

THE SEABED AND THE SOUTH: FROM STOCK STORIES TO NEW HISTORIES OF INTERNATIONAL LAWMAKING

SURABHI RANGANATHAN¹

Professor of International Law, University of Cambridge

Centering the career of Cameroonian diplomat Paul Bamela Engo during the negotiation of the UN Convention on the Law of the Sea, this article makes a methodological intervention in the historiography of multilateral treaty-making. It reads through and against the grain of dominant narratives of oceanic constitution-making, and offers counter-narratives that serve as conceptual and mobilizational resources in contemporary struggles. It examines how the ‘stock story’ of the emergence of the resource regime for seabed minerals as the common heritage of mankind erases the radical alternatives that were proposed by Third World actors and their efforts to write them into law and sorts these actors into trope-laden categories of ‘extremist’ and ‘moderate’. Against this, and building on critical race theorist Richard Delgado’s exploration of counterstorytelling, it traces histories that position Third World diplomats and lawyers as intellectual innovators and rival worldmakers. Extending the field of international intellectual history, and examining international lawmaking conferences as a political form, these histories link UNCLOS to wider anticolonial and worldmaking projects. Connecting analyses at multiple spatial and temporal scales they offer an empirically-grounded approach to the agency and structural constraints of Third World actors negotiating international legal orders, and illuminate international law-making as a promising site for global history.

Keywords: UNCLOS, historiography, multilateral conferences, decolonisation, anticolonial worldmaking, seabed mining, common heritage of mankind, critical legal histories

1 INTRODUCTION

There is an article in the *New Yorker* that I routinely re-read. Written by veteran journalist William Wertenbaker in 1983, and published in two parts, the article offers a riveting account of the Third UN Conference on the Law of the Sea, 1973-1982 (UNCLOS III).¹ Of course, despite its prosaic title, this *was* a historic conference. A meeting of over 150 states, and at times over 5000 participants, UNCLOS III was intended to showcase commitment to a post-imperial international legal order. It negotiated the UN Convention on the Law of the Sea 1982 (UNCLOS) — a treaty immediately dubbed a ‘constitution’ for the ocean.² In a narrative of more than a little edge-of-seat quality, Wertenbaker acquaints the reader with the main personalities, politics, and processes of the exercise. But despite its pleasures the article has some dissonant beats. The first part, for example, ends with this image:

Seated behind a negotiating table ... the massive Paul Engo, arms outthrust on either side and hands gripping the table, seemed a magnate of great puissance.³

By this point, Wertenbaker has offered the reader a deft overview of the conference, from inauguration up to late stages; the second part will report on the final sessions, particularly the chaos wreaked by the new Reagan Administration which was unhappy with the Part XI of the draft treaty, its regime for seabed mining. The text has already described prominent

¹ Email: sr496@cam.ac.uk. My thanks to Rohit De, Vito de Lucia, Megan Donaldson, Sundhya Pahuja, and anonymous referees, for comments on the draft, and to seminar participants at Harvard Centre for History and Economics, Australian National University College of Law, Norwegian Centre for the Law of the Sea, and University of Zurich Faculty of Law for helpful discussions. The essay was completed during a fellowship at the Wissenschaftskolleg zu Berlin, and my thanks to Wiko for the facilities and time.

² W Wertenbaker, ‘A Reporter at Large: Law of the Sea – I’, *New Yorker*, 1 August 1983, 38; ‘A Reporter at Large: Law of the Sea – II’, *New Yorker*, 8 August 1983, 56.

³ T Koh, ‘A Constitution for the Oceans’ (1982), reprinted in T Koh, *Building a New Legal Order for the Oceans* (NUSP 2020) 85.

³ Wertenbaker, LOS – I, 65.

participants, and the reader has learnt that Cameroonian delegate Paul Bamela Engo, chair of the conference's Committee I tasked with formulating this seabed mining regime, was

one of the most powerful men at the conference, and its most colorful figure, whether occupying the chair or sweeping along the corridors wearing native robes — a huge man with a deep rumbling voice that could command even the largest UN conference hall.⁴

Physical descriptions are a feature of such articles, and pepper this one — a US delegate, we are told, possessed 'the chiselled good looks of Dick Tracy'.⁵ But for the most part these descriptions appear once, and accompany words on the particular diplomatic skills of those pinpointed. With Engo, however, we hear twice about size, not once about skills, and more than once about flaws. In one paragraph we learn that he was regarded as 'less than fully effective', not given to 'pursuing the issues at much depth', 'sensitive about his authority', 'held up agreements when he did not think he was receiving proper credit,' and so on.⁶ In another that, at a crucial meeting notionally under his aegis, 'Engo wandered in from time to time and sat down and started lecturing the others and had to be talked out of the room again'.⁷

Wertenbaker is not alone in offering negative evaluations of Engo. As we will see, they have appeared in other works on UNCLOS III, including those not set up as chatty accounts, and different in form and methods of analyses. The question is why? Was Engo just that incompetent? If so, then how did he come to hold such an important chair, and later the office of an international judge?⁸ Were the conference evaluations just casually racist? If so, then why did some others come in for praise? Wertenbaker describes Kenyan delegate Francis Njenga as 'one of the smartest ... men in the conference'.⁹ Was it just that momentary irritations with individuals ran high on such a momentous issue — the seabed being a key site of North/South confrontation? If so, then why do the accounts perpetuate even much later?

Thinking with these questions I sought to explore Engo's role as chair of Committee I at greater depth, and in the context of his life and work. And that leads to the two interventions I seek to make in this essay. Both are about the historiography of UNCLOS specifically, but might have resonance for work on other international law-making. The first is about the current thrust of negotiation histories; the second about new historiographical possibilities.

Firstly, then, approaching the literature on UNCLOS III from the perspective of how it characterises Engo reveals that much of it partakes of and reproduces what Richard Delgado calls a 'stock story'¹⁰ — that is to say, a dominant but curated account of reality that serves to justify investment in existing structures. I will take up the question of the work that stock stories do in the final section of this paper, with reference to Delgado's writing. Before that, in Section II, I tease out the contours of UNCLOS's stock story. I show that it is one of grand if mixed achievement via an unprecedented process: a major new treaty via a massive treaty-making exercise, both symbol and consolidator of a world after empire (though eventually unratified by the United States). The showpiece of this achievement is its resource regime for seabed minerals, which it designates 'the common heritage of mankind' (CHM). Specific narrative strands differ in their takes on this regime: some are more concerned than others about the concessions it demanded from the US and other industrialised states and their mining companies; all fold in the coda of the 1994 'Implementing Agreement' that made significant alterations to the regime but differ in approval or criticism. But all agree on the scale of the achievement and, working backwards, analyse the process by which it was reached. Thus, we get a fairly neat narrative that

⁴ Ibid, 55.

⁵ Ibid, 64.

⁶ Wertenbaker, LOS – II, 62.

⁷ Ibid 66. Here quoting a delegate.

⁸ At the International Tribunal for the Law of the Sea, 1996-2008.

⁹ Wertenbaker, LOS – I, 62.

¹⁰ R Delgado, 'Storytelling for oppositionists and others: A plea for narrative' (1989) 87 Mich LR 2411.

brings out how a few dedicated actors worked in a febrile context to bridge epistemic gulfs, navigate impasses, and find common grounds. Engo does not fare well in such a telling.

Without doubt, process analysis is important, and given the grandeur and historical backdrop of UNCLOS and the novelty of the seabed regime, it also illuminates the devices and procedures that enabled an immense North/South negotiation. But we must take notice of the reductive way in which it engages that which it is describing. Particularly, consider how this analysis approaches one half of the ratio: the South. For sure, the North is also simplified, with the focus mainly on the US.¹¹ Even so, Northern positions are well contextualised. We learn about the structural factors that drove industrialised states' interests in general, and about US engagements, motivations and contributions to the law-making at every level, from international to domestic, interdepartmental, and civil society. The South is more than simplified: it is abstracted and stylized. On offer mainly are descriptions of Third World delegates as falling into one of two reactive categories: 'moderates' and 'extremists', with Engo exemplifying the latter.¹² The moderates are praised for their ready grasp of 'reality' as depicted by the North, and for their constructive role in brokering the compromises necessary for a successful negotiation. The extremists are criticised for an unproductive commitment to the New International Economic Order, for ideology without ideas, sensibility without sense, that caused the negotiation to falter. Not on offer are inquiries that might examine the ideas that were advanced by Southern delegates, tease out the complexities of their participation, material and political circumstances, or how their contexts and experiences refract the stock story.

The stock story's reductive approach to the South does disservice to it. It also reduces understanding of the very achievements it seeks to illuminate. And it obscures from view aspects that might be most consequential today in offering conceptual and mobilisational resources to struggles for ocean justice. Knowing that the seabed regime was built on the crowding out of more radical alternatives suggested by Southern actors, and on the subtle undermining of efforts to translate those alternatives into law, seems particularly important in this moment of crises, where debates on renewed extractive interests in seabed resources are confined to the narrow range of questions left open within the existing law. And knowing that despite its erasures and exclusions, the South had frequently captured UNCLOS III as a theatre for vibrant anticolonial politics and linked it to yet other sites for the same also seems important in the context of the pallid and depoliticised ways in which current negotiations proceed.

My *second* intervention, then, is about how we might open up UNCLOS historiography to take in these aspects. And here, thinking with Engo proves useful once again, showing possibilities of layering the stock story with a multi-scalar engagement with the South. Thus, in Section III, I place Engo in diverse contexts, relationships, and temporalities, and through this, offer rough sketches of three possible 'counterstories' that add to the history of UNCLOS negotiations.¹³ These stories situate Third World delegates as intellectual innovators, think about the international conference as a political form, and wrap UNCLOS III into a larger story of anticolonial worldmaking. The section explores what telling these stories might contribute, and identifies the specific methodological currents that inspire them. There are of course limits as well as possibilities to the enterprise of telling counterstories. Section IV, exploring the work

¹¹ Ogley observes that the seabed negotiations 'can, by a drastic simplification, be reduced to bilateral negotiations between the United States and the Group of 77'; but cautions that that simplification is 'procrustean': R Ogley, *Internationalizing the Seabed* (Gower 1984) 89. At UNCLOS III, especially on seabed issues, the G77 was the main formation of Third World states, though they also participated in geographically-defined group. Also present (as observers) were representatives of liberation movements and trust territories. In this essay, I use Third World, South and G77 interchangeably unless context demands otherwise.

¹² On the use of these labels, see note 48, *infra*. Note however recent auto- and biographical work that provides important texture to Southern actors and allies. E.g., SN Nandan and KE Dalaker, *Reflections on the Making of the Modern Law of the Sea* (NUSP 2021); T Meyer, *Elisabeth Mann Borgese and the Law of the Sea* (Brill 2022)

¹³ Delgado, *Storytelling*, 2414

done by stock stories, reflects on these. It also offers reasons why, despite difficulties, we need to tell these stories anyway.

2 UNCLOS III AND THE CONGEALMENT OF A STOCK STORY

To tease out the contours of UNCLOS's stock story, I first trace Engo's own arc at UNCLOS III, showing how he came to be narrated in negative terms. The seeds lay in a growing US dissatisfaction with his irrepressible political agency on seabed questions. Engo's actions and US reactions fed into two strands of analyses, which add up to one overall story.

2.1 Engo's arc, from praise to antagonism

'A key individual might, by his performance, make himself so controversial as to impede the process of negotiation. This has often been argued in relation to the Chairman of Committee I at UNCLOS.'

Barry Buzan (1980)¹⁴

'Two unfortunate procedural decisions further stacked the odds against UNCLOS III's generating an acceptable sea-bed mining regime. First, the man appointed to the chair of the relevant committee, Paul Engo of the Cameroun, was an unsuitable choice.'

Roderick Ogley (1995)¹⁵

The above-quoted assessments, by leading international relations scholars who wrote exhaustively on UNCLOS during and after the negotiations, serve as a sample of literature, albeit at the measured end of the spectrum. In work that illustrates the other end, two other scholars have more recently reiterated a description of Engo's role at UNCLOS III as 'treachery'.¹⁶ The word is supplied in appropriate quote marks but otherwise uncontextualised. That description originated with a commentator who worked for the US government. It was in line with the pointed terms in which Engo was discussed by US officials in private and public.¹⁷ Thus, interviews collected by legal scholar Markus Schmidt as part of a detailed study of US attitudes vis-à-vis seabed mining and UNCLOS III included criticisms similar to those seen in Wertebaker's narrative above. Engo was viewed as having caused 'unnecessary complications and acrimony', driven by 'resentment', power-hungry, and keen to stamp his authority over the process despite lacking necessary political or drafting skills.¹⁸ US diplomatic cables perpetuated an account of Engo as credit seeking, unable to understand the negotiating text, lacking grasp of the substantive issues, wanting to 'act as judge' rather than engage in 'shuttle diplomacy', and lying and exaggerating without realising it.¹⁹ Criticism also found its way into editorials and op-

¹⁴ B Buzan, 'United we stand... Informal Negotiating Groups at UNCLOS III' (1980) 4:3 *Marine Policy* 183, 193.

¹⁵ R Ogley, 'The UN and the Global Commons' (1995) 26:4 *IDSB* 74, 81-82.

¹⁶ S Blavoukos and D Bourantonis, *Chairing Multilateral Negotiations, the case of the United Nations* (Taylor and Francis 2011) 70.

¹⁷ PM Leitner, *Reforming the Law of the Sea Treaty: Opportunity Missed, Precedents Set, and US Sovereignty Threatened* (UPA 1996).

¹⁸ M 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 1989), 113-114, 121-122, 134-35. Another detailed account, also revealing harsh evaluations of Engo, is EL Miles, *Global Ocean Politics: The Decision Process at the Third United Nations Conference on the Law of the Sea, 1973-1982* (Nijhoff 1998).

¹⁹ US Diplomatic Cable (USDC) 1975COLOMB02836_b, 9 September 1975. Source: WikiLeaks. Unless specified otherwise all cables are from WikiLeaks. On public criticism and Engo's recognition of it as a 'personal attack', see

eds.²⁰ Wertenbaker noted Engo had ‘worked the entire conference into a froth’ in the summer of 1977, and repeated the congealing common sense that ‘Engo’s changes ... were generally agreed to have delayed [the conclusion of the conference] by about two years.’²¹ Another commentator wrote: ‘Engo’s actions cast a dark shadow on the negotiations.’²²

How did Engo come to inhabit this position of the antagonist of UNCLOS III? Certainly, he was not so perceived at the start. In fact, records show that the US lobbied for him to take the chair of Committee I. It had been agreed, on a principle of equitable distribution of conference positions — intended to showcase commitment to post-imperial lawmaking — that a delegate from Africa would chair this committee.²³ In conversation, US and UN officials were clear about their preference for Engo over others such as Ambassador Kedadi of Tunisia and Ambassador Cisse of Senegal.²⁴ The US Mission in New York included Engo in a group it described as ‘extremely competent’; he was elected by acclamation; and, in the face of uncertainty about his availability, the US directly appealed to Cameroon to send him to UNCLOS III.²⁵

It is worth dwelling on this early confidence placed in Engo. From the outset, the question of a seabed regime had been both complex and delicate. It was complex because it was novel, with no precedents for a regime based on designating resources as CHM, and because working out what that should mean required grappling with much that was unknown, ill-understood, or contested wisdom. There was no clarity, for example, with respect to basic facts: what resources did the seabed offer and what technology was available. The information that existed was unevenly shared. It was also difficult to predict the time horizon of mineral extraction, the sustainability of the demand for seabed minerals, and what seabed mining might imply for the many land-based mineral producers. Unclear even was the extent of area that would remain common. There was no agreement on the appropriate model for seabed mining, with positions ranging from a simple for-profit model with state-licensed corporations overseen by a weak international authority, to a fully redistributive model in which an internationally-governed ‘Enterprise’ monopolised extraction. Such issues were especially delicate because they distilled the North/South ‘battles’ of the time.²⁶ To Third World states, for example, the seabed did not simply represent a source of income. Although the money was important, what also mattered was equal participation in the activity itself and its regulation. The for-profit model preferred by Northern states did not speak to these goals. In the context of the time — the Cold War backdrop — questions about the nature and goals of seabed mining, and the basis for

USDC 1977STATE169883_c, 20 July 1977; USDC 1977STATE239529_c, 5 October 1977; USDC 1978STATE071543_d, 20 March 1978; USDC 1977YAOUND03843_c, 1 September 1977; USDC 1978GENEVA05551_d, 13 April 1978.

²⁰ E.g., ‘Sea Treaty at Sea’, Washington Post, 25 July 1977; ‘US Envoy Calls Proposed Regulations on Ocean Mining Unacceptable’, New York Times, 21 July 1977.

²¹ Wertenbaker, LOS-I, 55.

²² RB Levering and ML Levering, *Citizen Action for Global Change: The Neptune Group and the Law of the Sea* (Syracuse 1999), 76.

²³ The Presidency went to Hamilton Shirley Amerasinghe (Sri Lanka), succeeded by Tommy Koh (Singapore). Andres Aguilar (Venezuela) and Alexander Yankov (Bulgaria) chaired Committees II and III; Kenneth Rattray (Jamaica) was Rapporteur General, Alan Beesley (Canada) chaired the Drafting Committee. Several other states had seats on the General or Drafting Committees on the ‘one state one seat’ principle, but the US and USSR secured seats on both.

²⁴ USDC 1973USUNN04585_b, 9 November 1973.

²⁵ USDC 1973USUNN05696_b, 18 December 1973; USDC 1973YAOUND03988_b, 6 December 1973. See also USDC 1974USUNN01858_b, 18 May 1974; B Zuleta (UN Special Representative) to UN Secretary General, 11 April 1975, Series S-0913 Box 1 File 4, UN Archives, New York (UNA).

²⁶ M Koskenniemi and M Lehto, ‘The Privilege of Universality: International Law, Economic Ideology and Seabed Resources’ (1996) 65 Nordic JIL 533; S Ranganathan, ‘The Common Heritage of Mankind: Annotations on a Battle’, in J von Bernstorff and P Dann (eds), *The Battle for International Law: South North Perspectives on the Decolonisation Era* (OUP 2019) 35. There were also battles *within* these groupings, e.g., on the important question of what part of the seabed should be enclosed within national jurisdiction.

valuing seabed minerals *were* politically and epistemically contestable.²⁷ To Engo, then, fell the task of steering an issue on which there were no common grounds, and little agreement even on the starting points.²⁸

As sources show, for a while, he enjoyed a honeymoon period.²⁹ Part of the reason for US (and UK, France, USSR and Japan, forming the secretive Group of 5) support for Engo was that they assumed they could rely on him to secure their preferences, and they were not unduly dismayed by initial signs that suggested otherwise.³⁰ One reason for their sense of assurance might have been that Committee I had established an informal working group to permit efficient deliberation on key issues, and the appointed chair of this group, Christopher Pinto of Sri Lanka, was another delegate they regarded as reliable. In Engo and Pinto, these states believed they had secured two useful vehicles for their interests. Thus Engo's initial small acts of dissent were seen as merely performative, to bolster his credibility within the Group of 77. Indeed, in 1975, G5 states went along with Conference President Amerasinghe's proposal to authorise committee chairs to draw up 'single negotiating texts' (SNTs) based on the negotiations taking place in formal and informal settings. Such authorisation, necessary in view of the complexity of the negotiation structure, was extremely potent.³¹ Effectively, the chairs were being trusted to faithfully report in the form of draft provisions what they understood to be the emerging consensus amidst a chaotic setting. The hope was that well-founded SNTs could pave the way for early adoption of the treaty.

²⁷ Ranganathan, *ibid*, 50-51. However, the fault lines were not always as expected. Pinto recalls, vis-à-vis the position taken by socialist states:

'In the negotiations that ensued, the "dirigistic" policies favoured by the majority, the developing countries, were opposed by a relatively small group of economically and politically influential industrialized countries certain of the efficacy of the free market and private enterprise. Another relatively small group, the socialist countries, adopted a third position. While they might have been expected to support fully the "dirigistic" stance of the developing countries which had much in common with their own domestic policies, they did not do so. Recognizing the contradictions inherent in trying to administer a "dirigistic" regime in collaboration with the capitalist West, they chose to give only qualified support to the developing countries' initiatives...'

MCW Pinto, 'The Common Heritage of Mankind: Then and Now' (2013) 361 RCADI 19, 66.

In 1975, the USSR agreed with the US on the need for assured access to state-sponsored mining entities (private or public) and floated an early version of the parallel system, dividing the seabed into areas reserved to states and areas under the discretion of the seabed authority; the G77 rejected this: USDC 1975GENEVA03400_b, 10 May 1975. But in 1977, irate US officials were noting that the USSR was championing G77 positions, for 'political' reasons: USDC 1977USUNN01744c, 2 June 1977.

²⁸ It was apparent to the G77 that the political economy of resource extraction was a matter of construction, not 'discovery': I Feichtner, 'Sharing the Riches of the Sea: The Redistributive and Fiscal Dimension of Deep Seabed Exploitation' (2019) 30:2 EJIL 601.

²⁹ A key source used in this article are diplomatic cables exchanged between US departments and embassies. Researching this essay amidst pandemic constraints I was pleased to discover a cachet of over 500 cables via Wikileaks. There are of course limits to what such cables can show, but they offer valuable insights into impressions exchanged between US officials, and between US officials and those of other states. Interesting also are comparisons between 'classified' and 'unclassified' reports (Wikileaks provides both) of particular meetings or UNCLOS III sessions, for these reveal further glimpses of particular interests, postures and strategies of the US and, occasionally, other states. Wikileaks is simply the source of these cables, and there is no doubt about the authenticity of the records. The article also uses a variety of other sources, including archival materials from the UN Archives (New York), UK National Archives (London), and Kenyan National Archives (Nairobi); primary materials such as conference records; published works; and digitised archives, genealogical websites like ancestry.com, and social media archives and pages.

³⁰ Engo told them privately that their positions were too rigid. He objected to proposals by US lawmakers to pass unilateral seabed mining legislation. Most importantly, when, following his private suggestion for a seminar to educate G77 delegates on the economic implications of seabed mining and difficulties with production control mechanisms, the US tried to fudge information and confuse and divide the G77, Engo wrote a seminar report to set the record straight. The US dismissed this report as 'far from objective'. USDC 1974CARACA08251_b, 24 August 1974.

³¹ On the SNT as a 'major procedural innovation', see Ogle, *Internationalising*, 71-72.

Per US assessment, Pinto played his part in working out a draft that reflected US preferences; Engo was expected to present this formally as Committee I's SNT. Engo, however, sprang the first of what would be *two* such surprises: he substituted for Pinto's text one that leaned towards G77 preferences on questions such as who could conduct seabed mining.³² Discomfited, the US worked quickly to regain control. On the one hand, drawing on intelligence that suggested that Engo had become anxious about growing distrust among the G77, who were beginning to regard him as a US and mining industry 'stooge', they took care to avoid the impression of particular closeness — even as they agreed with Engo a plan by which further negotiations would be carried out by a secret group (that he would not attend) under cover provided by Engo.³³ On the other hand, they also conferred secretly with Pinto, all the while nodding along when Engo explained that his textual changes were due to Pinto's secretiveness in drawing up the draft.³⁴ It was also at this time that personal criticisms of Engo's ability began to be voiced in private exchanges between US officials.

The secret negotiating group was termed the 'Brazil group', and it was this group that arrived at the single-most defining feature of the UNCLOS seabed regime. This was the 'parallel system' of exploitation. The parallel system drew a compromise between the international Enterprise model favoured by the South and the state-licensed corporations model favoured by the US and others: now, mining could be carried out by either.³⁵ Although often regarded as the major breakthrough on the seabed regime, the parallel system spelt the end of the grander vision of participative mining and redistribution — which they also linked to the NIEO — that had fired the Third World's enthusiasm for seabed negotiations. Under the parallel system, the Enterprise was a much-reduced entity, and one that would struggle for relevance in a competitive system in ways that it would not have as a legislated monopoly.³⁶

Engo's role in providing cover for the Brazil Group included: finding pretexts to break up plenary discussion in favour of smaller meetings; calling charadric 'Friends of Engo' sessions at which G77 delegations (unaware of the secret negotiations) would air their views; and gradually feeding the Brazil group's positions to these delegations as drafts worked out on *their* views. The Third World was increasingly alert to these tactics: the G77 came to strenuously oppose the 'Revised' SNT (RSNT) that was emerging from the Brazil Group (albeit without exact knowledge of its provenance), and again began to describe Engo's actions as selling out.³⁷ These patterns continued over several months, right up to the late stages of the 1977 session. In all this time, the US engaged in robust diplomacy seeking support for the RSNT; US Secretary of State Kissinger himself played a role in eliciting G77 support by offering financial and technological support for the Enterprise, as well as vague promises for reviewing the parallel

³² Ibid, 72.

³³ USDC 1976USUNN01017_b, 16 March 1976; USDC 1976USUNN01415_b, 6 April 1976.

³⁴ USDC 1975COLOMB02836_b, 9 September 1975.

³⁵ A speech by US Secretary of State Kissinger offered the parallel system as a major concession to the interests of both sides. The US also engaged in intensive bilateral diplomacy to bolster the 'moderate' G77 delegations and marginalize the 'extremists': USDC 1976USUNN01508_b, 12 April 1976; USDC 1976STATE106933_b, 2 May 1976; USDC 1976USUNN03143_b, 7 August 1976. Ideas of a parallel system had been under discussion even prior to the Brazil group, for example between UK officials and industry representatives, but the latter regarded it with disfavour: 'Note of meeting with companies', 17 January 1975, FCO 76/1086, UK National Archives, London (UKNA). The suspicion of the industry towards the parallel system explains why the US perhaps sincerely regarded it as a major concession to the Third World.

³⁶ The parallel system was described by some as a form of 'neo-colonialism': USDC 1977USUNN01770_c, 4 June 1977. While this language was not generally embraced, the challenges that it posed for the viability of the Enterprise — even one supported by way of subsidies — were well recognised by states and scholars: USDC 1976USUNN03795_b, 17 September 1976; UN Inter Office Memorandum, 28 September 1977, Series S-0913 Box 1 File 6 UNA (noting for example *Sri Lanka* as criticising the parallel system, an assessment backed up by internal US communications observing that Pinto may have worked *with* Engo to change the Evensen texts: USDC 1977STATE192585_c, 15 August 1977); A Pardo, 'The Convention on the Law of the Sea: A Preliminary Appraisal', (1982-83) 20 San Diego LR 489, 500.

³⁷ USDC 1976USUNN01892_b, 1 May 1976.

system in the future.³⁸ The US also succeeded in getting Engo to let Jens Evensen of Norway lead further negotiations on the RSNT in order to ready a draft that could fit into the ‘Informal Composite Negotiating Text’ (ICNT) that Amerasinghe hoped to compile during the 1977 session. Evensen worked his way through sessional and intersessional meetings in 1977 to prepare texts operationalising the parallel system.

Here is where Engo sprang his second surprise — the one that Wertenbaker describes as ‘work[ing] the entire conference into a froth’. Having played along with US efforts at conference choreography, and either because he had always intended this as a backup plan if the Brazil Group and Evensen efforts did not produce an acceptable outcome or because he was again responding to perceived G77 criticism, Engo again switched the texts. Into the ICNT went seabed provisions that reflected certain G77 preferences vis-à-vis subsidies to the Enterprise and powers of the seabed authority, although the text retained the parallel system.³⁹ This time, the sense of shock amongst US officials was palpable: they believed they had learnt to play Engo, yet he had used his chair’s authority to table a text they found ‘totally unacceptable’.⁴⁰ Engo’s ‘treachery’ was thus met with an outright campaign by the US against him.⁴¹ Initially they hoped to see him removed from the process altogether; eventually, they worked to change the conference structure to diminish his role. The tone of US communications became especially strident, though notably the responses were mixed. Even amongst industrialised states, some had preferred different outcomes to those favoured by the US; various Third World states refused negative US briefings about Engo.⁴² An editorial in the journal of Mexico’s *Banco Nacional de Comercio Exterior* was particularly clear about the epistemic gulfs between the US and G77 views of the events.⁴³

Nevertheless, the US narrative did find toeholds. The conference structure was changed to divide up Committee I’s work amongst seven negotiating groups.⁴⁴ The new rules also prohibited modifications to the ICNT on the initiative of any single person, including the President or a Committee Chair, absent support from the Plenary. These changes introduced a consequential lag this into the process, as negotiations continued up to the change in government in the US. With the Reagan administration’s firmly negative view of the seabed regime, the US voted against UNCLOS. This move catalysed further negotiations towards modifying the regime (culminating in the 1994 agreement); efforts to have Engo preside over those were gently blocked.⁴⁵

³⁸ USDC 1976USUNN03570_b, 3 September 1976. The additional promises were likely in response to information collected during Kissinger’s bilateral meetings. See FX Njenga, ‘Report of a Meeting with Henry Kissinger’, 13 August 1976, KL/14/1, Kenya National Archives, Nairobi (KNA).

³⁹ See Schmidt, Common Burden, 134-136. However, Njenga noted that Engo’s changes were perceived as undermining the parallel system altogether: FX Njenga, ‘Report on Law of the Sea Consultations’, 6-17 February 1978, p.5, MAR/23/Vol.VI, KNA. As far as the mining industry was concerned, neither the Evensen text nor Engo’s revisions afforded an appropriate parallel system: ‘Industry views on the system of exploitation at the law of the sea conference’, 5 April 1978, FCO 76/1906, 1979, UKNA. Nevertheless, they did not favour scuttling the negotiations, as they viewed an international treaty as the only basis on which to begin seabed mining: ‘Report on meeting with a representative of BP’, 2 March 1979, FCO 76/1906, 1979, UKNA

⁴⁰ USDC 1977STATE175098_c, 26 July 1977.

⁴¹ For a sample of US efforts, see: USDC 1977STATE173534_c, 25 July 1977; USDC 1977STATE242626_c, 8 October 1977; USDC 1977STATE242626_c 7, 8 October 1977; USDC 1977STATE249348_c, 17 October 1977; USDC 1977STATE263748_c, 3 November 1977 and the cables cited in the next footnote.

⁴² For a sample of reactions of G77 states: USDC 1977RABAT04661_c, 23 August 1977 (Morocco); USDC 1977DARES03930_c, 29 September 1977 (Tanzania); USDC 1977NEWDE12575_c, 8 September 1977 (India); USDC 1977JAKARTA14635_c, 28 October 1977 (Indonesia); USDC 1977STATE264774_c, 5 November 1977 (Venezuela); USDC 1977BRASIL09325_c, 13 November 1977 (Brazil); USDC 1977KUALA08469_c, 7 November 1977 (Malaysia). See also USDC 1977MOSCOW15098_c, 14 October 1977 (USSR).

⁴³ Editoriale, ‘Conferencia del mar: ominoso paréntesis’, (1977) 27:7 Comercio Exterior 757.

⁴⁴ UN Doc. A/Conf.62/62, 13 April 1978. Ibid, para 10.

⁴⁵ Proceedings of the Commemoration of the ISA’s Twentieth Anniversary Kingston, 22 July 2014, p. 37, https://isa.org.jm/files/files/documents/isa_20thannivbook_web2_27july.pdf.

2.2 UNCLOS's stock story

Over time then, there congealed narratives about Engo that are revealing of the ways in which UNCLOS has been coded into a stock story, that is to say, a dominant interpretive framing of the process and outcomes. This story emerges as the product of two strands of analyses. The first is in the form of apologia for eventual US opposition to the treaty. In this, Engo embodies what is claimed as the important causal factor for hardening the US's attitude: irrational obstinacy of Southern diplomats, and their refusal to abide by carefully crafted compromises. The apologia reasoned that the US engaged in good faith with the negotiations, and even showed willingness to accept heavy obligations. Yet, it was repeatedly blindsided by 'high-handed' manoeuvres of Third World participants making ever-greedier demands.⁴⁶ Some apologetic voices urged the US to withdraw from the negotiations entirely, most took a poor view of the text adopted in 1982. They were clear about the standards by which the treaty and treaty negotiators were being assessed: their failure to reflect and understand US interests, while presuming US giveaways. UNCLOS, they felt, was too radical to be ratified. The alterations of 1994 were necessary, but in some perceptions still insufficient.⁴⁷

The second strand of analysis champions UNCLOS as the remarkably well-mediated outcome of a fraught negotiation process, made difficult both by US domestic politics and a faction of the Third World. Here, Engo exemplifies that faction: the 'extremists' or 'radicals', juxtaposed to the 'moderates' who engaged in shuttle diplomacy and worked out generally acceptable solutions.⁴⁸ The prime example given of the moderates is Singaporean diplomat Tommy Koh, who succeeded Amerasinghe as Conference President. Koh, who took on a bigger role on seabed matters following the events of 1977, is praised for his ability to get along with all sides, and for depoliticising the discussion on delicate matters by bringing in external expertise. Often cited is his role in establishing agreement on the financial terms of contracts for seabed mining.⁴⁹ Here, in the face of ambitious fee-raising proposals by states like India, Koh had experts from Massachusetts Institute of Technology demonstrate their implausibility via computer modelling.⁵⁰ This worked, Schmidt explains, because '[n]o country had to concede the correctness of others' arguments in order to retreat from its earlier position. It was easier to concede to a computer, rather than a political adversary....'⁵¹ Then, via middle-of-the-road proposals, small group consultations, and rounds of shuttle diplomacy, Koh achieved a result which all accepted. This is the kind of process that is celebrated in accounts of UNCLOS III. But it is worth noting that not all regarded it in the same sanguine way. As one of MIT experts themselves noted, opposition came from 'Paul Engo of the Cameroon, the politically adept chairman of the negotiations on the overall seabed regime', who spoke to 'how the locus of

⁴⁶ E.g., Editorial, 'Scuttle Law of the Sea', Wall Street Journal, 22 July 1977; S.J. Chapman, 'Underwater Plunder', New Republic, 21 April 1982. The most common source of such critiques are US officials, especially former members of UNCLOS III delegations. E.g., Leitner, *Reforming*, 13-23; J Malone, 'The United States and the Law of the Sea' (1984) 24:4 Virginia JIL 785. See also, *during* UNCLOS III: RG Darman, 'The Law of the Sea: Rethinking US Interests' (1978) 56:2 Foreign Affairs 373-395. Even works analysing the US attitude in more balanced terms see Engo and the Third World's recalcitrance as a relevant causal factor for US opposition: e.g. Miles, *Global Ocean Politics*, 427ff.

⁴⁷ D Bandow, 'Faulty Repairs: The Law of the Sea Treaty is Still Unacceptable', FP Briefing No. 32, Cato Institute, 12 September 1994. The US provisionally signed the 1994 Agreement, but did not ratify; the signature has lapsed.

⁴⁸ This language of 'extremists' and 'radicals' juxtaposed to 'moderates' appears in most accounts of UNCLOS III, although the latter two terms are more commonly used than the first, perhaps because it is recognised as pejorative. See e.g., Levering, *Citizen Action*, 69 (on the use of terms like 'Third world zealots' and 'extremists' by New York Times). Nevertheless, it was used, and also regularly featured in internal US communications. In some literature, there is also reference to Third World 'militants'.

⁴⁹ See e.g. Wertenbaker, *LOS-I*, 62, and the footnotes immediately below.

⁵⁰ See JK Sebenius, 'The Computer as Mediator: The Law of the Sea and Beyond' (1981) 1 JPA&M 77.

⁵¹ Schmidt, *Common Burden*, 154.

political power was shifting to the technocrats'.⁵² Engo 'lamented that [we] have ourselves been dragged into adopting models and systems of calculations on fictitious data that no one, expert or magician, can make the basis of any rational determination.... We get more and more engrossed with each session and have been reduced to mere spectators in the inconclusive tournament among experts'.⁵³

Although the first strand of analysis may seem too confined to select US voices of obviously particular interests to matter to the overall historiography of UNCLOS, it acts as a foil for the second. Throughout UNCLOS III and after the US applied significant political and material resources to narrativising the conference — shaping views about issues, personalities, and events, via diplomatic exchanges, public writing, media communications, and qualitative inputs into scholarly analyses; and turning its own domestic crises and interdepartmental conflicts into matters of general concern. This process gave rise to negative stereotypes about the Third World, and Engo in particular, that were — even if not shared universally — calcified in leading governance, law, and political science literature, becoming starting assumptions even of efforts to provide balanced assessments.⁵⁴ Moreover, it contributed to the settling of a perception that the 1982 seabed regime greatly favoured the South, and was too onerous for the North. This view became widely established in UNCLOS literature, and remains part of its valorisation (or otherwise) as a radical achievement. It also enabled the portrayal of the 1994 modifications as a rebalanced, or even diluted, but still transformative CHM regime.

Most prominently, the first strand of analysis boosts the second strand because it enables the latter to play out as the *critical* perspective on why things worked out as they did, while occluding that both are remarkably depthless in their engagement with Third World positions. The second strand of analysis seemingly concerns itself with more factors and pressures. For example, it looks at domestic US politics as an object of critique, not just a given. Nevertheless, the engagement with the US is contextualised, and understood as the product of important materialities, experiences, and ideas.⁵⁵ The same sort of contextualisation is not on offer for Third World states or delegates. Instead a rather stylized narrative of 'NIEO politics' paves the way for a stereotypical sorting of Southern delegates into categories of 'extremist' or

⁵² Sebenius, *Computer as Mediator*, 85; Levering, *Citizen Action*, 94. Levering, like Schmidt, tells the story as an example of Koh's constructive role.

⁵³ *Ibid.* Interestingly, Engo's complaint about the resort to the MIT model finds ratification in an unexpected quarter: Leitner, while describing Engo's actions as 'treachery', had his own critique of how the introduction of the model influenced the negotiation process: Leitner, *Reforming*, 20-23.

⁵⁴ It is instructive to compare Ogley's earlier work on UNCLOS III with his later writing: the earlier 'Internationalizing' (1984, pp. 54-97) is measured in its criticisms of Engo, and even offers some points in support; the later essay, 'UN and Global Commons' (1996, pp. 81-82), quoted above, cites Engo's nomination as chair as a key bad procedural decision. While the latter is a shorter work, and care should be taken not to infer too much from such a comparison, the categorical tone does differ from the previous text.

⁵⁵ Though oppositional western figures were also dropped into the ranks of the cranks and ideologues. For instance, Levering, *Citizen Action*, 32-33:

"John Logue became a joke," US negotiator Leigh Ratiner recalled. "You couldn't any longer listen to John Logue because he was monolithic in his left-wing view...." Delegate Tommy Koh of Singapore noted that Logue has "grandiose, idealistic ideas that were politically not possible to sell". By the mid-1970s [we] were embarrassed that Logue was accredited to UNCLOS III by a movement, world federalism, in which we had long been active...."

Elisabeth Mann Borgese, head of *Pacem in Maribus*, is similarly criticised for 'alienat[ing] many delegates by lecturing them on precisely what provisions the completed treaty should contain, including generous transfers to poorer nations of revenues from oil and other minerals.'

The choice of quotes is interesting because Koh is one of the Third World voices recouped for praise, while Ratiner, frequently swapping positions vis-à-vis UNCLOS — from serving on the US delegation, to lobbying against the conference on Kennecott money, then returning to the US delegation and engaging in maverick secret diplomacy — is simply seen as example of a true professional, wearing all hats admirably. See e.g., C Sanger, *Ordering the Oceans* (UTP, 1987) 25. Given this dismissal of figures like Mann Borgese, the new work by Meyer, Dalaker and others is particularly important.

‘moderate’.⁵⁶

UNCLOS is thus historicised in an account that unpacks US (and Northern, to a lesser extent) interests, while abstracting the Third World. Obscured in it are meaningful engagements with Southern positions on seabed mining, fact finding, and law-making. Rather, virtue is accorded to the enshrinement in the treaty of a hortatory concept, the CHM, even if its meaning has shifted considerably over time. Virtue is also accorded to the negotiation process as difficult but demonstrative of the possibility of post-imperial international ordering. And virtue is accorded to the moderate Third World diplomats who made both possible, displaying qualities of what Koh himself describes as the ‘good negotiator’:

a person possessing technical competence, negotiating skills, personal integrity, a calm temperament and a likeable personality. A good chairman should possess, in addition ... objectivity, a judicial temperament, a capacity to reconcile differences, the ability to think of creative solutions to seemingly intractable problems and the courage to put forward compromise proposals.... [I]t is helpful if the two or more sides to a negotiation could agree to what the facts were. In the difficult negotiations on the financial terms of mining contracts, for example, the chairman was able to convince the negotiators to accept a computer model developed by a team of scholars at [MIT].⁵⁷

This narrative of UNCLOS follows a familiar liberal script of what must be celebrated in any grand exercise of state- or world-making: a process and outcome in which passions are tamed, nativist impulses conquered, middle grounds found and coded into a law that melds ideals and realities, plausibility and transformative promise; all by the enlightened moderation of wise men. This is a generic story of the making of constitutions.⁵⁸

Many domestic constitutions, however, benefit from richer historical work on their process, protagonists, dramas, outcomes, and erasures.⁵⁹ This is not the case with UNCLOS. The initial narratives and accounts of its decision process have not been followed by critical reflection on how its ‘making of’ story has been reconstructed and told, nor how that telling engages with the various actors and interests, or shapes understandings of the outcome. What might be erased, for example, in a story that celebrates depoliticisation, casts the falling away of Southern positions as the ‘narrowing of technical gaps’,⁶⁰ or sorts its protagonists into moderates and

⁵⁶ On the critique of the limits of binary ‘North-South colonial-decolonizing’ frames see C Storr, “‘The War Rages On’: Expanding Concepts of Decolonization in International Law” (2020) 31:4 EJIL 1493, 1503.

⁵⁷ Koh, Building, 79-80.

⁵⁸ The genre was perhaps in Koh’s mind in his 1982 speech dubbing UNCLOS, ‘a constitution for the oceans’: *ibid*, 85-92. Koh’s text wove together many conventions of the genre, from soaring prose about a difficult quest (‘long and arduous journey’, ‘many who told us our goal was too ambitious and not attainable’) and enlightened fellow travellers (‘we did not regard our counterparts ... as enemies to be conquered’, ‘[working] not only to promote our individual national interests but also in pursuit of our common dream of writing a constitution’), and a staunch defence of the outcome as the substantial achievement of what was sought. Koh expressed regret for US hostility, as ‘throughout its history, [it] supported the progressive development of international law’. He hoped that a further process of constitutional improvement in an ‘efficient, objective and practical manner’ would pave the way for universal ratification. While he called out the US for not supporting UNCLOS, he did not comment on dissatisfactions that were felt in *other* quarters; that is, in the Third World, where the doubts were as to whether the treaty was progressive enough. This also conforms to the genre: criticisms that the document might lack ambition are rarely acknowledged at moments of constitutional adoption, while criticisms that it is too ambitious are highlighted because they paradoxically contribute to its legitimacy. Koh’s text is meticulous, hortatory, and evocative all at once, and decisively communicates what such a process of law-making *should be* all about. By its logic, it is easy to see why Engo’s role had to be criticised (although Koh only offers formal words of tribute).

⁵⁹ See for example M Glass, ‘Fixing America’s Founding’ (2020) 118(6) *Mich LR* 949; A Elangovan, ‘A political turn? New developments in Indian constitutional histories’ (2022) 20(8) *History Compass* e12746.

⁶⁰ Koh, Building, 91. This language has legacies for the present, as seen in debates on decision-making at the ISA. Increasingly, decision-making is routed via the closed-door Legal and Technical Commission. As Zalik notes, this fact is assessed rather differently by the North and the South: ‘At the ISA Assembly, the Global South frames this debate employing the language of “exclusion/inclusion”, while more powerful, typically northern or highly

extremists? How might that shape views of UNCLOS itself, and the work that it does in consolidating a particular imaginary of the sea?

We know that work that thinks about international legal developments from other scales — highlighting national circumstances for instance — can make us look at those developments in new ways, opening up dimensions that challenge foregoing perceptions. Indeed, in the very literature referenced here, commentators have usefully analysed the negotiations and outcomes of 1982 and 1994 in terms of the interplay of domestic US interests. What, then about doing this work in relation to the Third World, thinking about what emerges when UNCLOS is juxtaposed to individual, relational, itinerant, national and regional geographies that constitute that part of the world that invested the law of the sea negotiations with such great significance.⁶¹ What other stories fall to be told? And what might be the payoffs — for UNCLOS, for ocean justice — in telling them? The next sections will turn to these questions.

3 HISTORIOGRAPHICAL POSSIBILITIES: TELLING COUNTERSTORIES VIA ENGO

With a sense then that there is something dissatisfying about how the South is approached in the UNCLOS stock story, I turn again to Engo to identify new historiographical possibilities. What follows are rough sketches of three possible counterstories, each offering a textured approach to Southern positions and participation at UNCLOS III. The first explores the possibility of extending the study of international thought by treating the Third World delegate as an intellectual innovator; it also brings into focus the *ideas* for world-(re)making that were lost when the radical Enterprise-dominant model of seabed mining faded. The second draws on recent work in historical geography that brings international conferences into view as a distinctive political form, and reads UNCLOS III through the materials, constraints and opportunities that informed Engo's participation. The third pieces together a partial arc of Engo's life, traversing multiple geographies, temporalities and familial networks, to offer a 'history by contiguity'⁶² of anti-colonial worldmaking; an invitation, in equal parts, to curiosity about the worlds gathered under rubrics like the South, and to scrutiny of the frames within international lawmaking events are analysed.

The three stories are, of course, connected, with the same individual at their nexus. But they follow different methodological trails, juicing the same materials in different ways as well as bringing into focus new sources and contexts. They are not the only counterstories that might be told. My telling of them also has limits, with outlines taking the place of complete stories. I come back to these points in Section IV in reflecting on the challenges of counterstorytelling. Nevertheless, what is set out illuminates possibilities of how we might analyse international law-making at multiple scales.

3.1 A counterstory of the Enterprise

The first story is the most direct in engaging the stock story. It is also genuinely a *counterstory*, taking on board key themes of the stock story, but as a starting point for further, overlooked questions. So, if those key themes include obstinacy and delay on part of Southern 'extremists' or 'radicals', in pushing for a monopolistic Enterprise despite offers of a subsidy-sweetened parallel system, this counterstory examines what underlay that push. There are many aspects to this

industrialised states, emphasise the need for "technical expertise". A Zalik, 'Mining the seabed, enclosing the Area: ocean grabbing, proprietary knowledge and the geopolitics of the extractive frontier beyond national jurisdiction' (2018) 68 ISSJ 343, 352.

⁶¹ Per Chimni, UNCLOS III 'was viewed as a microcosm of the possibilities the future held and the inauguration of a new era in international relations': BS Chimni, 'International Law Scholarship in Postcolonial India: Coping with Dualism' (2013) 23 LJIL 23, 38.

⁶² E Rothschild, *An Infinite History* (Princeton 2021).

examination, none of which are encapsulated in how the episode is usually summed up. For the stock story looks at the Enterprise with the benefit of hindsight, noting that an international monopoly model was simply not a realistic proposition: it would never have been acceptable to western states, which viewed even the diluted regime incorporated in UNCLOS as a form of unacceptable international ‘socialism’.⁶³ In such a telling then, the Third World’s attachment to the monopoly model can be written off as mere obduracy or ideology, and actors like Engo similarly dismissed as unreliable or vanity-driven in returning again and again to an implausible project. But there is much that goes unnoticed in this telling.

The Enterprise makes an occasional comeback in contemporary critiques of UNCLOS and how it has constructed — as inevitable — a particular political economy of seabed mining as the only way of realising the CHM ideal.⁶⁴ However, understandably, most engagements focus on the contemporary concept of the entity — the Enterprise as it operates within the UNCLOS parallel system read with the 1994 agreement — and explore what it would take to make it an actually functioning body today, and whether its activation is still a goal for the Third World to pursue.⁶⁵ Such engagements are welcome in themselves; not least, proposals for activating the Enterprise have the effect of reinjecting a sense of political purpose into the discussions at the International Seabed Authority.⁶⁶

However, there are also several unexplored questions about the Enterprise as initially imagined by the Third World, and these offer multiple forms and sites of engagement with the history of the law of the sea. They include questions about the idea itself; where it came from; and how it travelled both across space, from a particular proposal to a widely held position; and time, with shifting conceptions of the core concept. Formally, the introduction of the idea of a monopolistic Enterprise is attributed to a Latin American proposal, submitted in August 1971 amidst a slew of other proposals — including from Third World states and the USSR — favouring *non-monopolistic* internationally administered licensing systems.⁶⁷ From there, it became, to quote Roy Lee, ‘the brainchild of the Group of 77’.⁶⁸ It was discussed in various versions, from ‘direct exploitation’ by the Enterprise, to service contracts, to joint ventures, to some early iterations of the parallel system. These versions all had their supporters and critics; and a generally shared view did not imply agreement with specific language. Internal US correspondence noted:

The LDCs continue to insist on direct exploitation as the primary system of operation, largely interpret direct exploitation to mean what we call ‘service contracts’, but are unwilling to define it as such in the treaty. For example, a private initiative on the part of one LDC leader to formulate an article [...] that essentially defined direct exploitation as service contracts and provided for a

⁶³ JL Malone, ‘The United States and the Law of the Sea after UNCLOS III’ (1983) 46(2) L&CP 29, 31. Malone was Chairman of the US Delegation to UNCLOS III in its final years.

⁶⁴ See Feichtner, Sharing; S Ranganathan, Decolonization and International Law: Putting the Ocean on the Map, (2021) 23:1 JHIL 161.

⁶⁵ M Remaoun, ‘The International Seabed Authority and the Enterprise: how Africa is Reinvigorating the Principle of the Common Heritage of Mankind’ (2021) 1(1) JOGA 1; K Willaert, ‘The Enterprise: State of Affairs, challenges and way forward’ (2021) 131 Marine Policy 104590. Remaoun served as the Algerian delegate to the ISA and spokesperson for the African group.

⁶⁶ This is because the case for activation of the Enterprise departs from considerations of supply security and extractive efficiency, and rests on equality of opportunity to participate in mining. Taking the Enterprise as a given shifts the bases on which other elements of the regime – such as the financial model – can be constructed. See Remaoun, ISA; E Egede, ‘African States and Participation in Deep Seabed Mining: Problems and Prospects’, (2009) 24 IJMCL 683. As an observer at ISA annual meetings, I was able to record the enlivening effect of the proposal that Remaoun describes.

⁶⁷ Working Paper by Chile, Colombia, Ecuador, El Salvador, Guatemala, Guyana, Jamaica, Mexico, Panama, Peru, Trinidad and Tobago, Uruguay, Venezuela, UN Doc. A/AC.138/49, 4 August 1971. For other contemporary proposals see ‘Proposals submitted to Committee on Peaceful Uses of Sea-Bed’ (1971) 10 ILM 973.

⁶⁸ RS Lee, ‘The Enterprise: Operational Aspects and Implications’ (1980) CJWB 62. Lee was secretary of Committee I of UNCLOS III.

gradual phasing out of a joint venture system into service contracts was effectively killed by other LDC leaders.⁶⁹

Importantly, different conceptions gathered and lost strength not just at UNCLOS III meetings but at a range of political forums. Engo noted for example that his contribution in the form of the SNT text advocating for direct exploitation had unexpectedly gathered steam at a meeting of the Organisation of African Unity in Kampala;⁷⁰ while another of his interventions, in support of joint ventures, was knocked back at the Okinawa *Pacem in Maribus* conference convened by Elisabeth Mann Borgese.⁷¹

The emergence, circulation, and specific manifestations of these conceptions, and their eventual replacement by the parallel system, offer a rich seam for exploration at the junction of multiple historical approaches. For one, the various early proposals for the Enterprise are grist for intellectual history, one that would think about their authors, contexts of articulation and reiteration, and specific framing choices and conceptual innovations.⁷² Regardless of what happened later, in their moment these proposals and their reiterations *meant* something, their articulation was *doing* something. But what? And the ‘what’ vis-à-vis both Third World states, *and* the voices that were actually articulating these ideas, given that many delegates from the Third World, like Engo, were effectively ‘one-person operations’, with generic or no instructions from their home state.⁷³ The proposals obviously represented particular aspirations for seabed mining; but bound up in them were also broader imaginations of the global (and domestic) economy, and of the attractiveness of particular legal forms. So, what were those imaginations, and what shaped them? What were their intellectual underpinnings, and what might they reveal of alternative modernist epistemologies? What, in other words, did the imagined Enterprise instantiate, such that Engo acted more than once to restore it in some version?⁷⁴

With such questions, this story joins efforts to extend the field of international intellectual history, beyond its traditional preoccupations, including with white men. Important new work is being done on women’s, black, antiracist, leftist, and anticolonial international thought,⁷⁵ but even so, figures like Engo — diplomats and lawyers, rather than political leaders, key bureaucrats, scholars or revolutionaries in any conventional sense — are rarely identified as likely subjects for study. There is much to be gained also in methodological terms from considering *how* they should be located as intellectual agents circulating independent ideas. For that shines a light on the specificities of an international legislative process, and how that receives and transforms ideas. The materials on the Enterprise are thus also grist for a history of international lawmaking practice, attentive to the processes of circulation, reproduction, drafting, editing, and rationalisation by which a more expansive vision became replaced by its contemporary namesake. Such a history, albeit tracing process, would be told not as a story of ‘moderation’, nor indeed a mere reiteration of the logic of US power. Rather, it would carefully uncover the hegemonic embedding of one set of preferences into a common sense, and regime,

⁶⁹ USDC 1975STATE110126_b, 12 May 1975.

⁷⁰ USDC 1975YAOUND02544_b, 25 July 1975; USDC 1975COLOMB02836_b, 9 September 1975.

⁷¹ USDC 1975TOKYO14460_b, 9 October 1975.

⁷² Within a vast literature large, see A Brett, ‘Between history, politics and law’, in A Brett, M Donaldson, M Koskenniemi, *History, Politics, Law: Thinking through the International* (CUP 2022) 19.

⁷³ A phrase used in US communications about Engo.

⁷⁴ Apart from what it might reveal about economic thought, this might also throw up interesting cultural connections. One story is that the name ‘Enterprise’ was inspired by Star Trek: see A Hollick, ‘Managing the Ocean’ (1984) 8(3) *Wilson Q* 70, 83. This is usually mentioned in passing, but the mediation of an oceanic techno-utopian project by reference to the popular TV show that took multiracial cooperation, scientific and technological advancement via a public entity, and the overcoming of social and economic problems on Earth as its starting premises is worth more analysis.

⁷⁵ E.g., P Owens and K Rietzler (eds), *Women’s International Thought: A New History* (CUP 2021); A Getachew and J Pitts (eds), *WEB DuBois: International Thought* (CUP 2022); A Getachew, *Worldmaking After Empire* (Princeton 2019).

so congealed as to have placed other alternatives beyond the pale of reasonable discussion.⁷⁶

It is in a combination of these inquiries that we might recover the early Enterprise as the story of something more than an idea that didn't fly; rather, of a vision of post-imperial worldmaking and what became of it.

3.2 Reanimating the conference

Amongst its contributions, the first counterstory also expands our shared atlas of worldmaking to new theatres, sites, and actors. This same question of the atlas of worldmaking, and the narratives that can be plotted on it, is the focus of an interesting project in historical geography, which opens the way to a second set of counterstories, of UNCLOS negotiations. The project, 'Conferencing the International', brings new lenses to bear upon past international conferences, reanimating them 'not just as locations or material spaces but as lived, sensed and experienced places, buzzing with life, potential futures, hope and despair'.⁷⁷ Arguing that modern internationalism, usually explored in terms of 'the carefully organized bureaucracies of permanent international organizations', is better understood as a reflection of the 'ephemeral, messy and unpredictable nature of international conferences', the project thinks about how these conferences may be brought into view.⁷⁸ It suggests multiple forms of analysis — of infrastructures, locations, and logistics; the 'cultural and social content, including rhetoric, music, food and drink'; and the role these conferences played in forging networks through which people, objects and ideas circulated and 'global, local and regional actors came together to ... establish international solidarity'.⁷⁹

The intervention is two-fold. On the one hand, this work centres the international conference in the historiography of internationalism, viewing conferences as 'creative rather than confirmatory events'.⁸⁰ On the other hand, it opens up the international conference — defined expansively, including League or UN conferences, imperial round tables, and activist, anticolonial and scientific forums — to new forms of scrutiny. Beyond outcome documents and sanctioned conference reports, conferences are analysed holding in view both the immediacies by which they are constituted and the expansive range of their effects. Illustrative work includes the study of conference 'atmospheres'; the opportunities afforded by slow travel to conference venues for forging hostilities and alliances; contributions of translators, administrative staff, second-tier diplomats and other conference 'subalterns'; and the public spectacles and *on dits* that conferences generated, shaping attitudes towards the topics under discussion.⁸¹

The project offers important leads for how we might add layers to narratives of UNCLOS negotiations, even to the intellectual histories and histories of international legislation suggested above. The unprecedented scale of UNCLOS III is well known: its 5000 participants included 150 states, liberation movements, international and non-governmental organisations and corporations. Formally, it met for approximately 93 weeks over a decade, preceded by six years of work at the Seabed Committee, and succeeded by more years of work leading up to the

⁷⁶ A Orford, 'In praise of description', (2012) 25(3) LJIL 609.

⁷⁷ S Legg et al. (eds), *Placing Internationalism: International Conferences and the Making of the Modern World* (Bloomsbury 2021) 2.

⁷⁸ Ibid 3.

⁷⁹ Ibid 4.

⁸⁰ Ibid 3. See also L Eslava, M Fakhri and V Nesiha (eds), *Bandung, Global History and International Law* (CUP 2017).

⁸¹ S Legg, "'Political Atmospherics": the India Round Table Conference's Atmospheric Environments, Bodies and Representations, London 1930-32' (2020) 100 AAAG 774; S Legg, 'Political lives at sea: working and socialising to and from the India Round Table Conference in London, 1930-1932' (2020) 68 JHG 21; J Hodder, 'The Elusive History of the Pan-African Congress, 1919-1927' (2021) 91 HWJ 113; J Hodder et al., 'The Archival Geographies of Twentieth-Century Internationalism: Nation, Empire and Race' (2021) 71 JHG 1; J Hodder et al., 'Introduction: Historical geographies of internationalism, 1900-1950' (2015) 49 Political Geography 1-6.

1994 agreement.⁸² It convened mostly in New York or Geneva, but with an inaugural session in Caracas, Venezuela, and closing session at Montego Bay, Jamaica. Interspersed with formal meetings were intersessional consultations, and side negotiations at other conferences — meetings of regional organizations, G77 and Non-Aligned Movement Meetings, and formations like Elisabeth Mann Borgese's *Pacem in Maribus* conferences. There were also bilateral and small-group discussions, government-industry consultations, expert workshops, and other events. Delegates like Engo, who were centrally engaged in the work of hammering out a text, lived in a state of overwhelming immersion in its details. The methodological approaches outlined in *Conferecing the International* offer possibilities for placing their intellectual and diplomatic contributions into the context of their immediate experiences and relationships, as also their material constraints.

Consider the various factors that defined Engo's participation. On the one hand, as assessments of his as a 'one-man operation' confirm, his home state could not readily replace him at UNCLOS III, but nor could it offer him much technical or legal support. The Cameroonian delegation, like that of many G77 states, was a small affair, and formulating national positions was largely left to one or few individuals. Delegates often remained involved with the negotiations for their full duration. This was all in stark contrast with delegations like the US, which were defined by large numbers, changing personnel, and inputs from many different sectors. This did allow Third World delegates to form general expertise and develop comprehensive visions for legal regimes: it is thus also an argument for placing them at the focus of intellectual histories. But, on the other hand, Engo's participation was also defined by all manner of uncertainties. From time to time, in the absence of widespread understanding of how UNCLOS III might benefit its domestic economy, Cameroon was prepared to give up active participation in it. Records show the US interceding with the Cameroonian government on multiple occasions to ensure Engo could attend or finding funds for him to travel to important meetings — creating an odd dynamic of dependence between Engo and the US, and fostering US expectations that Engo would indeed represent their interests.⁸³ Moreover, although Engo had a successful diplomatic career, and was part of Cameroon's Mission to the UN in New York both before UNCLOS III and after, for the duration of the conference he was in a marginal governmental role in Yaoundé, as technical advisor to the Cameroonian Minister of Foreign Affairs.⁸⁴ During this time, he took on lectureship roles for additional income, which made it difficult for him to attend conference or intersessional meetings, as absence from teaching would lose him the extra pay.⁸⁵

Their lean delegations also presented diplomats like Engo with simple practical difficulties: how to participate effectively in the sheer range of meetings and engagements that made up a large negotiation; stay on top of the piles of working papers and other submissions; and meaningfully sift through the bewildering array of scientific, technological and economic data, including to identify and combat *deliberate* misinformation.⁸⁶ These challenges underpinned his preference, and that of other G77 delegates, not to negotiate the seabed regime in tedious detail, but at the level of principles only, leaving the details to the future Seabed Authority.

⁸² Ogley calculates the figure of 93 weeks: Ogley, *Internationalizing*, 1.

⁸³ See e.g., USDC 1975STATE115674_b, 17 May 1975. Other key figures at UNCLOS III were placed in similarly precarious positions by changes at home. Most famously, in 1978, Sri Lanka decided to drop Amerasinghe from the Sri Lankan delegation, leading to a long pause in the conference as it negotiated terms on which he could continue in his leadership role. Some years before that, Arvid Pardo -- even described as the Father of the Law of the Sea conference (<https://press.un.org/en/1999/19990716.SEA1619.html>) -- was dropped from the Maltese delegation, precluding him from playing a substantive role in the negotiations.

⁸⁴ USDC 1975YAOUND03861_b, 20 November 1970.

⁸⁵ USDC 1975COLOMB02836_b, 9 September 1975. Possibly, Engo also pursued some business interests in this time: see 'Esquire': the Family Man, in *SakerPride*, Entry 17, <http://www.sakerpride.com/almanac.html>.

⁸⁶ See e.g. Ranganathan, *Common Heritage*, 45-47. For Engo's own mentions of practical difficulties, see USDC 1975YAOUND03861_b, 20 November 1970.

Whereas, enabled by large teams of lawyers and other experts, the US pushed for detailed rules and regulations, precisely because it was via the details that it could limit its CHM commitments.⁸⁷ The detailed character of UNCLOS's seabed provisions is often contrasted to the remainder of the text which is more a framework agreement, and it is important to recognise that the choice for detail may have owed more to material and strategic factors than the nature of the subject itself.⁸⁸

If resource constraints shaped attitudes towards questions of what — and how much — to put into the treaty text, they also enhanced the G77's dependence upon Northern civil society organisations, such as the famous Neptune Group. The Neptune Group, in their role as 'honest brokers' of information, were able, through newsletters, expert workshops, bespoke advice and fundraising, to promote an epistemology of moderation and (western-scientific and liberal economic) expertise, above radical postures which they viewed as threatening the adoption of a treaty.⁸⁹ Resource constraints also manifested in 'acerbic' exchanges on questions of location, timing, and duration of conference sessions, with Engo and other G77 delegates pointing out the difficulties posed by longer meetings, meetings in capitals where they lacked permanent embassies, meetings that demanded expensive travel, and meetings in cold climates.⁹⁰

As ethnographies of contemporary international legislative processes reveal, attention to such details is important for a full picture of the *how* of lawmaking, because they layer abstracting theories both of structure and intellectual or diplomatic agency with nuanced understandings of the small and big inequalities and discursive opportunities and foreclosures by which such processes are constituted.⁹¹ The *how*, they show, is inseparable from the *who* and consequential as to *what* law is made.⁹² This kind of work invites analyses of material (and often non-contingent) factors shaping lawmaking sites, diplomatic performances, and even routine legal processes of circulation, repetition, reiteration, drafting and editing.⁹³ And it has potential to repoliticise our readings of outcomes and processes. As 'Conferencing the International' asks in exploring conferences as a political technology:

Does the conference method prescribe or favour particular kinds of political outcomes? That is, what is the relationship between the politics of conferencing and the ideologies at play? Does it reify those with the authority to codify its norms? That is, what is the nature of the power wielded by those in a position to define how conferences are to play out? Is conferencing a failure? That is, what is the nature of the afterlife of the theatrics and performance of conferences, and how exactly does a more rounded appreciation of the conference-as-event help us think about its patterns of influence?⁹⁴

It is of course more challenging to explore these questions vis-à-vis past conferences, with resources that may be limited for these purposes, if voluminous in other ways. Official records of UNCLOS III run to thousands of pages, yet only summarizing plenary discussions and with much of the work taking place in informal meetings they offer just partial insights into

⁸⁷ USDC 1974CARACA06101_b, 3 July 1974.

⁸⁸ The 1994 agreement, having reconfigured the ISA to concentrate decision-making power amongst a few key states and personnel, stripped back the details and delegated the fashioning of rules and regulations.

⁸⁹ See Levering, Citizen Action. The Neptune Group was specifically thanked in Koh's 1982 speech.

⁹⁰ See e.g., a debate on the venue for the spring 1978 session of the conference: A/CONF.62/SR.80-81, 15 July 1977. Adding vigour to the exchanges were proposals by Jamaica and Malta to host, against the eventual choice of Geneva. The description of the atmosphere as 'acerbic' is from USDC 1977USUNN02277_c, 16 July 1977. It also characterised the exchange between Engo and Amerasinghe as 'unusually sharp'.

⁹¹ A leading example is S Bock-Leib and T Halliday, *Global Lawmakers: International Organizations and the Crafting of World Markets* (CUP 2017).

⁹² *Ibid.*, 10, 13.

⁹³ I regard things like Engo's absences, and discomfort with Geneva as a venue, as non-contingent because they speak to structural difficulties in his position, rather than his individual preferences.

⁹⁴ Legg et al, Placing Internationalism, 9.

the processes by which the treaty was crafted, and factors such as the emotions in the room (although both boredom and exhaustion are easy to infer).

That said, they do speak to much beyond their immediate subject matter, i.e., the law of the sea. For example, although unstudied as a theatre of political speech, UNCLOS III was a site for the enactment and reinforcement of particular kinds of internationalisms, linked to ongoing anticolonial struggles. Take Engo's opening address of 1974.⁹⁵ The US privately interpreted this speech as intended to position Engo as a 'major voice of LDCs' (Least Developed Countries).⁹⁶ That is plausible, but his themes are interesting in how they link UNCLOS negotiations to other causes. Beginning with expressed gratification to be speaking in Caracas 'the capital of a developing country', Engo dwelt upon who was present and who was not.⁹⁷ Absent were 'the peace-loving peoples of South Africa, Namibia, Zimbabwe, Angola, Mozambique, among others', deprived of freedom by 'the meanest of racist fascist regimes'.⁹⁸ Those present included 'representatives of the racist political brigands who oppressed these peoples ... [t]he Conference should not be burdened by their presence ... [yet many] were giving them considerable material and moral support'.⁹⁹ He also regretted the absence of the 'peace-loving people of Cambodia' and 'deplored' the absence of the people of Palestine 'whose tragic fate could have been the subject of an important debate at the Conference'.¹⁰⁰

Although — as Amerasinghe clarified in response to a protesting Khmer Republic delegate — debates on Cambodia (or Palestine) were not within UNCLOS III's formal competence,¹⁰¹ Engo's raising of these issues and the terms used suggest an effort to view the conference within a wider context of racial, political, and economic justice. Engo also asked those assembled to reflect on the conference's representational limits and how that might skew their awareness of the universe of possible interests — against a narrative of UNCLOS III as a historic opening up of international lawmaking. Engo reminded delegates not to assume that 'the problems and interests of those not represented at the Conference did not differ from those of the participants', nor to simply produce a convention that benefited a 'privileged class'.¹⁰² The speech listed the objects that must guide the effort to 'organize the common heritage of ocean space': 'poverty, starvation, disease and periodic natural disasters' — and those it must preclude: 'exorbitant explorations in space, wasteful ventures in armaments and the pursuit of illusory power at the expense of peace'.¹⁰³ If this was one move in his effort to situate oceanic lawmaking in a wider landscape of new international economic ordering, reminding the Conference that even a specialised topic like the law of the sea was part of the larger struggle for material and political equality of all peoples, another move was his exhortation as to what was needed for this: a decisive political approach. Engo called for practices appropriate to the 'new international community [which] was a child of a union between rapidly developing technology and revolutionary thinking.' Negotiations had to be approached as 'political'; regimes could not be reduced to 'existing law', nor their delimitations to 'mathematical logic'.¹⁰⁴ In sum, against doctrinal and liberal-technocratic verities, he was foregrounding historical and distributive justice. He also pressed the links between the historical and the distributive in cautioning against the seeming naturalness of some geographical relationships, which obscured historical and economic ones. Thus, expressing skepticism about a grouping of 'landlocked states', he noted that, while access to the sea was important

⁹⁵ UNCLOS III, 26th plenary meeting, 2 July 1974, A/CONF.62/ SR.26.

⁹⁶ USDC 1974CARACA06117_b, 3 July 1974.

⁹⁷ A/CONF.62/ SR.26, para. 1.

⁹⁸ *Ibid.*, para. 2.

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*, para. 3.

¹⁰¹ *Ibid.*, para. 103.

¹⁰² *Ibid.*, paras. 5-6.

¹⁰³ *Ibid.*, para 6.

¹⁰⁴ *Ibid.*, paras. 13, 15; see also para. 20.

it must be understood that a State was not necessarily impoverished merely because of its geographical location. States were disadvantaged if they could not take part in the development of activities in ocean space because of lack of natural access to it. However, the classification into countries which were or were not land-locked was sometimes an unreal one. The natural resources of some land-locked countries were in fact greater than the aggregate of land- and sea-based resources of some coastal States. It could not, for instance, be seriously claimed that there was a profound community of interests between the land-locked States of Europe, which had an effective infrastructure of railways, road systems and air services, and the African land-locked States, for which, lacking such infrastructure, access to the sea was a practical problem even where the neighbouring coastal State had granted it. Therefore, it was essential to avoid discussions and negotiations based on unrealistic criteria and misleading nomenclature.¹⁰⁵

Already in this brief analysis of a single speech, it becomes clear that UNCLOS negotiations were being tied to broader contestations over the epistemological and ontological frames governing international lawmaking. These contestations, also seen at other sites of North/South battles over post-imperial ordering, are among those marginalized in the stock story, but brought to the fore by the methodologies employed in Conferencing the International.

3.3 A history by contiguity of anticolonial worldmaking

The third counterstory draws on Emma Rothschild's idea of 'a history by contiguity'.¹⁰⁶ This history 'proceeds from an individual to her own connections ... to their connections' and so on, becoming 'a history from below and a history of the largest events of modern times'.¹⁰⁷ Rothschild's book begins with a woman from a provincial town in 18th century France, and sweeps across both space and time, exploring empire and revolution, conduct and abolition of the slave trade, and social, economic and technological change. By telling a cluster of stories about this woman's family — their circumstances, mobilities of class and geography, disputes over taxes and marriages — it comes at the very large from the scale of the intimate:

The choice of historical scale or size is poignant, and it is ideological in the sense that it distributes the immense cemeteries of the dead into two classes, of the important (individuals with ideas and sentiments) and the unimportant (individuals of whom there are no records, or nothing very much, and who can be counted, but cannot be understood). In choosing the history of individuals, which is small, the historian chooses to understand small and unimportant changes (except in the circumstance that the individuals are themselves important...). In choosing the history of the social economy, the historian chooses to live in a world of the past without ideas or hopes or friendships, and to understand important changes, like the causes of revolutions, or the rise of the modern economy. But these are not the only possibilities, and there are times—like our own times—when it is important, and even urgent, to try to understand political and economic transformation from the perspective of individuals and families: of ordinary life.¹⁰⁸

The project thus combines 'an interest in other people's lives', with 'an exhilarated, exhausted sense of the possibilities of historical inquiry'.¹⁰⁹ Rothschild's method allows her to locate a group of individuals in intertwined personal, political, and economic contexts, and enliven those contexts themselves. So, if Conferencing the International seeks out the peripheries and phenomena that illuminate the ordering of the international, Rothschild makes a further move in the direction of refracting the usual set pieces of international history. In this

¹⁰⁵ Ibid., paras. 16-17.

¹⁰⁶ Rothschild, *An Infinite History*, 2.

¹⁰⁷ Ibid, 10.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

case, viewing them via the lives of ordinary individuals who lived through them. This is a significant reversal: a top-down story of an institution or conference might allow some individuals only walk-on parts, by way of a mention or two in a long text; Conferencing the International brings them into focus; while Rothschild turns the institution or conference itself into the walk-on part, glimpsed with as much intensity as it appears in the lives being traced. As such, the method cannot replace histories of other scales, but it can complement them. And when those histories have become very settled — have become stock stories — it brings fresh perspective.

Engo — although unlike Rothschild's protagonist in gender, literacy, location, or time — is similarly not the sort of figure usually associated with world-historical endeavours. And yet he exemplifies an important category of worldmaking actors: those who were both objects of empire, law, and postcolonial state-making, *and* who wrested agency from and within those structures. The stock story offers a flat and incurious account of him, assessing him simply in terms of his utility to a negotiation process that is evaluated by prefigured liberal internationalist standards. Here by centering him, it is also possible to bring into the frame the construction and adequacy of those standards.

So, who, then was Engo? Figures like him test archival limits but also open trails, connecting international histories at multiple geographical and temporal scales. The stories I found suggest an actor constantly in transition. Engo's family traversed three empires as well as colonial and postcolonial worlds across West Africa, Britain, France, USA, and the Caribbean. Their village, once in German Kamerun, became part of French Cameroun after World War I.¹¹⁰ A short time after, in the late 1920s or early 1930s, Engo's father, Frederick Engo Mimbe moved to Warri, in British colonial Nigeria.¹¹¹ Warri was a provincial trading hub, the headquarters of many British companies, and Mimbe worked as accountant at one.¹¹² Here he married again — his second wife Mewe Omadeli was from a well-established Itsekeri family — and became stepfather to Leslie and Hope Harriman, born from Omadeli's previous relationship with an English engineer, Arthur (who would later found the famous highlife band The Tempos, associated with ET Mensah, in Ghana).¹¹³ After the death of their own mother, Engo and his siblings moved to Warri too. There, Engo attended the Foreigners' School, followed by Edo College in Benin, Nigeria, the first secondary grammar school set up in the region.¹¹⁴ His immediate circle went on to become politically active in West African independence movements and pan-Africanist projects. One schoolfriend, Tayo Akpata, was brother to Bankole Akpata, member of the West African Students Union (WASU) in London and among those who had counselled Kwame Nkrumah to establish the West African National Secretariat (set up in December 1945, soon after the Manchester Pan-African Congress).¹¹⁵ It is likely that Engo, who too moved to London and studied law at Middle Temple, was also a WASU member together with Tayo, Leslie and Hope. In London, he lived on Connaught Road, Harlesden, a popular area for Asian, African and Caribbean immigrants;¹¹⁶ and represented Nigeria at the Melbourne

¹¹⁰ Via Art 119, Treaty of Versailles 1919.

¹¹¹ SakerPride, Entry 17, <http://www.sakerpride.com/almanac.html>. A shipping record from Liverpool mentions an Engo Mimbe, holding the occupation of a first-class steward, returning to Cameroons (west) in 1909; this could possibly refer to Frederick Engo Mimbe or another relative. Source: ancestry.com.

¹¹² See O Okoh, 'Who controls Warri? How ethnicity became volatile in the Western Niger Delta (1928–52)' (2016) 57(2) JAH 209.

¹¹³ Arthur Harriman makes several appearances in marriage, travel and census records on ancestry.com and in UKNA records as a co-respondent in a divorce case in 1934 (J 77/3316/1305, 1934). The records suggest that he initially travelled to Warri with an English wife. She died in England in 1933, Harriman married again in 1938. His death notice, of December 1952, lists him as of 'Takoradi, Gold Coast' as well as 'Wanstead Park, Ilford': Ancestry.com, *Andrews Newspaper Index Cards*. On The Tempos, see: J Collins, 'The Early History of West African Highlife Music' (1989) 8:3 Popular Music 221.

¹¹⁴ https://edocollegebenin.com/w_about.

¹¹⁵ H Adi, *Pan Africanism: A history* (Bloomsbury 2018) 129, 135.

¹¹⁶ Census, voting and travel records on ancestry.com.

Olympics (1956) and the imperial Commonwealth Games (1958). An amateur dramatist, Engo toured the United States with his church theatre group in 1956, where he met his first wife, Beatrice Viola Antonio (US born, daughter of a Cuban father and Kittsean mother).¹¹⁷ Engo and Beatrice married in London.¹¹⁸

Engo was called to the English Bar in 1959, and thereafter Engo and Beatrice moved to Nigeria where Engo joined the Federal Ministry of Justice as Crown Counsel, Legal Departments of Lagos, Nigeria, and Southern Cameroons.¹¹⁹ In early 1961, just after a UN plebiscite resulted in a decision to split the British Cameroons prior to independence, merging Northern Cameroons with Nigeria and Southern Cameroons with Cameroun (or Cameroon) — the Engos returned to Cameroon. Here Engo built a significant career in law and diplomacy. He was Deputy Agent in *Northern Cameroons*, a case brought by Cameroon against the United Kingdom before the International Court of Justice, seeking declaration of British violations of its Trusteeship Agreement between 1959 and 1961 which had cemented the bifurcation of the British Cameroons, and the incorporation of the northern part in Nigeria.¹²⁰ The case was decided in the shadow of the first *South West Africa* case; and the International Court noted the possibility that apart from its own interest, Cameroon had brought it in the general interest relating to the functioning of the Trusteeship system.¹²¹ However, the case was dismissed on the ground of mootness, as Cameroon, recognising the irreversibility of the outcome, had not sought any relief capable of effective application. Despite this outcome, Engo's role furthered his career. While remaining a senior member of Cameroon's Federal Judicial Commission until 1969, Engo was also posted to embassies in Bonn and Washington DC, from which latter post he served on the UN Special Committee drafting the Friendly Relations Declaration, including as committee chair.¹²² In 1968, he became Cameroon's Deputy Permanent Representative to the UN and its main man on the law of the sea, attending meetings of the Seabed Committee, and taking the chair of its first subcommittee (predecessor to UNCLOS III's Committee I). Between 1973 and 1982, Engo attended UNCLOS III meetings from a post in Yaoundé; in 1984, he returned to New York as Cameroon's Permanent Representative. Beatrice died in 1983, just months after UNCLOS was adopted. Engo had married for a second time in the mid-1970s; his francophone Paris-educated second wife, Ruth Ngo-Tjega, taught university in Yaoundé, and later worked for the UN.

In the span of his life, Engo's family moved from village to capital, colony to metropole, and obscurity to fame. They inhabited contradictions and marginalities, and shared connections and similarities with anti- and postcolonial movers and shakers across the Afro-Asian and Caribbean social worlds. Engo was a Cameroonian in Nigeria, from a Francophone area; in Cameroon, he was a member of the Anglophone minority, defined by connections to the British

¹¹⁷ Ancestry.com. Beatrice attended Walton High School in Bronx, and aspired to become a concert pianist: *US School Yearbooks, 1950*.

¹¹⁸ Records on ancestry.com show that Beatrice, then working as a nurse's aide, travelled to London in December 1958, for an intended stay of 3 months. Engo and she married soon after. In February 1959, Beatrice, now with the stated occupation of housewife, left for Nigeria with Engo on the *MV Soba*; the ship's register indicated Southern Cameroons as their country of intended future residence.

¹¹⁹ ITLOS Yearbook 1998, Vol. 2 (Kluwer 2000) 60.

¹²⁰ *Northern Cameroons, (Cameroon v United Kingdom)* ICJ Reports 1963, p. 15. The referendum had not included the option of an independent British Cameroons. See also NF Awasom, 'The Reunification Question in Cameroon History: Was the Bride an Enthusiastic or a Reluctant One?' (2000) 47(2) *Africa Today* 91-119

¹²¹ *Ibid*, 36.

¹²² Incidentally, for this role Engo was extensively complimented, with the US ambassador noting: 'Chairman Engo displayed an unflagging enthusiasm for and devotion to the tasks assigned to the Special Committee. He created opportunities for accommodation and meaningful compromise where a less optimistic leader would have thrown up his hands in the face of the apparent rigidity of articulated national positions. He pressed all members to achieve maximum results, but always with courtesy and consideration. Such accomplishments as the Special Committee may properly be credited with, must in significant measure be attributed to his good work. We are indebted to Chairman Engo'. Press Release USUN-179, 7 November 1967.

rather than the French empire. He was avowedly inspired by anticolonial radicals, who featured in his expressive speeches and tributes; but was also a functionary of an increasingly authoritarian postcolonial state, surviving power shifts (such as the hostile transfer of power that replaced Cameroon's first president, Ahmadou Ahidjo with the current incumbent Paul Biya, in office since 1982), constitutional change, rising repression, and a growing Anglophone separatist movement — and consolidating both wealth and status throughout.¹²³ He was pan-Africanist, Third Worldist, and internationalist — identities that did not always cohere. And he was an anti-imperialist, yet London-trained bar-at-law — itself a shared if also occasionally incoherent identity across the British empire. His family structure, including a possibly bigamous second marriage (although a US biographical summary suggests Engo and Beatrice had divorced¹²⁴) may have reflected tradition, but his wives were cosmopolitan, boundary-crossing figures, and part of a network of remarkable connections across wide Anglo- and Francophone worlds.

The travels, travails, and networks of Engo's family reveal the circumstances of colonial lives and anti- and postcolonial endeavours, and telescope larger events and shifts in economic and political organisation. They also illuminate UNCLOS in at least two important ways. *Firstly*, as enmeshed within wider politics, processes, and networks of anticolonial worldmaking rather than an isolated event, thus bringing it squarely within the historiography of the period. Indeed, of the many stories that might be told on this point, consider just one — featuring Engo's kinship ties at the UN. At the time that Engo was building a diplomatic career in Cameroon, doing the same over in Nigeria was his stepbrother, Leslie Harriman. Harriman, like Engo had moved to the UK, where he studied at Oxford and Imperial Defence College, before returning to Nigeria and joining its fledgling diplomatic service.¹²⁵ He served in Ghana, as deputy to the Zikist Kolawole Balogun, and as Ambassador to Uganda, Kenya and France.¹²⁶ As Nigeria's Permanent Representative to the UN in the 1970s, he became chair of the UN Special Committee against Apartheid, a prominent role in which he used speeches, tributes, and ceremonies to emphasise the linkages between African-American and African causes, and between antiracism and economic justice; and strenuously identified a 'canon' of Third World political leaders.¹²⁷ In 1978, for example, he organised a special ceremony at the UNGA to award medals to seven individuals for 'distinguished service in the struggle against apartheid': Reverend Collins, Michael Manley, Olof Palme, and posthumously, Jawaharlal Nehru, Nkrumah, Paul Robeson and former Nigerian President Murtala Mohammad.¹²⁸ Manley used the occasion to deliver a blistering speech, which the US privately described as 'one of the most eloquent and effective speeches given in the General Assembly in a long time', causing 'even the old cynics in the UNGA hall [to] stop their doodling'.¹²⁹ The hearty applause had the US predicting 'rougher sailing' on UNCLOS, among other issues.¹³⁰

So, what did Manley say? The speech identified apartheid and racism as only the 'superficial manifestations of a deeper process ... [of] economic exploitation of nation by nation and, ultimately man by man':

¹²³ See M Terretta, *Nation of Outlaws, States of Violence: Nationalism, Grassfields Tradition and State Building in Cameroon* (Ohio 2013); A Mbembe, 'Provisional Notes on the Postcolony' (1992) 62(1) *Africa: JIAI* 3.

¹²⁴ USDC 1977USUNN02075_c, 28 June 1977.

¹²⁵ Harriman was described as one of the 'twelve apostles' of Nigeria, who began its diplomatic missions abroad: S Kola-Balogun, 'Reliving the Spirit of Pan-Africanism', *The Guardian Nigeria*, 13 July 2020, <https://guardian.ng/opinion/reliving-the-spirit-of-pan-africanism-2/>.

¹²⁶ T Akpata, 'Remembering the politics and times of Kolawole Balogun 1922-2002', <http://www.gcimuseum.org/content/remembering-politics-and-times-kolawole-balogun-1922-%E2%80%93-2002-2>; GO Olusanya, 'The Zikist Movement-A Study in Political Radicalism, 1946-50'(1966) 4(3) *JMAS* 323.

¹²⁷ Harriman served as chair of the committee from 1976 to 1979.

¹²⁸ A/33/PV.30, 11 October 1978.

¹²⁹ USDC 1978USUNN04201_d, 12 October 1978.

¹³⁰ *Ibid.*

We have learned by bitter experience that *apartheid*, the frustrations of Namibia, and the manoeuvres of the Smith regime ... cannot be separated from the anger that ultimately drives people to rebellion against fascist oppression everywhere; cannot be distinguished from the continuing frustrations which beset the search for the [NIEO]; cannot be distinguished from the relentlessly adverse terms of trade for those who survive by exporting primary commodities; cannot be separated from the insensitivity of the world's financial institutions to the true social and economic needs of two thirds of mankind; cannot be separated from the anguish of more than 2 billion of the world's poor; cannot be separated from the helplessness of the citizen who cannot read; cannot be separated from the anger of the woman who looks at the opportunity which she knows to be rightfully hers but cannot enjoy because of her sex; cannot be separated from the experience of the government of the struggling nation which faces the choice between economic destruction and political surrender in its dealings with transnational corporations; and, finally and most critically, cannot be separated from the stranglehold which is exercised over the dissemination and interpretation of news, to the end that the true causes of their suffering will remain concealed from three quarters of mankind.¹³¹

Manley thus connected struggles for equality at multiple sites and scales, reminding his audience that remaking a world after empire required recognising and addressing the totality of the circumstances that placed humans in structures of hierarchy and subordination. The speech was an act of positive refusal against the sorting of worldmaking into single-issue regimes that bounded matters as international or domestic; public or private; civil rights or economic. Although seeking specific actions against apartheid, it reiterated that 'what is on trial here today is not only racism; it is not only *apartheid* — these are but symptoms'.¹³² Emphasising the entwinements of imperialism, 'the international corporate system', racism, and — briefly — patriarchy, as about exploitation enabled by the denial of decision-making authority to the people, Manley noted that 'the [NIEO] and the right of the black South African to walk in simple and unexceptional dignity in his own country, both represent a fundamental question which mankind must answer. Who is going to run the world, and on whose behalf?'¹³³

Manley's words, recalling Engo's own, are evocative of a shared world of connections, analyses and movements, which linked Engo directly by friendships and indirectly via admiration and influence to the figures his family name in their tributes: including Nkrumah, Azikiwe, Nelson Mandela, Mariam Makeba, and Martin Luther King.¹³⁴ The words are also potent in how they harness the term 'mankind', as both object and ultimate bearer of political power and responsibility to remedy historical and structural injustices. Thus, they specifically indicate who is signified, and what is to be done — against developments that were emptying the term of any specific content in the context of the CHM principle, to suggest its compatibility with vastly different seabed regimes.

Secondly, by placing UNCLOS III within its wider context, a history by contiguity also reveals the stock story's reductive conceptions of diplomatic 'competence' and 'successful' outcome. In that story, Engo is a figure without context, and his performative acts — such as the intentional dressing in traditional clothes — serve only to exoticize him as a 'colourful' figure.¹³⁵ Yet viewed in the totality of his circumstances, Engo's decisions, from attire¹³⁶ to speeches, to the surprises he sprang in resetting negotiations, all achieve greater charge as acts perhaps designed to, and certainly producing, eddies in the smooth progress of the negotiations towards the middle grounds that are celebrated in the stock story but mark the abandonment of radical possibilities. Questioning bland compromises, challenging the epistemic takeover by technocrats, matching choreography with counter-choreography, forming surreptitious networks

¹³¹ A/33/PV.30, para 32.

¹³² *Ibid.*, para 33.

¹³³ *Ibid.*, para 37.

¹³⁴ 'Esquire': the Family Man.

¹³⁵ Wertenbaker, LOS – I, 55.

¹³⁶ Engo's children recollect his decision to reflect his 'African pride' in his dress: 'Esquire': the Family Man.

of conference ‘radicals’, and keeping ‘non-negotiable’ positions open to negotiation were competent actions in their own right. Indeed, actions that for a long period kept in view a different conception of a successful outcome, even against the press of the structural factors — the limits and pressures, as Susan Marks highlights in her analysis of ‘false contingency’¹³⁷ — that made its falling away inevitable.

But, even apart from such instrumental considerations, curiosity itself, the ‘interest in other people’s lives’ that Rothschild expresses, is reason enough for following such story trails in international law. I turn now to this point.

4 COUNTER STORYTELLING: POSSIBILITIES, CHALLENGES AND LIMITS

Having examined the possibility of enriching the historiography of UNCLOS negotiations via multiscale counterstories, let me now turn to the promise and limits of counterstorytelling. This project of telling counterstories to layer, embroider, and cut against the reductive frames of the stock story does not represent a new idea in legal scholarship. In fact, I borrow it from critical race theorist Richard Delgado, who used it both as description of an existing practice, and prescription for those wanting to engage critically with law and legal structures.

‘Everyone’, began Delgado’s classic essay of 1989, ‘has been writing stories these days’.¹³⁸ The essay examined who had been telling what stories, and why. Delgado first identified the work done by ‘stock stories’, told and retold by ‘ingroups’, in stabilising extant arrangements, and placing radical changes beyond the pale of imagination:

My premise is that much of social reality is constructed. We decide what is, and, almost simultaneously, what ought to be. Narrative habits, patterns of seeing, shape what we see and that to which we aspire. These patterns of perception become habitual, tempting us to believe that the way things are is inevitable, or the best that can be in an imperfect world. Alternative visions of reality are not explored, or, if they are, rejected as extreme or implausible.¹³⁹

As he showed, the power of stock stories rests on multiple factors: that they are told and retold by ingroups, and grafted on to widely shared intuitions and assumptions. Stock stories confirm and reinscribe; and even where they might demand, they reassure. Indeed, in the stories that Delgado pinpointed, relating to reparation for racial injustice, it was precisely the combination of demand and reassurance that spoke to more thoughtful members of ingroups, to whom simplistic stories that denied hierarchy or subordination would not have rung true. But visions of reality that pivoted on the idea of reform did, as did the promise of incremental change.

It was thus left to racialised ‘outgroups’ with ‘consciousness [] other than that of the dominant one’, to tell counterstories revealing the limits of stock stories and articulating ‘alternative visions of reality’ truer to their lives. The progress of such counterstories was not straightforward: they succeeded best when *insinuating*, drawing in their listeners, rather than deliberately confronting them.¹⁴⁰ Yet, importantly, even noting this, Delgado does not offer a single recipe, nor counsel subtlety or moderation as necessary storytelling tools for outgroups. Rather he emphasises multiplicity, uptake, amplification, and repetition, and how one story might

¹³⁷ S Marks, ‘False Contingency’, (2009) 62(1) CLP 1, 8.

¹³⁸ Delgado, Storytelling. On storytelling in international law, see also S Stolk and R Vos (eds), *International Law’s Collected Stories* (Palgrave 2020).

¹³⁹ Delgado, Storytelling, 2416-17. See also N Goodman, *Ways of Worldmaking* (Hackett 1978).

¹⁴⁰ Delgado, Storytelling, 2435. Italics mine.

pave the way for another. A constructive ‘politics of listening’¹⁴¹ is also necessary even if not immediately forthcoming. Moreover, Delgado pointed out, outgroups also told their counterstories for their own sake, for self-awareness and therapy, even prior to achieving radical change.¹⁴²

With these points in mind I explored the production of UNCLOS’s stock story during and after its negotiation. The story works in terms that Delgado shows stock stories generally do. The treaty, and especially its CHM regime, are read as evidence of international law’s progressive turn, even as it reinscribes Northern preferences as given realities. This is an appealing story, and one reiterated when the question of the present appropriateness of the treaty and seabed regime are considered. For instance, against movements seeking drastic change in the approach to seabed mining given its potentially disastrous consequences, the Seabed Authority’s Secretary General has argued:

it is useless and counterproductive to argue that an *a priori* condition for deep-sea mining is an existential debate about whether it should be permitted to go ahead or not. The international community passed that point already many years ago.¹⁴³

His essay reiterates the constitutional status of UNCLOS, but dissociates CHM from any ‘moral or philosophical’ meaning; rather denoting only a ‘specific and limited legal status’.¹⁴⁴ From his perspective, this interpretation is understandable; and confirms how a once ardently-contested worldmaking concept has been leached of political significance, to the point that the erasures enacted in its name are no longer thought to be worth recall, even in vastly altered circumstances. Thus, while the Secretary General’s text recognises the possibility of improving the regime, this is only vis-à-vis strengthening environmental safeguards (of course, important in itself). What it does not and perhaps *cannot* consider is whether improvement might require resurrecting the fundamental questions about distribution and participation that had initially powered seabed negotiations. Nor can it then take on board the notion that if *those* fundamental questions cannot be satisfactorily answered, then mining should not proceed at all.¹⁴⁵

The UNCLOS stock story enables a detachment of CHM from its political context. But what can counterstories achieve in response? I have argued that they can do their work in recalling precisely this political context, and how other imaginations of what seabed mining could mean were erased. They can also throw into relief the mechanisms of narrative capture, including the caricaturing of individuals, and recover Southern figures as rival worldmakers.¹⁴⁶ Of course, none of this can itself generate a change in the regime; for that a movement is necessary. Arguably there is one incipient in the growing call for a moratorium on seabed mining, though its focus is on environmental questions not distributive ones, and in efforts to operationalise the

¹⁴¹ On the politics of listening, L Bassel, *The Politics of Listening: Possibilities and Challenges for Democratic Life* (Palgrave 2017); M Qato, ‘Texts, Tales, Transits: Archival Method and the Politics of Listening’, *The Immanent Frame*, 1 July 2020, <https://tif.ssrc.org/2020/07/01/texts-tales-transits-archival-method-and-the-politics-of-listening/>.

¹⁴² *Ibid.*, 2435-38.

¹⁴³ M Lodge and P Verlaan. ‘Deep Sea Mining: International and Regulatory Challenges and Responses’ (2018) 14:5 *Elements* 331, 336. Lodge is the ISA Secretary General. The ISA is currently meeting on an expedited schedule to complete work on a mining code enabling commercial exploitation of seabed minerals: see <https://isa.org/jm/sessions/27th-session-2022>.

¹⁴⁴ *Ibid.*

¹⁴⁵ In fact, as Isabel Feichtner observed, developments point in the contrary direction. Under a new financial model being developed again by MIT experts, the increased cost of environmental protection is set off against the prospects for redistribution of mining revenue. This has been criticised by Third World states – with Algeria speaking on behalf of a group of African states. It was also criticised by Germany, making clear that Northern interests too may be overly simplified in stock stories. Feichtner, *Sharing*, 626-629.

¹⁴⁶ S Pahuja and A Saunders, ‘Rival Worlds and the Place of the Corporation in International Law’ in Bernstorff and Dann, *The Battle for International Law*, 141.

Enterprise, even though the original vision of it is not on the table.¹⁴⁷ There are also growing and important calls for articulating distributive oceanic justice.¹⁴⁸ In such a context, the counterstories explored here remind us that the futures we seek have already been part of our thought and action for a long time.

But no less important is the historiographic work done by these counterstories in opening the stylized category of the South. This again has an instrumental dimension, as the dissatisfactions of the present fuel calls for alternative epistemologies, including within legal literature. In these calls, references are made to turning to the South, yet what that might mean can remain abstract and elusive. Here historiography that situates the South in all its diversity, complexity and range is important and necessary.

Of course, my own enterprise here is necessarily incomplete. Not only are my stories sketches, but they are also not the only stories to tell, even of the UNCLOS negotiations. Unlike for the stock story, which benefits from a clear scope of inquiry, the project of counterstories is confronted by a potentially infinite field of possibility. It demands a ranging ambition and crossing the horizon of the conventional legally relevant fact; and does not come easily to lawyers. In writing this essay, I have been dogged by uncertainty about my choices and readings and stymied by the limits of available materials. It is just a fact that it is more difficult to find, even for mid-level-elite Southern actors like Engo, the kinds of records available for equivalent Northern figures; while pandemic constraints have also added to the usual challenges of archival access.¹⁴⁹ But, against this, there is what Rothschild described: the ‘exhilarated, exhausted sense of the possibilities of historical inquiry’.¹⁵⁰ There *are* materials to find, sometimes in unconventional places; and others to read against the grain.¹⁵¹ The counterstories do not only bring in layers of global history into process histories of international law-making, they also suggest legal contexts can act as important nodes for multiscale and multisited histories. This does its own work in limning the sharpness of the decolonisation moment — the previous moment of *newness* that confronted international order and generated thinking about the future of world and the future of states, as the climate crisis should do today.¹⁵² Most importantly, it does the work that Delgado highlights as a major reason why we do and should tell counterstories even before narrative enrichment and disruption: for their own sake, for awareness and therapy.¹⁵³

¹⁴⁷ Calls for a moratorium are tracked at <https://www.savethehighseas.org/momentum-for-a-moratorium/>.

¹⁴⁸ Including, but not limited to the UN, where work has recently concluded on a high seas agreement to address, inter alia, benefit sharing in the use of marine genetic resources from areas beyond national jurisdiction: see <https://www.un.org/bbni/>.

¹⁴⁹ On difficulties of sources, see ‘Disputing Archives’ (with Meredith Terretta and James Lowry), EJIL: The Podcast, Episode 16, 28 April 2022, <https://www.ejiltalk.org/ejlthe-podcast-episode-16-disputing-archives/>. Speaking generally, the pandemic is but the latest reminder of the challenges and inequalities built into archival research, with funding, ability to travel and afford equipment, and time all determining who gets to tell the stories.

¹⁵⁰ Rothschild, *An Infinite History*, 10.

¹⁵¹ As Hodder et al., *Archival Geographies of Twentieth-Century Internationalism*, 1, observe: ‘The international archive is a scattered archipelago, which includes better known and surveyed archival ‘islands’ alongside many smaller, previously unexplored collections.’

¹⁵² O Okafor, ‘Newness, Imperialism, and International Legal Reform in Our Time: A Twail Perspective’ (2005) 43:1/2 *Osgoode Hall LJ* 171.

¹⁵³ On therapy and the practice of international legal history see also K Purcell, *Faltering at the Critical Turn to History: ‘Juridical Thinking’ in International Law and Genealogy as History, Critique, and Therapy*, Jean Monnet Working Paper 02/15, <https://jeanmonnetprogram.org/wp-content/uploads/2015/04/JMWP-02-Purcell.pdf>.