:1 (1984) 121-153.

7 For a more extensive discussion of the G77 and UNCLOS, see: Alan G. Friedman and Cynthia A. Williams, 'The Group of 77 at the United Nations: An Emergent Force in the Law of the Sea', *San Diego Law Review* 16:3 (1979) 555-574.

the early 1980s – without a fully operational commercial operation ever being realised.<sup>8</sup>

In this article, I analyse the formulation of a Dutch policy towards the international regulation of deep-sea mining in the 1970s and early 1980s. In doing so, I zoom in on both the Dutch Ministry of Foreign Affairs (*Ministerie van Buitenlandse Zaken*) and the Dutch Ministry of Economic Affairs (*Ministerie van Economische Zaken*). The actions of, and the interactions between, these ministries are crucial to explain the Dutch position on how to regulate this newly envisioned extractive industry.

As mentioned above, there is ample literature that discusses the international debates on deep-sea mining at the UNCLOS negotiations. However, researchers have devoted little attention to how specific states came to view regulating deep-sea mining in particular ways. Markus Schmidt has analysed the US position, using public documents and interviewing hundreds of actors involved, to show the persistent influence of industry interests and lobbying efforts in shaping US policies regarding deep-sea mining.<sup>9</sup> Additionally, Ole Sparenberg has conducted archival research into German deep-sea mining interests.<sup>10</sup> Both scholars emphasise these countries' fundamental disagreements with developing states on what a deep-sea mining regime should look like. However, there is little understanding of the other industrialised states in this story, specifically the smaller ones. The Dutch case – which has not been looked at before – is particularly interesting because of the ambivalent attitude of Dutch officials towards the competing visions of deep-sea mining regimes. Through Shell and Boskalis's participation in OMCO, the Netherlands was part of a select group of states with companies directly involved in deep-sea mining. However, despite these interests, the Dutch did not follow most of the major industrialised states, like the US and Germany, in refusing to sign UNCLOS in 1982 over objections to the proposed seabed mining regime.<sup>11</sup>

8 Steinar Løve Ellefmo et al., 'Marine minerals' role in future holistic mineral resource management', *Geological Society, London, Special Publications* 526:1 (2022). DOI: <https://doi.org/10.1144/SP526-2022-30>; G. P. Glasby, 'Deep Seabed Mining: Past Failures and Future Prospects', *Marine Georesources and Geotechnology* 20:2 (2002) 161-176, 162. DOI: <https://doi.org/10.1080/03608860290051859>; Ole Sparenberg, 'A historical perspective on deep-sea mining for manganese nodules, 1965-2019', *The Extractive Industries and Society* 6:3 (2019) 842-854. DOI: <https://doi.org/10.1016/j.exis.2019.04.001>. However, deep-sea mining has

recently made a comeback. See, for example: Ellefmo, 'Marine minerals' role'.

9 Markus G. Schmidt, *Common Heritage or Common Burden: The United States Position on the Development of a Regime for Deep Sea-Bed Mining in the Law of the Sea Convention* (Clarendon Press 1989).

10 Sparenberg, 'A historical perspective'.

11 On the decision of industrialised states not to sign UNCLOS in 1982, see: Surabhi Ranganathan, 'What If Arvid Pardo Had Not Made His Famous Speech? (False) Contingency in the Making of the Law of the Sea', in: Ingo Venzke and Kevin Jon Heller (eds.), *Contingency in International Law: On*

To understand the formation of a Dutch policy on deep-sea mining, I analyse documents from the Dutch Ministry of Foreign Affairs and the Dutch Ministry of Economic Affairs on deep-sea mining and UNCLOS from 1967 to 1982. This material includes internal deliberations and interactions with outside actors. As Marc Dorpema has recently argued, looking at bureaucratic exchanges helps to understand the formulation of Dutch foreign policy better, while also dispelling the notion of the Dutch government as a unitary actor.<sup>12</sup> Looking at the workings of the ministries – and conflicts between them – is particularly fruitful because, as my research shows, the Dutch policy on deep-sea mining and UNCLOS was formulated and negotiated predominantly at the level of administrators. The focus on these exchanges does not mean that ministerial officials were the only significant actors. In fact, I use the ministries' paper trail to analyse how the positions of the ministries have been shaped in interactions with two types of actors that tried to promote their own visions of exploiting the deep seabed: foreign states and Dutch-based multinational companies.

First, in analysing the impact of foreign governments on the formulation of the Dutch position towards deep-sea mining, this article takes to heart a recent call to heed the way in which smaller states have shaped their foreign policy and wider international relations. Introducing the concept of 'margins for manoeuvre', Laurien Crump and Susanna Erlandsson have argued for the critical role of small states in Cold War Europe.<sup>13</sup> They use this concept to focus attention not just on the constraints faced by small states, but also on the way in which they often managed to carve out a role for themselves that defied simple Cold War bipolarity. Similarly, Duco Hellema has argued that while the Dutch government certainly valued its transatlantic relationship with the US during the Cold War, it ultimately sought to balance this through a commitment to the European Economic Community (EEC).<sup>14</sup> While not completely absent, the Cold War was more in the background when it came to international debates on deep-sea mining, and the global divisions were predominantly those of developing versus industrialised states. This does not make it less insightful. On the contrary, as Remco Raben has argued, the way in which the Netherlands managed their relations with newly decolonised states deserves more attention in the

*the Possibility of Different Legal Histories* (Oxford University Press 2021) 231-245, 242.

12 Marc Dorpema, 'Funny friends? Dutch foreign policy, Great Britain and European integration in the "long" 1970s', *European Review of History* 29:4 (2022) 695-713. DOI: <https://doi.org/10.1080/13507486.2022.2051442>.

13 Laurien Crump and Susanna Erlandsson, 'Introduction: Smaller powers in Cold War

Europe', in: Laurien Crump and Susanna Erlandsson (eds.), *Margins for Manoeuvre in Cold War Europe: The influence of smaller powers* (Routledge 2019) 240-244. DOI: <https://doi.org/10.4324/9780429425592>.

14 Duco Hellema, *Nederland in de wereld: De buitenlandse politiek van Nederland* (Spektrum 2013) 472-473.

study of Dutch foreign policy.<sup>15</sup> Thus, my paper addresses how much the Dutch government was able to find room for manoeuvre when it came to the fault lines between the big, industrialised states and the Global South.

In addition to the importance of smaller states, recent contributions to the study of the history of Dutch foreign policy have also focussed on the importance of (transnational) non-state actors. Ruud van Dijk and other scholars have argued that the history of Dutch foreign policy can only be fully understood if researchers pay attention to the complex interactions between state and non-state actors – especially those of a transnational nature.<sup>16</sup> These insights are fruitful in understanding deep-sea mining because, while the international negotiations at UNCLOS might have been conducted by state delegations, multi-national consortia of state-owned and private companies were closest to mining the ocean floor. Therefore, in trying to find room for manoeuvre, Dutch government officials did not only have to relate to foreign governments, but also to the interests of Dutch-based multinational companies.

This article therefore adds to our understanding of the influence of multinationals on the formation of Dutch foreign policy. While Hellema and others have argued that the Dutch foreign policy during the oil crisis of 1973 was one of protecting the interests of Shell and Dutch industry, Keetie Sluyterman and Bram Bouwens have suggested that the 1970s were a period in which Dutch multinationals and their interests abroad were viewed with suspicion by policymakers and the public alike.<sup>17</sup> This article, on the contrary, will show that policymakers were in fact receptive to the attempts of Shell and Boskalis to promote their interests in this new extractive industry. While company archives of Boskalis, Shell and Lockheed were, for various reasons, inaccessible and unavailable, I use the ministries' paper trail to bring into view how companies and foreign governments tried to promote their own visions of exploiting the seabed.<sup>18</sup>

15 Remco Raben, 'Nederland en de (post)koloniale wereld', in: Jacco Pekelder, Remco Raben and Mathieu Segers, *De wereld volgens Nederland: Nederlandse buitenlandse politiek in historisch perspectief* (Boom 2015) 152-173.

16 Ruud van Dijk et al., 'Conclusions and outlook: Small states on the global scene', in: Ruud van Dijk et al. (eds.), *Shaping the International Relations of the Netherlands, 1815-2000: A Small Country on the Global Scene* (Routledge 2018) 240-244. DOI: <https://doi.org/10.4324/9781315228440>.

17 Hellema, *Nederland*, 278-279; Duco Hellema, Cees Wiebes and Toby Witte, *The Netherlands and the oil crisis: Business as usual* (Amsterdam University

Press 2004); Keetie Sluyterman and Bram Bouwens, 'From colonial empires to developing countries and on to emerging economies: The international expansion of the Dutch brewery Heineken, 1930-2010', *Management & Organizational History* 10:2 (2015) 103-118, 111. DOI: <https://doi.org/10.1080/17449359.2015.1029944>.

18 Boskalis did not respond to my requests. Shell stated that its archives did not contain valuable information on this episode, and only gave access to more general annual reports. Lockheed's archives on deep-sea mining development have been destroyed, and I was denied access to its more sensitive material.

Thus, in this article, I investigate the formulation of a Dutch policy towards the international regulation of deep-sea mining – with a specific focus on the interactions between the different ministries and the influence of both foreign governments and Dutch-based multinationals. To do this, I first analyse the initial reaction of Dutch Foreign Affairs towards novel ideas about internationally regulating the deep seabed and its exploitation. Specifically, I focus on why and how Foreign Affairs manoeuvred away from the bigger industrialised states' positions to accommodate demands from the Global South. Second, I show how the entry of Dutch multinationals into the prospective deep-sea mining industry in the mid-1970s moved Economic Affairs officials to engage themselves more actively with the discussion, by steering the Dutch position closer to that of the US and other industrialised states with deep-sea mining interests. Then, I discuss the scepticism among Dutch ministerial officials towards more radical US proposals for an alternative regime that would circumvent UNCLOS. Finally, I discuss the fizzling out of interest among Dutch multinationals in deep-sea mining and elucidate how this helped Dutch Foreign Affairs officials successfully advocate for the Netherlands to sign UNCLOS in 1982, despite strong opposition from the US and most other big, industrialised states.

### Foreign Affairs' support for the internationalisation of the seabed

In 1967, Arvid Pardo, the Maltese ambassador, gave a passionate speech at the UN General Assembly in which he called for the designation of the deep seabed as a 'common heritage of mankind'.<sup>19</sup> Furthermore, he proposed the creation of an international authority that would manage the exploitation of the deep seabed. In his vision, this organisation would be able to regulate the use of the deep seabed and prevent both the uncontrolled dumping of (nuclear) waste and a race to install military infrastructure on the seafloor. However, Pardo also specifically highlighted the 'vastness of the untapped wealth' of polymetallic nodules on the deep ocean floor and called for these and other resources of the deep sea to be exploited in a way that would benefit the whole of mankind (see Figure 2).<sup>20</sup> He had learned of the American interest in mining these minerals a year before.<sup>21</sup> In his speech, Pardo cited the studies of American mining engineer John L. Mero, which presented a glowing assessment of the economic potential of polymetallic nodules. Mero's work had been pivotal in igniting considerable interest in deep-sea minerals from American industry.<sup>22</sup>

19 United Nations General Assembly, First Committee Debate (1 November 1967), Doc A/C.1/PV.1515-1516, [https://www.un.org/depts/los/convention\\_agreements/texts/pardo\\_ga1967.pdf](https://www.un.org/depts/los/convention_agreements/texts/pardo_ga1967.pdf).

20 *Ibid.*, 5.

21 Ranganathan, 'What If', 234.

22 Glasby, 'Deep Seabed Mining', 161-162; Tony Koslow, *The Silent Deep: The Discovery, Ecology and Conservation of the Deep Sea* (The University of Chicago Press 2007) 166.



**Figure 2.** A picture of polymetallic nodules from the abyssal plains of the Pacific Ocean floor. These mineral concretions have been found on deep ocean floors across the globe. However, little of these deposits can be mined economically. Therefore, the mining efforts in the 1970s and 1980s focused on the Clarion-Clipperton Fracture Zone in the Pacific, an area abundantly rich in nodules. Hannes Grobe, *Manganese Nodules from the South Pacific Ocean* (date unknown). © Hannes Grobe [https://en.wikipedia.org/wiki/Manganese\\_nodule#/media/File:Manganese-noduleo\\_hg.jpg](https://en.wikipedia.org/wiki/Manganese_nodule#/media/File:Manganese-noduleo_hg.jpg).

When officials in the Dutch Ministry of Foreign Affairs heard of Pardo's speech, their initial reaction was to urge their minister, Joseph Luns, a staunch Atlanticist, to approach the proposal with caution. Since there was an ongoing dispute with the FRG on the demarcation of the North Sea continental shelf, the officials wanted to know the proposal's implications before formulating a position.<sup>23</sup> Natural gas was recently discovered in the North Sea, and the Netherlands was sitting on potential riches. Thus, it was clear that the initial Dutch focus was not on deep ocean nodules but on gas in its own shallow sea.

After realising that Pardo's proposal posed little danger to Dutch economic interests in the North Sea, Foreign Affairs officials quickly developed a position on the exploitation of the deep seabed. As instructions to their UN representatives show, they wanted to emphasise that they were open to the needs of developing countries.<sup>24</sup> That is why they favoured Pardo's plan for the UN to take on a leading role in the exploitation efforts and advocated against wide national jurisdiction over the seabed – which would not benefit the Dutch anyway.<sup>25</sup> The Dutch proposal also entailed a double concession system whereby the UN would grant concessions of the seabed beyond the continental shelf to states, who would then act as administering authorities, awarding concessions to enterprises. The financial benefits accrued by the UN in this system were intended to help countries from the Global South develop.<sup>26</sup>

This proposal incorporated a changing view of developing countries and international order that gained traction in the Netherlands in the 1960s. In government, this led to an institutional restructuring in which Foreign Affairs got to host a separate minister for Development Cooperation (*Ministerie voor Ontwikkelingssamenwerking*). Additionally, a growing body of officials became involved in creating and executing development policy. As Hellema and Vincent Kuitenbrouwer have shown, this also entailed a move towards acknowledging the demands for a fairer international order and trying to bridge differences between developing countries and industrialised states.<sup>27</sup> Even Luns, who used to view the assertiveness of newly independent countries

23 The continental shelf refers to the seabed areas around continents where the sea is relatively shallow. Nationaal Archief Den Haag (hereafter NA), Archief van het Ministerie van Buitenlandse Zaken (BUZA), 1965-1974 2.05.313 (hereafter 2.05.313), Inventory Number (hereafter IN) 24074, Memorandum Directie Internationale Organisaties (DIO) voor minister (22 November 1967).

24 NA, 2.05.313, IN 24075, Codebericht BUZA naar PV NY (15 March 1968).

25 The Netherlands' geological position, with a sea mostly locked in by other countries, meant that it would not stand to profit from large zones of sea (beyond the continental shelf) under exclusive national jurisdiction.

26 NA, 2.05.313, IN 24075, UN document: F/2405/68 (18 March 1968).

27 Hellema, *Nederland*, 247-248; Maarten Kuitenbrouwer, *De ontdekking van de Derde Wereld: Beeldvorming en beleid in Nederland, 1950-1990* (SDU Uitgeverij 1994) 136-148.

– specifically in the UN – as suspicious, became increasingly convinced of the importance of strengthening relationships globally. Crucial here was also the realisation that the Netherlands increasingly depended on natural resources from abroad and that good relations with the Global South would ultimately also benefit the Dutch.<sup>28</sup> Thus, the position formulated by Foreign Affairs that favoured an international authority to regulate the seabed was an attempt to bridge developing countries' demands with the interests of major industrialised states.

Not everyone appreciated this favourable attitude within Foreign Affairs towards an international regulatory body. Royal Dutch Shell, the influential Dutch multinational, sent a letter in 1971 expressing its worries, arguing that such an organisation could endanger its activities.<sup>29</sup> It was clear to Foreign Affairs officials that Shell saw a risk to its rapidly expanding global offshore drilling operations. In a subsequent meeting, they told Shell's representatives that, although they understood its position, they also wanted to acknowledge the demands of developing countries for an international authority with direct powers of exploitation.<sup>30</sup> However, there were also limits to the extent to which Foreign Affairs officials could promote this view. In 1972, officials within Foreign Affairs' legal department wrote a memorandum suggesting that the Netherlands should advocate for a regime that would transfer a fixed percentage of national government revenues of the continental shelf to the proposed international authority.<sup>31</sup> However, this idea was quickly dropped when officials from the Ministry of Economic Affairs and the Ministry of Finance (*Ministerie van Financiën*) expressed discontent with the prospect of giving up part of the revenues from the continental shelf. Support for an international authority and overtures to developing countries were clearly constrained by national economic interests.

Disagreements between the Dutch ministries became increasingly common as worries about the stability of supply chains and access to minerals moved Economic Affairs to focus on deep-sea mining. These concerns were not specific to the Netherlands, as the attempts of countries from the Global South to gain more control over their natural riches created worries in industrialised states about the availability of natural resources.<sup>32</sup> A letter sent in early 1972 by the Minister of Economic Affairs, Harrie Langman, to his Foreign Affairs colleague, Norbert Schmelzer, who had succeeded Luns, reflects this development. In it, Langman expressed worry that the position favouring the internationalisation of as much of the ocean floor as possible

28 Hellema, *Nederland*, 249-256.

29 NA, 2.05.313, IN 24079, Brief Shell aan BUZA (9 August 1971).

30 NA, 2.05.313, IN 24085, Verslag van de vergadering belegd door BUZA inzake de oceaانبodemproblematiek (8 February 1972).

31 *Ibid.*

32 Ellefmo, 'Marine minerals' role'; Sparenberg, 'A historical perspective', 845.

could hinder the exploration and potential exploitation of the minerals it contained. This could 'seriously jeopardise the Western European raw material position'.<sup>33</sup> Therefore, he argued that the Dutch position on seabed exploitation should not be left to officials in Foreign Affairs and the Dutch UN-delegation, as they had developed too much of an idealistic position regarding the international authority, foregoing critical economic considerations and national interests.<sup>34</sup>

Officials from Economic Affairs explained that they preferred the quick establishment of an international regime that would promote the emerging deep-sea mining industry. This regime, however, should not encompass a powerful international authority that would have the potential to demand so much royalty that it could effectively foreclose the possibility of mining the seabed.<sup>35</sup> That did not mean that Economic Affairs was opposed to all forms of market regulation. It acknowledged the need to address worries among developing countries about the possible negative impact on onshore producers of minerals, but it ultimately preferred a different kind of solution.<sup>36</sup> Mention was made of the possibility of a global agreement along the lines of the *International Tin Agreement*, which could be a way to protect against extreme market disruption. This agreement was instigated by the International Tin Council, which was an organisation that sought to control the international tin market to safeguard the interests of the major tin producers and consumers it represented.<sup>37</sup> Officials at Foreign Affairs were not too pleased about this intervention. Internally they expressed their discontent, arguing that Economic Affairs' focus on exploiting the minerals on the seabed was one-sided.<sup>38</sup> Thus, the two ministries clearly had different visions of what an international regime regulating the deep seabed should look like.

Concerns about access to critical minerals would only become more pronounced as the 1970s progressed. 1972 saw the publication of *The Limits to Growth* by the Club of Rome, which was an informal and international group of influential academics, business leaders and politicians that focused attention on the dangers of increasing human exploitation of the natural world and specifically highlighted the finiteness of natural resources.<sup>39</sup> Apart

33 Original quote: 'de West-Europese grondstoffenpositie ernstig in gevaar kan worden gebracht'. NA, 2.05.313, IN 24079, Memorandum DIO Sociale Zaken en Congressen: oceaانبodemproblematiek – gesprek met Shell (19 May 1972).

34 *Ibid.*

35 NA, 2.05.313, IN 24091, Brief Directoraat-Generaal voor Buitenlandse Economische Betrekkingen EZ aan DIO (3 August 1972).

36 *Ibid.*

37 See, for example, John Hillman, *The International Tin Cartel* (Routledge 2010). DOI: <https://doi.org/10.4324/9780203856611>.

38 NA, 2.05.313, IN 24091, Brief DIO aan minister Economische Zaken (EZ) (2 May 1973).

39 *The Limits to Growth* was extremely popular in the Netherlands, with over 250.000 copies sold. See: Geert Buelens, *Wat we toen al wisten: De vergeten groene geschiedenis van 1972* (Querido Facto 2022).

from worries about running out of natural resources in the long run, there was also increasing worry in industrialised countries about the stability of supplies coming from the Global South. Pivotal in this regard was the oil crisis of 1973, which instilled fears of shortages among the public and policymakers in the industrialised states. Even if the Netherlands weathered the crisis quite well, it put the issue of access to resources – and specifically the dependence on foreign sources – front and centre.<sup>40</sup> The ‘shock of the global’ would continue to define the 1970s, as an acute perception arose of the increasingly interdependent global economy as fundamentally unstable and crisis-prone.<sup>41</sup> It is then no surprise that discussions of access to minerals would also dominate negotiations at the UN. When UNCLOS negotiations commenced in 1973, the issue of the exploitation of the seabed became part of a wide-ranging revision of international maritime law, tackling topics such as the right of passage, anti-pollution measures, and regulation of research at sea. Nonetheless, for nearly a decade, tensions over access to seabed minerals would be a dominant feature of these negotiations.

### The emergence of Dutch deep-sea mining interests

At the start of UNCLOS, the Dutch delegation tried to accommodate the demands of countries from the Global South for a strong international authority with direct powers of exploitation of the seabed. While obviously not oblivious to national interests, Foreign Affairs’ officials remained committed to the position first formulated at the end of the 1960s. This might not come as a surprise since this was the period of the Labour-led cabinet of Joop den Uyl (1973-1977). Regarding foreign and development policy, Den Uyl’s government built on changes initiated under Luns and Schmelzer to try to position the Netherlands even more squarely as a bridge builder.<sup>42</sup> This led to a rather favourable attitude towards the demands of developing countries when compared to the US and other bigger industrialised states. At the same time, this was never a complete realignment, as can be seen in Den Uyl’s appointment of his fellow Labour member Max van der Stoel as minister of Foreign Affairs. Van der Stoel was a dedicated Atlanticist who, to the chagrin

40 Hellema et al., *The Netherlands and the oil crisis*. Ole Sparenberg has recently highlighted the existing worries around scarcity and the stability of supply chains for metals in industrialised countries in the 1970s. See: Ole Sparenberg, ‘The commodity crisis of the 1970s: Scarcity, vulnerability and the West German metal supply’, *European Review of History: Revue Européenne d’histoire* 27:3 (2020)

342-369. DOI: <https://doi.org/10.1080/13507486.2020.1737652>.

41 Niall Ferguson, ‘Introduction: Crisis What Crisis? The 1970s and the Shock of the Global’, in: Niall Ferguson et al. (eds.), *The Shock of the Global: The 1970s in Perspective* (Harvard University Press 2011) 1-21.

42 Hellema, *Nederland*, 298-300; Kuitenbrouwer, *De ontdekking*, 148-153.

of much of the left wing of the Labour party, was not in favour of a more radical move away from the American orbit.<sup>43</sup>

The international negotiations at UNCLOS were complicated by significant strides by industry to make deep-sea mining a reality. Several companies in industrialised states had been involved in these efforts since the 1960s.<sup>44</sup> In the 1970s, these companies formed international consortia, as developing this new industry was a high-risk effort with large capital requirements.<sup>45</sup> These consortia spent huge sums of money on the exploration of the deep seabed and the development of deep-sea mining systems. According to a 1978 estimate by Mero, the combined polymetallic nodule mining programs of these consortia amounted to around 300 million dollars – which amounts to over 1.4 billion dollars today when corrected for inflation.<sup>46</sup> These companies, especially in the US, engaged in extensive lobbying activities. Additionally, they were, for the most part, the only supplier of data on polymetallic nodules and mining activity.<sup>47</sup> This meant that their input greatly shaped governments' expectations of deep seabed minerals' potential.

Dutch companies also started to invest in this new extractive industry. Billiton, a subsidiary of Shell, joined forces with the American companies Lockheed and Amoco in 1976, thus founding the US-based multi-national consortium of OMCO. Lockheed had been doing research on deep-sea mining for twelve years, and they had done tests in a high-pressure water tank on land. Nonetheless, in comparison to other companies, the scale of their investment had been modest and they were looking to speed up the development of a commercial mining system.<sup>48</sup> The aim was to quickly get an operation up and running in the Clarion-Clipperton Fracture Zone, a nodule-rich abyssal plain in the Pacific Ocean (see Figure 3). Nickel was the primary target, while copper and cobalt were expected to be valuable by-products.<sup>49</sup> Like several other US companies before them, Lockheed saw the formation of a consortium as a necessary step to bring in the required capital and expertise for such an endeavour.

43 Anet Bleich, *Joop den Uyl, 1919-1987: Dromer en doordouwer* (Balans 2008) 281-282.

44 Sparenberg, 'A historical perspective', 843; John L. Mero, 'Ocean mining: an historical perspective', *Marine Mining* 1:3 (1978) 243-255, 248-250.

45 Sparenberg, 'A historical perspective', 843.

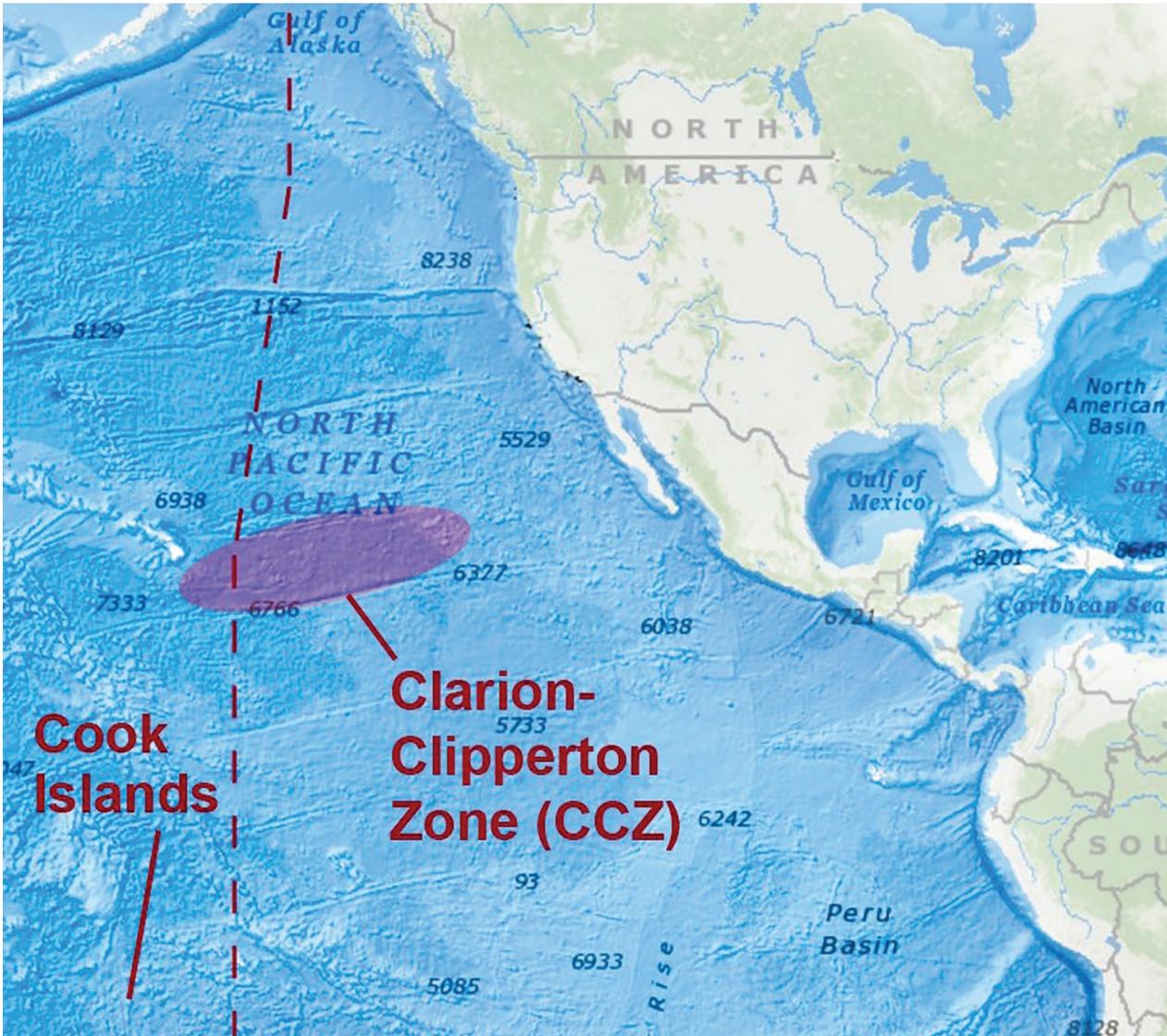
46 Mero, 'Ocean mining', 252. It is difficult to say how accurate this estimation is, as it is based on public statements of consortia on the projected costs of their deep-sea mining programs. These consortia could have an interest in overstating these figures to attract further investment and/or government support. However, it is clear that

large amounts of money were spent to try to make polymetallic nodule mining a reality.

47 Schmidt, *Common Heritage*, 55-59; Glasby, 'Deep Seabed', 163-164.

48 'Statement G.C. Welling', *Deep Seabed Hard Minerals Act: Joint Hearings Before the Committee on Commerce, Committee on Foreign Relations and the Committee on Armed Service of the United States Senate. Ninety-Fourth Congress, Second Session on S. 713* (Washington DC 17 and 19 May 1976) 135-139.

49 Royal Dutch Petroleum Company, *Annual Report* (1977) 31-32.



**Figure 3.** A map that shows the Clarion-Clipperton Fracture Zone. Abundant in polymetallic nodules, this area was – and still is – the most well-sought-after area for nodule mining. The map also shows the depth of the ocean floor at different locations (in metres). United States Geological Survey, *Locations of Clarion-Clipperton Zone* (2018). © Public Domain <https://www.usgs.gov/media/images/locations-clarion-clipperton-zone>.

From the Dutch side, Billiton initially committed to investing around 40 million guilders in research and development – which amounts to a bit less than 50 million dollars today when corrected for inflation.<sup>50</sup> Shell had acquired Billiton, which operated a big bauxite mine in Suriname, only six years before. Billiton was reorganised, and it adopted a strategy of expanding its activities into different metals upstream and downstream, often by taking minority shares in joint ventures.<sup>51</sup> Deep-sea mining was one such project that fitted within this broader strategy. One year later, in 1977, the dredging company Boskalis joined the consortium, bringing the Dutch share of OMCO to 40 per cent.<sup>52</sup> Similarly to Billiton, Boskalis had also recently adopted a strategy of diversification by participating in joint ventures.<sup>53</sup> In discussing its participation, Hans Kraaijeveld van Hemert, the president of the board of directors of Boskalis, called deep-sea mining a promising industry. However, he also emphasised that such capital-intensive projects necessitated ‘clarity from the side of the government’ (see Figure 4).<sup>54</sup>

The establishment of OMCO in 1976 increased pressure on the Dutch government to take steps to create a deep-sea mining regime favourable to Dutch-based companies. At Foreign Affairs, they saw this coming. In an internal memo, an official noted that the ministry could expect a ‘hardening of the positions’ of the ministries of Economic Affairs and Finance on deep-sea mining because of the direct interests of Dutch companies.<sup>55</sup> And indeed, after the establishment of OMCO, officials from Economic Affairs quickly moved to make their mark on the instructions for the Dutch delegation at the UNCLOS negotiations. After a bit of horse-trading between the ministries, the instructions left less room for concessions to developing countries, specifically regarding the powers of the proposed international authority.<sup>56</sup> The goal to redistribute some of the benefits of seabed mining to the Global South did not disappear entirely, as Foreign Affairs officials remained adamant that an international deep-sea mining regime should also reflect the demands of developing countries.<sup>57</sup> However, Economic Affairs’ intervention had made the official guidelines for the Dutch delegation at UNCLOS less focused on

50 ‘Billiton met Lockheed in zeemijnbouw’, *de Volkskrant*, 21 December 1976.

51 Keetie Sluyterman, *Concurreren in turbulente markten, 1973-2007. Geschiedenis van Koninklijke Shell* (Boom 2007) 110-112; Billiton International Metals B.V., *Billiton* (Billiton International Metals B.V. 1980) 18.

52 Larson, ‘Deep seabed’, 283.

53 Bram Bouwens and Keetie Sluyterman, *Verdiept verleden. Een eeuw Koninklijke Boskalis Westminster en de Nederlandse baggerindustrie* (Boom 2010) 236-238.

54 ‘Topman Bos Kalis: Diepzee-mijnbouw snel belangrijk’, *De Telegraaf*, 26 May 1976.

55 NA, Archief van het Ministerie van Buitenlandse Zaken, 1975-1984 2.05.330 (hereafter 2.05.330), IN 22832, Memorandum DIO Bureau Handelspolitieke Zaken en Grondstoffen (DIO/HG): zeerechtconferentie (27 June 1977).

56 NA, 2.05.330, IN 22832, Memorandum DIO/HG: Exploitatie diepzeebodem en grondstoffenvraagstuk (16 December 1977).

57 NA, 2.05.330, IN 22832, Memorandum DIO/HG: VN-zeerechtconferentie Exploitatie diepzeebodem en Ontwikkelingslanden (15 May 1979); NA, 2.05.330, IN 22859, Richtlijnen



**Figure 4.** Hans Kraaijeveld van Hemert, the Boskalis president of the board of directors, during a press conference of the company in 1984. © Nationaal Archief Den Haag, cco, photographer Rob C. Kroes/Anefo, 2.24.01.05, <http://hdl.handle.net/10648/ad376d32-dob4-102d-bcf8-003048976d84>.

fostering better relations with developing countries and thus more aligned with that of other industrialised states with deep-sea mining interests.<sup>58</sup>

As the conflict over the future deep-sea mining regime hardened, the US State Department invited Dutch Foreign Affairs' officials to join a series of 'like-minded' meetings to coordinate the actions of Western industrialised states. These meetings took place from 1977 onwards and were attended by eight countries that had companies with stakes in the international deep-sea mining consortia. Apart from the US and the Netherlands, these were the United Kingdom, France, the FRG, Italy, Belgium, and Japan. Foreign Affairs accepted the invitation, despite having called these kinds of talks 'premature' in an EEC meeting earlier that year.<sup>59</sup>

In these 'like-minded' talks, the states discussed the idea of temporarily bypassing the difficult negotiations at UNCLOS by creating an alternative interim legal regime. The US government had been increasingly put under pressure – by both companies and Congress – to follow this course of action.<sup>60</sup> The proposed legal system would entail countries passing national legislation that would recognise claims made under other national laws. Because the system was envisioned as interim in nature, these laws had to reflect already agreed-upon principles at UNCLOS, such as revenue sharing.<sup>61</sup> These national laws would be superseded by international law as soon as UNCLOS was concluded. Yet, such a legal system would allow companies of the industrial states to start with their deep-sea mining activities outside of the control of the proposed international body. It could thus potentially lead to a situation in which it would be tough for such a body to change the practices of an already established industry. While Dutch Foreign Affairs officials worried that such unilateral steps could negatively affect the UNCLOS negotiations, there was some anticipation that it might be necessary for the Netherlands to 'follow the international trend'.<sup>62</sup> Thus, it became clear that Dutch Foreign Affairs officials saw increasingly little room for manoeuvre.

### National legislation

The Dutch companies represented in OMCO also started to push for Dutch national legislation on deep-sea mining. Billiton and Boskalis sent a letter to the minister of Economic Affairs, Gijs van Aardenne, requesting such a

voor de Koninkrijksdelegatie naar derde VN-zeerechtconferentie (30 March 1979).

58 *Ibid.*

59 NA, 2.05.330, IN 22816, Memorandum: bijeenkomst van delegaties zeerecht, Brussel 10 en 11 februari 1977.

60 Schmidt, *Common Heritage*, 86-88.

61 NA, 2.05.330, IN 22817, Codebericht van BUZA naar PV NY en PV Geneve (5 October 1977); NA, 2.05.330, IN: 22817, Codebericht PV NY naar BUZA: derde VN zeerechtconferentie (15 October 1977).

62 NA, 2.05.330, IN 22817, Aantekening: overleg tussen VS en andere gelijkgezinde Staten over het Zeerecht (12 November 1977).

law.<sup>63</sup> This led to a meeting in early 1978 between officials from Foreign Affairs, Economic Affairs, and Finance to discuss the possibilities. In this meeting, officials of Economic Affairs, who were generally sympathetic to the needs of the Dutch companies, expressed their doubts about a Dutch deep-sea mining law. According to their assessment, Billiton saw the Dutch law as just another option and did not want to commit in advance to it. Dutch legislation would only be considered if it was deemed adequate; otherwise, the consortium could also bind itself to the American legal framework or even operate outside of a legal system entirely. Because of this, Economic Affairs officials wondered whether it was wise for the government to do the bidding of companies.<sup>64</sup> They clearly feared that a patchwork of national laws could allow multi-national consortia to cherry-pick preferred legislation.

Within Foreign Affairs, the legal department recommended preparations for a law in case, ‘and only in case’ UNCLOS would fail. At the same time, these officials cautioned that Dutch support for such unilateralism would not be understood in light of their ‘internationalist tradition in UN-context and [...] pronounced position in the North-South dialogue’ and would be ‘optically very unfortunate’.<sup>65</sup> They also expected that the Dutch Council of Ministers and parliament would have similar reservations. While Economic Affairs officials drafted a law modelled on the Dutch law regulating resource extraction on the continental shelf, and which would temporarily extend legitimisation of resource extraction by Dutch companies to the deep sea, this was not immediately pursued.<sup>66</sup> All in all, it remained unclear how exactly the reciprocal regime would function and doubt about the wisdom of national legislation dominated.

While there was little momentum for an internationally acceptable compromise, officials at Foreign Affairs and the Dutch delegation to UNCLOS still tried to bring the different parties at the international negotiations closer together. They devised a compromise proposal in early 1979. The proposal’s core was a system of mandatory joint ventures between the Enterprise and the international consortia. They envisioned this as a concession to demands of the G77 for the transfer of technology and the strengthening of the international authority while at the same time ensuring access for the consortia to the minerals on the seabed. The proposal was advocated internationally despite some hesitation from within Economic Affairs.<sup>67</sup>

63 NA, 2.05.330, IN 22834, Memorandum DIO/HG: zeerechtconferentie – nationale wetgeving inzake exploitatie diepzeebodem (19 April 1978).

64 *Ibid.*

65 Original quotes: ‘vanuit onze internationalistische traditie in VN-verband en onze geprononceerde opstelling in de Noord-Zuid dialoog’ and ‘zou optisch zeer ongelukkig kunnen werken’. *Ibid.*

66 NA, 2.05.330, IN 22834, Brief EZ: eenzijdige wetgeving (13 July 1978).

67 NA, 2.05.330, IN 22820, Kort verslag van de vergadering van de interdepartementale werkgroep ter voorbereiding van de VN-zeerechtconferentie (14 February 1979). For an extensive overview of the discussion of transfer of technology within UNCLOS, see: Yarn, ‘The Transfer’.

In an informal meeting with representatives of the G77 from India, Peru, Sri Lanka, Kenya, and Thailand, interest was expressed in the Dutch proposal. However, the Peruvian representative warned that the proposal was likely to be less well received among others in the G77, as they would probably object to the Dutch proposal on the grounds that it would increase the power of multinationals even more.<sup>68</sup> There were also objections from the larger industrialised states, as the US, the United Kingdom and the FRG. Their delegations expressed dissatisfaction with the proposal, seeing it as an unworkable solution that would not provide enough incentives for private industry to invest in deep-sea mining.<sup>69</sup> Similarly, the reaction from the deep-sea mining industry was also lukewarm. A position paper by Shell and British Petroleum (said to be broadly supported by Belgian and German industry) argued against the proposal because it would be an undue burden on private enterprise and could lead to the forced transfer of technology.<sup>70</sup> Instead, they proposed a voluntary joint venture system, which was immediately recognised by the Dutch as extremely unlikely to be acceptable to the G77.<sup>71</sup> Even though the Dutch advocated for their proposal in the subsequent UNCLOS negotiation sessions, they abandoned it after realising they were flogging a dead horse.<sup>72</sup>

While, at the end of the 1970s, the deep-sea mining consortia sped up the development of nodule mining systems, they were also explicit in expressing the need for a favourable and swift legal framework to actually make extraction on a commercial scale work.<sup>73</sup> With yet no end in sight to the legal uncertainty, OMCO ploughed on ahead with the development of an integrated deep-sea mining system. They developed a nodule collector and crusher vehicle, a seabed-to-surface nodule slurry riser, a dynamically positioned surface ship, and a metallurgical processing plant specific to nodules (see Figure 5).<sup>74</sup> However, operating on the high seas and the deep seabed remained extremely challenging. Conrad Welling, head of OMCO, described the first extensive test run at sea with the *Glomar Explorer* in early 1979 as ‘not completely successful, but encouraging enough to

68 NA, 2.05.330, IN 22820, Codebericht BUZA naar PV Geneve: VN-zeerechtconferentie – Nederlands voorstel joint ventures (15 June 1979).

69 NA, 2.05.330, IN 22820, Codebericht PV Geneve naar BUZA: derde VN-zeerechtconferentie EEG-overleg (24 April 1979); United States National Archives at College Park, MD, Record Group 59: General Records of the Department of State, Law of the Sea Files, 1966-1980, Box 14, July 16-August 24, 1979 (NY), Memorandum of Conversation: Meeting of the Coordinating Group of Five Countries (13-14 June 1979).

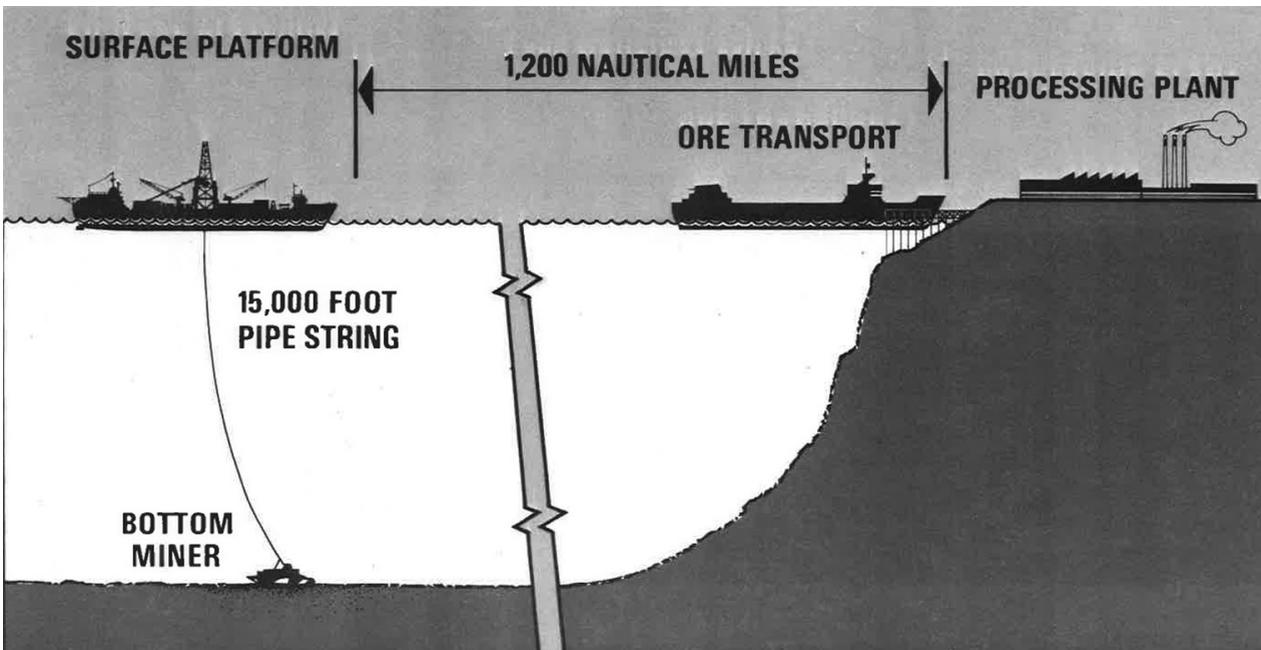
70 NA, 2.05.330, IN 22821, Telexbericht PV NY naar BUZA: VN-zeerecht conferentie: joint ventures opvattingen Europese industrie (25 July 1979).

71 *Ibid.*

72 NA, 2.05.330, IN 22821, Brief DIO aan Minister A. van der Klaauw (21 December 1979).

73 Sparenberg, ‘A historical perspective’, 848.

74 Jin S. Chung, ‘Deep-Ocean Mining Technology III: Developments’, *Proceedings of The Eighth (2009) ISOPE Ocean Mining Symposium* (Chennai, September 20-24 2009) <https://onepetro.org/ISOPEOMS/proceedings/OMS09/All-OMS09/ISOPE-M-09-050/25328>.



**Figure 5.** A schematic sketch of the integrated deep-sea mining system as envisioned by the OMCO consortium. *Ocean Minerals Company*, *Ocean Minerals Company Leaflet*. © Fair use. Reproduced with permission from Library of Congress Washington DC (Elliot L. Richardson papers, 1780-1999, Part I, Box 389, Trips and Meetings (10 July 1978), Lockheed Briefing in deepsea mining).

run new trials'.<sup>75</sup> Kraaijeveld van Hemert, of Boskalis, liked to compare the operation to 'a man standing on the Euromast [tower in Rotterdam] with a straw 180 metres in length who needs to suck up grains of sand from the street under windy conditions'.<sup>76</sup> Despite the challenges, Welling managed to convince the other companies within OMCO to fund further tests.<sup>77</sup> However, according to Welling, adequate legislation was the only way for OMCO to secure the funding needed to build a full-scale commercial system.<sup>78</sup>

With international negotiations increasingly deadlocked, Dutch companies renewed their efforts to advocate for national legislation. At the end of 1980, President Jimmy Carter had signed US deep seabed mining legislation into law. In a meeting at the Dutch Ministry of Economic Affairs, representatives from Shell and Billiton argued again that the Netherlands should also adopt national legislation.<sup>79</sup> The companies' representatives highlighted that the American legislation had quite some heavy procedures – most probably referring to its environmental monitoring requirements – and argued that they might use Dutch legislation if it was less complicated. Thus, the companies clearly attempted to pressure the Dutch government into creating a national legislative framework that would allow them to bypass the most stringent aspects of American legislation.

Doing the companies' bidding seemed less of a concern this time around for Economic Affairs, as Minister Van Aardenne wrote a letter to his Foreign Affairs colleague, Chris van der Klaauw, arguing for the preparation of a national deep-sea mining law.<sup>80</sup> Shell also sent such a letter.<sup>81</sup> This time, the pressure worked better, and at least five interdepartmental meetings took place in which a draft law was extensively discussed. One of these meetings was attended by representatives of Billiton and Boskalis, who provided input on the legislation's content.<sup>82</sup> While officials from Foreign Affairs agreed to these meetings, they remained hesitant. They only agreed to draft

75 University of Virginia School of Law Special Collections and Archives, Papers of the United Nations Conferences on the Law of the Sea MSS 82-6, Nordquist Box 17, DBSM DOMES Workshop 1979, Minutes Deep Ocean Mining Environmental Studies Workshop (25-26 April 1979).

76 Jeroen Terlingen, *Het slijk der aarde. Hans Kraaijeveld van Hemert; een biografie van de meest bejubelde en meest verguisde ondernemer van naoorlogs Nederland* (Veen 2000) 141. It is interesting to note that Terlingen has characterised Boskalis's involvement in deep-sea mining as an 'expensive hobby'.

77 Library of Congress Washington DC, Elliot L. Richardson papers, 1780-1999, Part 1, Box 376,

Memoranda of Conversations for the Record, Notes from Conversation with Connie Welling (Lockheed) (23 April 1979).

78 *Ibid.*

79 NA, 2.05.330, IN 22834, Memorandum DIO/HJ: eenzijdige wetgeving inzake exploitatie van de oceaanbodem – Verslag van een gesprek op EZ op 19 September (24 September 1980).

80 NA, 2.05.330, IN 22834, Brief minister EZ aan minister BUZA (14 October 1980).

81 NA, 2.05.330, IN 9734, Brief Shell aan minister BUZA (17 October 1980).

82 NA, 2.05.330, IN 9734, Brief EZ aan BUZA (22 May 1981).

legislation as a potential future option and would not commit to supporting it. Furthermore, they wanted to ensure that the potential legislation would not be in opposition to UNCLOS.<sup>83</sup>

The Dutch hesitancy towards unilateral legislation became even more pronounced because of developments on the other side of the Atlantic. After the election of Ronald Reagan, the prospect of a successful conclusion of UNCLOS was looking grim. In April 1981, Reagan, worried about the provisions of mandatory transfer of technology and the powers of the Enterprise, called for a ‘policy review’ of UNCLOS.<sup>84</sup> In response, chairman of the G77, Inam Ul Haq of Pakistan, expressed the view that it seemed an attempt to renegotiate compromises reached under previous US administrations. This perception was widely shared among countries from the Global South.<sup>85</sup> Reports from inside the American administration relayed the impression to the Dutch Ministry of Foreign Affairs that the Americans might favour an alternative seabed mining regime that would tank UNCLOS.<sup>86</sup> Therefore, Foreign Affairs’ officials increasingly worried that the proposed ‘like-minded’ agreement was evolving into a ‘mini-treaty’. This was unacceptable, as Foreign Affairs had always taken the position that the agreement should have a clear interim nature. So, to avoid the impression that the Netherlands joined an alternative deep-sea mining regime, the decision was made internally to wait with any like-minded agreement until after signing UNCLOS.<sup>87</sup> The Americans, clearly eager to push on, temporarily discontinued the like-minded talks and instead continued negotiating with the UK, the FRG, and France.<sup>88</sup> These were the countries that had followed the lead of the US and had passed unilateral legislation on deep-sea mining by the end of 1981.

Even within Economic Affairs, there was increasing unease with the situation. While officials of the Mining and Coal Directorate wrote a memorandum to Minister Van Aardenne that advocated national legislation, this led to a pushback from officials of the Legal Directorate, as they argued that national legislation was just a way of legitimising the activities of companies and that there was no logic to national legislation regulating resources that were generally accepted as the common heritage of mankind.<sup>89</sup>

83 NA, 2.05.330, IN 9734, Brief minister BUZA aan minister EZ (4 December 1980); NA, 2.05.330, IN 22832, Memorandum DIO/HG: interimwetgeving diepzeemijnbouw (25 February 1981).

84 David L. Larson, ‘The Reagan administration and the law of the sea’, *ODIL* 11:3-4 (1982) 297-320. DOI: <https://doi.org/10.1080/00908328209545699>.

85 Schmidt, *Common Heritage*, 235-236.

86 NA, 2.05.330, IN 22824, Codebericht Washington aan BUZA: VN-zeerechtconferentie (31 October 1981).

87 NA, 2.05.330, IN 22824, Codebericht BUZA naar Washington, Bonn, Londen: Gelijkgezindenoverleg zeerecht (12 January 1982); NA, 2.05.330, IN 22835. Memorandum aan minister: internationaal overleg diepzeemijnbouw (12 January 1982).

88 NA, 2.05.330, IN 22824, Memorandum DIO: zeerecht (5 February 1982).

89 NA, Archief van de Directie Wetgeving en Juridische Zaken en voorganger van het Ministerie van Economische Zaken, 1976-2007

The Mining and Coal Directorate responded by arguing that the companies wanted an interim law to show their goodwill towards UNCLOS and the idea of common heritage.<sup>90</sup> This seems not to have convinced Van Aardenne, as there was no indication that the law was pursued further. Thus, while in an interview, a Billiton representative blamed the lack of Dutch action on the fact that ‘the Pacific Ocean was a bit far away,’ there was clearly more fundamental opposition within the Dutch ministries to unilateral legislation.<sup>91</sup>

### The fizzling out of Dutch interest in deep-sea mining

On 30 April 1982, in a show of opposition to UNCLOS, the US forced a vote on the draft treaty and was one of just four countries (with Israel, Turkey and Venezuela) voting against it. The draft contained many of the provisions (albeit watered down) that the developing countries had fought for. It set out to create a new international body that could develop its own mining operations and which linked mining licenses to obligations of both financial and technological assistance to developing states, and even included some production quotas.<sup>92</sup> Like many industrialised states, the Netherlands abstained from the vote, hoping that further changes could help bring the Americans back on board.<sup>93</sup> However, despite the American opposition, Dutch officials from Foreign Affairs were increasingly in favour of signing UNCLOS, even if the Americans would hold out.<sup>94</sup>

The decreasing interest of Dutch-based companies in deep-sea mining was certainly a significant factor. In the early 1980s, the realisation started to set in that assessments of the technological and economic feasibility of mining polymetallic nodules had been overly positive. The unevenness of the ocean floor proved challenging, and the estimates of the nodules’ mineral composition and quality turned out to have been too high. This, together with the fall in raw material prices, made these capital-intensive projects less attractive.<sup>95</sup> Additionally, the big European companies were less convinced

2.06.179 (hereafter 2.06.179), IN 877, Nota Directie Mijnwezen en Kolen aan minister: Interim-wetgeving diepzijmijnbouw (18 December 1981); NA, 2.06.179, IN 877, Aantekening W.J.A. bij nota EMK/231/81 inzake diepzeemijnbouw.

90 NA, 2.06.179, IN 877, Nota Directie Mijnwezen en Kolen aan minister: overleg diepzeemijnbouw 1-2 December 1981 (20 November 1981).

91 ‘Knollen lokken metaalzoeker naar zeebodem’, *Het Parool*, 20 March 1982.

92 Ranganathan, ‘What If’, 242.

93 A/CONF.62/SR.182, in: United Nations, *Official Records of the Third United Nations Conference on the Law of the Sea* Volume XVI (2009) [https://legal.un.org/diplomaticconferences/1973\\_los/vol16.shtml](https://legal.un.org/diplomaticconferences/1973_los/vol16.shtml); NA, 2.05.330, IN 22825, Memorandum DIO: elfde zitting zeerechtconferentie (7 May 1982).

94 NA, 2.05.330, IN 22826, Codebericht BUZA naar Washington: VN-zeerechtconferentie (10 June 1982).

95 Glasby, ‘Deep Seabed’, 162; Ellefmo, ‘Marine minerals’ role’.

than their American counterparts that operating outside of an international treaty was viable.<sup>96</sup> By 1981, the polymetallic nodule exploration programs all but came to a halt.<sup>97</sup>

In a meeting in 1982 between Dutch Foreign Affairs officials and representatives of the Dutch industry, the latter highlighted the worsening business case for deep-sea mining because of low nickel prices. That is why Shell and Boskalis planned to wait with further investments and said it was no longer appropriate for them to push for Dutch national legislation.<sup>98</sup> With deep-sea mining deemed not immediately viable, Foreign Affairs reported the development of a favourable attitude among the Dutch companies towards UNCLOS, even if there was the hope that the sessions of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea at the UN – which would develop the treaty into workable rules and regulations – would improve the provisions regarding seabed mining.<sup>99</sup> In a subsequent letter urging the Dutch government to sign, Shell argued that despite having misgivings with the ocean mining regulations, the treaty's provisions generally were 'in the best interest [...] of international business'.<sup>100</sup> What becomes clear is that the company valued the legal certainty that an international treaty provided regarding offshore oil operations.

There was also a consensus among officials within the Dutch ministries that the Netherlands should sign UNCLOS. After investing so much effort in creating an international agreement to establish a new maritime legal system, the choice seemed obvious for officials in Foreign Affairs. This was reflected in a briefing memorandum prepared for their new minister, Hans van den Broek, who was part of a centre-right government led by the Christian Democrats, this time with Ruud Lubbers as prime minister. The memorandum argued that there was a strong case for signing, as 'operating outside of the treaty (with deep-sea mining, for example) is risky and will lead to conflicts between states'.<sup>101</sup> Apart from some discussions on budgetary implications, officials from Economic Affairs and Finance also agreed with Foreign Affairs and advised the Dutch Council of Ministers to sign the treaty.<sup>102</sup> Lubbers also relayed this intent to Donald Rumsfeld, who had been appointed by Reagan to serve as an emissary to convince allies to either not sign UNCLOS or, at

96 Schmidt, *Common Heritage*, 285.

97 Glasby, 'Deep Seabed', 163.

98 NA, 2.05.330, IN 22826, Verslag van DIO/HG van gesprek met bedrijfsleven over Verdrag inzake het Recht van de zee (16 June 1982).

99 *Ibid.*

100 NA, 2.05.330, IN 22827, Brief Shell aan BUZA (11 November 1982).

101 Original quote: 'buiten het verdrag opereren (bijv. op het gebied van de zeemijnbouw) bergt grote risico's in zich en zal tot conflicten tussen staten leiden'. NA, 2.05.330, IN 22826, Memorandum DIO/HJ: Zeerecht i.v.m. dossier nieuw bewindsman (6 October 1982).

102 NA, 2.05.330, IN 22827, Memorandum DIO/HG: zeerecht (23 November 1982).

the very least, delay their decision.<sup>103</sup> In a meeting at the end of November 1982, Lubbers told Rumsfeld that Shell supported the treaty and that the Dutch were convinced that no seabed mining outside the treaty was viable. Additionally, he emphasised that signing UNCLOS was important as a way of ensuring good relations with the Global South.<sup>104</sup> In his meeting with Lubbers, Rumsfeld was told that, therefore, ‘the Netherlands saw no reason to hold out with [the] US’.<sup>105</sup> A week later, the Dutch Council of Ministers also agreed to sign.<sup>106</sup>

The Netherlands, together with France, were the only countries of the so-called like-minded group to sign UNCLOS on 10 December 1982, the first day it was opened for signatures. The same month, the Dutch newspaper *Trouw* reported that Billiton intended to leave OMCO and halt all investments in deep-sea mining. Because of the worsening economic circumstances, OMCO had already put a hold on the project and had ended the lease of the *Glomar Explorer*. Billiton was said to have invested 100 million guilders in the project.<sup>107</sup> In the same article, a Boskalis spokesperson deplored the harmful effect the international legal situation had had on the project. However, he acknowledged that even if this had been solved satisfactorily, the decision to quit deep-sea mining would have been the same. According to him, the ‘nickel market [...] was the ultimate decider’.<sup>108</sup>

## Conclusion

This article has shown that Dutch Foreign Affairs initially managed to find room for manoeuvre to position the Netherlands as a bridge builder between the two competing visions of regulating deep-sea mining. That is why they supported the establishment of a strong international authority to regulate the extraction of resources on the deep seabed, and were accommodative to demands for the transfer of deep-sea mining profits and technology. This initial reaction demonstrates that when it came to the question of regulating deep-sea mining, a small state like the Netherlands was able to

103 National Security Decision Directive 58 (September 30 1982), in: *Foreign Relations of the United States, 1981-1988, Volume XLII, Global Issues II* (2017) <https://history.state.gov/historicaldocuments/frus1981-88v41/d176>.

104 Telegram From the Department of State to the Embassies in the Netherlands and Belgium (29 November 1982), in: *Foreign Relations of the United States, 1981-1988, Volume XLII, Global Issues II* (2017) <https://history.state.gov/historicaldocuments/frus1981-88v41/d186>.

105 *Ibid.*

106 NA, Archief Raad van Ministers [Ministerraad]: 1823-1997 2.02.05.02, IN 3647, Notulen van vergadering vrijdag 26 November 1982 (6 December 1982).

107 In current day value (corrected for inflation) this would amount to around 95 million euros.

108 ‘Billiton stapt uit project diepzeemijn’, *Trouw*, 28 December 1982.

carve out a position for itself that was different from the other bigger Western industrialised states.

However, this role became increasingly difficult to uphold when Dutch multinational companies entered the impending deep-sea mining industry. Spurred on by these companies' interests, officials from Economic Affairs – who had already expressed scepticism about Foreign Affairs officials' views – moved quickly to assert more influence in the formulation of the Dutch policy and align it more closely to that of the US and other industrialised states with deep-sea mining interests. This shows that, in the late 1970s and early 1980s, Dutch multinationals and their interests impacted Dutch foreign policy on this emerging new extractive ocean industry. Because of their concerns, the position of the Dutch delegation at the UN became less geared towards accommodating the demands of the Global South, and more attention was focused on the need to ensure a deep-sea mining regime that would induce private investment in this new industry. The external Dutch room for manoeuvre was thus limited by the internal pressure from transnational actors. Nevertheless, officials within Foreign Affairs – and even some in Economic Affairs – expressed doubts about US' ideas, also advocated by the companies, for an alternative regime based on national legislation that would circumvent UNCLOS.

Yet, at the beginning of the 1980s, when the short-term feasibility of deep-sea mining seemed impossible, the Dutch companies relented in their lobbying efforts against the compromises of UNCLOS. They even expressed tacit support for the draft treaty. This subsequently made it easier for Dutch Foreign Affairs officials to argue for the compromises of UNCLOS as both a valuable contribution to international maritime law and a significant diplomatic achievement in improving Global North-South relations. This, ultimately, made it relatively easy for the officials from the Dutch ministries to reach consensus on advising their ministers to sign UNCLOS. The Dutch cabinet, led by Lubbers, decided to do so when the treaty opened up for signatures in 1982, even if this was opposed by the US and other big industrialised states who objected to the deep-sea mining provisions and refused to sign the treaty.

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