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File: The complexities of a sea change by Elisabeth Mann Borgese

Description of item:

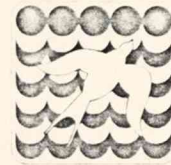
File contains a copy of the following newspaper article:

Borgese, Elisabeth Mann. "The Complexities of a Sea Change." *The New York Times*, Friday, October 1, 1976.

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N.Y. Times article
(long version)



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As the fifth session of the Third Conference on the Law of the Sea is reaching its midpoint, the press is reflecting an atmosphere of gloom. The proceedings are all but grounded, we read. The Conference's First Committee, we read, charged with the challenging task of creating a new regime for the management of the mineral wealth of the deep seabeds, is stalemated between those who really want this new regime and those who'd rather keep the old. Landlocked and coastal States are locking horns in the Second Committee, in the struggle for access to the living resources of the sea within the limits of the so-called Exclusive Economic Zone -- the two-hundred mile zone over which States, from now on, by law or by fact, will exercise their jurisdiction. Stalled, the Third Committee, in apparently fruitless debate between the advocates of freedom of scientific research in vast ocean areas that now fall under the jurisdiction of other States, and the advocates of those States which, often lacking marine scientific capacity themselves, need to protect their offshore waters and continental shelves against expeditions beyond their comprehension and interest. Deadlocked, the Plenary, taking exception to the exceptions from the exceptions to international jurisdiction.

The press has been gloomy ever since the beginning of the Conference -- ever since the Caracas session in 1974. And needless to say, the press has more than a point. The Conference is difficult and apparently getting more difficult, the deeper we are getting into the issues.

But there are a few aspects public opinion is not aware of, and the press has not stressed them.

First of all, the Treaty that is being negotiated is the most comprehensive and the most complex Treaty ever negotiated

in history. Its importance transcends the competence of specialists in the law of the sea. With the penetration of the industrial revolution into the oceans, the law of the sea is no longer what it used to be. Every issue facing the international community today ~~reflects itself~~ in the oceans: relations between industrialized and developing countries; the arms race; the impact of science and technology on institutions, on society, on the environment; relations between States, the international community and the multinational corporations; food; energy; resource management; communications and international trade -- to mention only the most important ones. To negotiate a treaty on the new law of the sea, therefore, is to negotiate a vital part of world order, including the new international economic order which the international community is pursuing in so many other forums. "It is not only the law of the sea that is at stake," The Secretary-General of the United Nations, Dr. Kurt Waldheim, said last April. "The whole structure of international cooperation will be affected, for good or for ill, by the success or failure of this conference."

Second, and contrary to general opinion, the issues before the Conference therefore are not clearly circumscribed technical issues that can be solved in isolation. While their solution would be conducive to the solution of related problems in other forums, they are also dependent on the solution of these questions in such other forums. The general crisis in international relations, reaching at this moment new peak danger points in Lebanon, in Korea, reflects itself also in the crisis of the law of the sea conference. The breakdown of the international law of the sea is part and parcel of the breakdown of international law and order in general. It would not be fair to blame the Delegates to the Law of the Sea Conference for this breakdown. On the contrary, it is here, in this Conference, that the birth pangs of the new international order are more perceptible than anywhere else.

Thirdly, and lest we forget, amongst the daily frustrations,

inevitable setbacks and human disappointments of this Conference: Something has been acquired in the nine years since ~~the~~ great Ambassador Arvid Pardo of Malta drew the attention of the United Nations to the economic potential of, and the ecological perils to, our life support system in the oceans and proposed that the oceans and their resources be declared to be the Common Heritage of Mankind, to be reserved for peaceful purposes only, to be conserved for posterity, and to be managed cooperatively for the benefit of all people, especially the poorer ones; that a Declaration of Principles be adopted, and that this Conference be called to prepare a Treaty to embody these principles. Beyond the vicissitudes of passing altercations, these principles are there to stay. Even should we fail this time round -- which we shall not; they would stay; they would crop up again, whether in the context of the oceans or with regard to the environment, outer space and satellites, climate and weather modification, energy or food. We shall learn to do together what none of us can do alone. The new principles hammered out in the ten years' labor of this Conference and its preparatory organ: the new language that has been developing around them: all this remains: the foundation of the new international economic order arising from the twin imperatives of the technological revolution and the revolution in international relations through which we are passing.

Fourth: during this process, and little as we may be aware of it, issues and obstacles are changing. What today seem to be insurmountable problems, are no longer even talked about tomorrow.

Thus the alternatives before us in the First Committee, quite likely are not either an Enterprise system, managed and controlled by the international community, or free access for States and Companies (the dilemma: International Authority versus States, is illusory at any rate, since the international community consists of States cooperating through the international authority); quite likely, there is a third alternative, in a comprehensive and flexible system of joint ventures acceptable to States and companies, under the financial and administrative control of

the Authority and for the benefit of all countries, especially the poorer ones. The alternatives before us are not either all living resources to the coastal States or the infringement of their sovereign rights by landlocked and geographically disadvantaged States, but regional cooperation in the management of living resources in which all States of the region participate and from which all States benefit; for without such regional cooperation the rational management of living resources is illusory, and nobody benefits. The alternatives before us are not necessarily either freedom of scientific research or coastal State control of such research, but, quite possibly, internationalization and international guarantee of scientific research: in other words, if a research project were approved and guaranteed by an international organ like UNESCO's Intergovernmental Oceanographic Commission (IOC), it could be carried out upon notification to the coastal State; if it were to be carried out merely under national or private auspices, it would require the consent of the coastal State. The question before us, finally, is not whether certain issues or areas are either subjected or excluded from international jurisdiction, but there may be gray areas, as one distinguished jurist proposed, subject to compulsory conciliation, where the dispute settlement procedure is obligatory but the acceptance of the decision is voluntary. ~~The horns of many a dilemma~~ *if a public approach is used* may turn out to be optical illusions, and *approached from a* slightly different angle, new solutions may become plainly visible.

For those of us who have been associated with the effort to build a new international order in the oceans from the beginning, the Conference, while undoubtedly frustrating at times, is nevertheless a great educational experience. This writer, for one, is grateful to be able to assist what may turn out to be the most important international development of this century. One only wishes this learning experience could be shared more widely and that the Conference dropped some of the remaining trappings of old-fashioned diplomacy and the attendant pretense

to secrecy. People everywhere are affected directly by what happens to our oceans: They have a right to know how decisions are made. It does not detract from the effectiveness of the decision-making processes of Congress -- or of Presidential Conventions -- that the press is there. It would not detract from the efficiency of the decision-making processes or of the debates of this great Conference if the press and at least the accredited representatives of accredited nongovernmental organizations were admitted to the working sessions of the Committees. Public support is essential if the Treaty that will result from this Conference is to be ratified and observed. This support must be built now, through the wide sharing of this learning experience. There would be less gloom if there were more participation.