

STATEMENT

by

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International Ocean Institute

Before the

Third U.N. Conference on the Law of the Sea

First Committee

Cairns, July 12, 1974.

Mr. Chairman:

It is with a feeling of deep gratitude and in full awareness of the novelty of the situation that I, as the representative of a nongovernmental organization, take the word in this Committee.

The International Ocean Institute was established two years ago in cooperation with the Royal University of Malta and the United Nations Development Programme. It is governed by an international Board of Trustees of which the President of this Conference, Ambassador Amerasinghe of Sri Lanka, has graciously accepted, in a personal capacity, to be the Chairman. The Institute's work is conducted by an international Planning Council, a number of whose members are present here as Delegates and of which I have the honor to be the Chairman.

The work of our Institute continues that of the Pacem in Maribus Project which was initiated in 1968 by the Center for the Study of Democratic Institutions. From the outset this work has been impressed by the concept of the ecological unity of the world ocean system, the implications of technological advance, and the growing interactions of all uses of ocean space and the exploitation of its resources. Our work has convinced us of the need for a new and systemic approach to ocean affairs.

Mr. Chairman, it is in this context and on the basis of this experience, and with reference to General Assembly Resolution 2749 (XXV), entwining the Declaration of Principles, and to the terms of reference of this Committee, that I should like to discuss today one point that seems to me fundamental: namely, the necessity, in our opinion, of enlarging the concept of a sea-bed authority to that of an ocean-space authority.

From the statements we have heard during this Conference it appears that we are moving toward a consensus in favor of the establishment of an economic zone or patrimonial sea. I do not wish to discuss here the attributes of this zone. Let me take it for granted and merely assume that jurisdiction over, and management of, the economic resources of the zone will be attributed to the coastal State. This is indeed a big innovation. The mandate of this Conference, on the other hand, to establish an international regime for the seabed beyond national jurisdiction -- which now includes the economic zone -- remains unaltered. It is my contention that the establishment of an economic zone, especially in conjunction with other arrangements concerning jurisdictional limits supported by many delegations, basically transforms the concept of the international seabed regime.

The common heritage of mankind to which we refer today simply is not the same as it was when the Declaration of Principles was adopted in 1970. Then it comprised more than three-quarters of ocean space having a very considerable economic potential, from exploitation of hydrocarbons to that of hard minerals, and as a consequence it would have had a financial basis for significant distribution of financial benefits to poorer nations. The size and resources of the area would also have made possible reasonably effective international measures for the control of marine pollution and independent research leading to effective scientific and technological transfers.

The seabed regime of which we speak today has none of these attributes. Its area, in the concept of some delegations, covers the abyssal ocean floor only. It is a single-function regime governing only the mining of manganese nodules, at least

According to UN Document A/AC 138/87, even long-term prospects for oil on the continental rise are small, but, then, the rise too, may fall under national jurisdiction. And there are no prospects, in the foreseeable future, for commercially exploitable minerals other than manganese nodules in the international area.

Add to this that not more than half a dozen countries and not more than a dozen companies have the capability to engage in nodule mining and that the revenue likely to be obtained from nodule exploitation may be expected to vary between 50 and 200 million dollars a year over the next ten years: a revenue not much larger than would be required to cover the operating costs of the future authority and certainly insufficient to effect any significant distribution of financial benefit.^s

Such a situation ~~hardly warrants~~ *does not merit, cannot afford, and will not tolerate* the establishment of a complex and costly machinery, about the structure of which, furthermore, the technologically less developed nations would have very little to say. It is an open secret that the companies of the nodule mining countries have been and are now negotiating the terms of their cooperation in the exploitation of nodules. It is not likely that they will come up with a machinery providing for the participation ^{of the developing nations} in decision-making and management. At best such machinery would be of marginal utility as far as the interests of the great majority of the international community are concerned and would be totally incapable of fulfilling effectively those functions of scientific and technological transfer which are desired by many countries. In other words, The sea-bed regime about which we are talking today could in no way embody the Principles adopted in 1970 and would be incapable of filling the jurisdictional and managerial vacuum in the oceans which must be

filled in the interests both of coastal States and of the international community as a whole.

Mr. Chairman. Should this be a reason for pessimism? For retreating from the Declaration of Principles whose adoption in 1970 was a mile stone in the history of the United Nations?

Not at all. On the contrary. We should stand firmly on the ground which has been conquered with so much toil, and enlarge it in accordance with the requirements of changed circumstances.

If the international authority governing the area beyond the limits of the economic zone is to be economically viable, if it is to be useful to the international community, if the developing nations are to have their share in decision-making and management as well as in financial benefits, then we must pass from the concept of a single-purpose seabed regime to that of a multi-purpose ocean-space regime and machinery. Only in such a comprehensive regime, where all nations can participate in activities, can there be give and take, and a harmonization of interests -- which is much harder to obtain in a regime where, as a starting point, very few nations control everything and the majority has no capacity whatsoever.

There are other cogent reasons which make this enlargement of the seabed regime concept the mandatory and logical consequence of the adoption of the economic zone.

In contrast to the continental shelf area over which national jurisdiction was extended by the second conference on the law of the sea, the economic zone is developing as a multi-functional zone. Especially in the technologically more advanced countries new forms of coastal management are evolving to coordinate and harmonize all uses of national ocean space, to integrate ocean-

economy, creating new forms of cooperation between local, regional, and national government, and between scientific, industrial, and administrative organs.

Mr. Chairman, if this is the form of "coastal management" that is now developing for a large and productive sector of ocean space under national jurisdiction, it would be meaningless to face it with an array of fragmented organizations and competences in international ocean space. The two sectors, national and international, would not "knit." Sectoral and overlapping competences as well as competence gaps would render the international sector totally ineffective -- once again undermining confidence in the feasibility of international organization and cooperation.

Mr. Chairman. The second part of my statement deals with the functions and the structure the international sector should have, in our opinion, if it is to interlink effectively with the coastal management system regulating the interaction of all uses of national ocean space and resources; and the new forms of interaction between local, national, regional, and international, governmental and nongovernmental entities required by this development. I would be glad to submit it on a future occasion in some suitable form. I thank you.

We all know that advancing technologies have changed the character of navigation and created problems of regulation and interaction with other uses of ocean space which are without precedent. It is difficult to imagine how these problems could be solved by IMCO in its present form and in the present context. IMCO has done and is doing exceedingly good work but its competence is purely technical. It remains a sectorial organization with limited membership and it has no competence or power to deal with the interactions of navigation with other uses of ocean space.

IOC deals with scientific research: it has a very small secretariat, a very limited budget and no independent scientific capability. Essentially it limits itself to disseminating information received and to organizing and coordinating international cooperation for some major scientific projects in the oceans.

Intergovernmental fishing commissions, some of which have virtually no secretariat, have no independent scientific capability. They must normally rely on data provided by their members, data which are not infrequently highly divergent. Many suggestions have been made for their improvement. But even assuming that they are restructured and strengthened, it is still unlikely that they will be able to serve the needs of the international community very effectively. Firstly the commissions are organized either to deal with a particular stock of fish or by area. The first case ignores the existence of food chains, i.e., the fact that a particular stock depends upon other stocks for its subsistence, and these in turn upon others which may or may not be within the competence of the particular commission. Fishery commissions organized by area, on the other hand, do not adequately reflect the interest of the international community as a whole since they are not

established within a global framework.

Secondly, fishery commissions cannot deal with many circumstances which can seriously affect fishing and fish stocks, such as competing uses of the sea and marine pollution.

Finally, and most importantly, the very serious problems affecting world fisheries cannot be solved until access to stocks is restricted: that is, until licensing of commercial fisheries is introduced beyond national jurisdiction so that the management measures taken by the coastal state within its jurisdiction are complemented by effective management outside. Here we have an example where the strengthening of international organization will strengthen national organization with which it must interact; and one is impossible without the other. But it is only as part of an integrated ocean system that the fishery commissions can take on these added competences.

In short, the activities of IMCO, IOC and of the intergovernmental fishery commissions would benefit greatly from a technical point of view were they integrated in the future authority which this Committee will establish. But the benefits would not be merely technical: there would also be easier access to higher levels in governments of member States, and there would be the possibility of discussing and deciding technical questions against a wider background. This might remove some of the difficulties which have impeded the practical implementation of several useful initiatives in the past ten years.

There are also a number of organizations concerned with the oceans which are outside the U.N. system and whose usefulness is now limited by structural and financial limitations. These, too, would benefit if integrated into a multi-purpose international machinery.

Among these are the International Lighthouse Association whose functions could be much strengthened and expanded within a comprehensive machinery, and the International Hydrographic Organization whose functions acquire particular significance at a time when surface and subsurface obstacles to navigation in the seas are multiplying and when the draft and speed of vessels is increasing. A mammoth work of review and updating of marine charts is urgently required and can be undertaken quickly and effectively only in the context of comprehensive international institutions.

Finally, there are a growing number of new uses of the seas for which there does not now exist even a technical forum for a discussion of their interaction with traditional uses, their environmental impact, and an analysis of their cost-benefit to the international community. Among these are ocean-linked energy production technologies; artificial islands and submarine habitats, new military technologies including tracking systems of huge dimensions which may interfere with the peaceful uses of the oceans and with the ecology -- and technological capability is developing to modify the natural state of the marine environment over significant areas, thus potentially affecting climates and the flora and fauna of the sea -- even without causing pollution. There must be a forum with recognized competence to deal with such matters.

In conclusion, Mr. Chairman, we believe that because of rapid and unprecedented technological advance, because of the evolution in our uses of ocean space, and because of contemporary social and political needs, the fundamental questions before this conference must be: firstly, the development (which obviously must include its protection: for we cannot develop what we destroy) of ocean space for all peaceful purposes, in condition where uses of the oceans are intensifying, diversifying and increasing-

ly interacting; secondly, the equitable allocation of the resources of the two-thirds of our planet covered by water. Neither of these vital goals, nor indeed a significant useful purpose is achieved merely by the creation of a single purpose agency for the exploration and exploitation of the resources of the abyssal depths. A constructive approach is, on the other hand, possible by extending the concept of common heritage from the seabed to ocean space beyond national jurisdiction. This would make possible the establishment of a multi-purpose international machinery which would of course retain as one of its principal functions the exploitation of seabed minerals but which would have other functions such as the elaboration of general norms of ocean use, in navigation, the management of living resources in cooperation with coastal States, independent scientific research and effective transfer of related technologies, the prevention of marine pollution in cooperation with UNEP, and other activities ~~useful~~ to the development and conservation of the common heritage.

We are now coming to the question of the structure of the new ocean-space authority.

Here the first problem is the relation of the new authority to the United Nations system as a whole.

Such a relationship must obviously exist. There can be no doubt that the new authority must emanate from, and be legitimized by the United Nations Organization and must operate in accordance with the Charter of the United Nations. It is equally clear, however, that the functions of the new authority will essentially differ from those of the U.N. and that its structure must be adapted to its special functions. No purpose would be served by copying the structure of the United Nations organs which were created in a different era and for different purposes. The new authority, having different

functions and a different structure, must enjoy great operational autonomy.

The authority must have legal personality. For instance, it should have the right to sail vessels under its own flag. Otherwise it cannot engage in effective resource management and research.

As far as membership in the authority is concerned, obviously this should be open to all States. But one of the characteristic developments of our time is that other entities are evolving and are beginning to play a significant role in international relations. Among these are the regional organizations such as EEC or OAS or the Organization of African States, and these too should have the right to join the Authority in some capacity which will have to be determined.

The principle of the sovereign equality of all States must be respected, but considering the above mentioned development as well as the novel functions of the Authority and their structural requirements, the traditional principle of State representation might well be integrated with the new principles of regional and functional representation. This would require arrangements transcending traditional patterns in the direction of participation in appropriate cases. It would facilitate the integration between politics and science and industry which is so essential for the successful operation of an ocean regime. Organs must correspond to their functions. Their forms keep evolving and will keep evolving in the future.

There should indeed be an Assembly, a Council, and a Secretariat, but there must be new organs to cope with new functions. There should be an Enterprise, or Enterprises for the management of nonliving and living resources, of communication, of scientific research and the transfer of technologies.

Many of the functions could be brought together

within the competence of three or four major organs or councils. One would be the very important function of Planning, to be embodied in a Planning Council, and under this there might be subsidiary organs, perhaps on a regional basis, charged with the management of ocean resources and technologies.

It is essential that the Authority should have a special organ for the settlement of disputes, which are bound to increase in number and intensity with the increase of national jurisdiction in the oceans and the intensification of uses, and they may involve not only States but regional organizations as those mentioned above as well as enterprises and even individuals. Neither the provisions of Article 33 of the Charter, leaving everything, essentially, to the goodwill of the parties concerned, nor the Court of International Justice in the Hague, whose competence is limited to dealing with States, are adequate to deal with this new situation. The new conflict settlement system might give access to entities other than States and, in specific cases, specified in the Treaty, even to individual persons. It should embody a flexible system of processes and procedures which in a first instance might well include the means described in Art. 33 of the Charter and establish arbitration bodies to hear any dispute and attempt a settlement. From a decision of the arbitration body there would be an appeal to a Tribunal which would have to be created. On the other hand there are certain disputes which are essentially of a political nature and may involve vital State interests. An attempt should be made to settle these by negotiations between the States concerned. If these were not successful within a reasonable time, such matters should be discussed by the political organs of

the Authority, most likely, the Council.

A final point concerns the coming into force of the Treaty establishing the new Authority.

In view of the rapid advance of technology, the diversification of uses of the sea and the crisis of the present international law of the sea, it is of vital importance that any Treaty come into force as quickly as possible. A delay beyond the end of this decade would be disastrous. On the other hand, the problems we are dealing with are so new and complex that their solution will take time. ~~Whereas~~ in the midst of what might be called a revolution in international relations, in the midst of restructuring the relations between developed and developing nations in the spirit of the Sixth Special Session of the United Nations General Assembly.

There is no use in panicking and rushing off in the wrong direction. A comprehensive scheme takes time, and all the organs and institutions required to embody this dramatic change cannot be created by a stroke of the pen. They demand, as much as they will enhance, changes in the scientific, technological and economic infrastructure.

Perhaps one should devise a time-table for the step-by-step internationalization of various functions in international ocean space -- somewhat similar to the time-tabled adopted by the European Economic Communities. But this must happen within a comprehensive design, and to construct this design should, in our opinion, be the task of this Conference.

Mr. Chairman, if I may sum up:

The assumption of a wide economic zone makes it mandatory to enlarge and adapt the concept of a seabed regime to that of an ocean space regime. Such a regime must be able to manage the resources of the oceans and seabeds as the common heritage of

mankind for the benefit of all peoples with special regard to the needs of the developing nations; to harmonize and integrate all uses of ocean space and resources; to build in, utilize, and strengthen existing intergovernmental institutions active in ocean space; to create new forms of cooperation and linkage between the management of national and of international ocean space; to integrate ocean-based ecology and economy with land-based ecology and economy; to harmonize universal interests with regional needs and national interests; to create new forms of cooperation between politics, science, and industry, for interdisciplinary decision-making on problems which are essentially interdisciplinary and transcend the competence of any one group acting alone.

Mr. Chairman, if over the next years, we succeed in creating such new and modern forms of international cooperation and organization, we shall have done more even than saving the oceans on which all life depends. We shall have contributed to creating a pattern for international organization for the next generations.

III.

Only an Authority with comprehensive powers ^{and functions} can regulate the interaction of the multiple uses of ocean space and resources, ~~xxxxxxx~~ minimizing pollution and conflict and maximizing economic benefit.

III.

The intensification of uses and the interaction of between various ocean sectors and strata require a comprehensive ~~xxxxxxx~~ dispute settlement system. It is indeed to be anticipated that the number of disputes, involving the delimitation of jurisdictional areas, conflict between uses of ocean space, and damages to installations, vessels, or the national or international environment, is going to rise sharply; such disputes may be between nations; between nations and juridical persons; or between nations, ^{or} juridical persons and the international community. A comprehensive dispute settlement system cannot be attached to a single-function sea-bed authority nor can it function effectively in an operational vacuum. To function effectively, a comprehensive dispute settlement system must be part of an effective and comprehensive ocean-space Authority.

IV.

The ocean system cannot endure half managed and half unmanaged. Fragmentation of functions and competences in the international area would put an undue burden on management within the national area. ^{This} is evident particularly with regard to fisheries management. Management within the national area is crippled without corresponding management within the international area. ^{Incomplete} regulation works in favor of the technologically advanced and economically powerful nations, as described so eloquently by the Delegate of Tanzania before Comm ttee II, and documented by the statistics compiled by the Internati nal Ocean Institute and attached

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The extent of the international regime should cover
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to which the shelf and all resources of the sea beyond the
limit of national jurisdiction.

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it must attempt to integrate ocean-based ecology and economy with land-based ecology and economy;

it must harmonize universal interests with regional needs and national interests;

it must create new forms of cooperation between politics, science, and industry, for interdisciplinary decision-making on problems which are essentially interdisciplinary and transcend the competence of any one group acting alone.

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*Too long, too learned and at same time not sufficiently clear.
Please consult Vity them for his opinion and then we can go over this together.*



Pacem in Maribus

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PART II
STATEMENT
by
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Before the
Third U.N. Conference on the Law of the Sea
First Committee

Content: STATEMENT
APPENDIX A: Recommendations from Pacem in Maribus
IV to the United Nations Committee
on the Peaceful Uses of the Sea-Bed
APPENDIX B: The Enterprise. Excerpt from Model
Draft Treaty. Pacem in Maribus, 1972.

Fisheries Department

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Coastal Management in a comprehensive framework

functions and a different structure, must enjoy great operational autonomy.

Membership

Membership could be open to all States. But one of the characteristic developments of our time is that other entities are evolving and are beginning to play a significant role in international relations. Among these are regional organizations such as EEC or OAS or the Organization of African States, and these too should have a right to join the Authority in some capacity which will have to be determined. Provision might also be made for Associate Membership, following the pattern of IMCO.

Voting

The principle of the sovereign equality of all States must be respected, but considering the above mentioned development as well as the novel functions of the Authority and their structural requirements, the traditional principle of State representation might well be integrated with the new principles of regional and functional representation. This would require arrangements transcending traditional patterns in the direction of participation in appropriate cases. It would facilitate the integration between politics and science and industry which is so essential for the successful operation of an ocean regime. Organs must correspond to their functions. Their forms keep evolving and will keep evolving in the future. That such new schemes can be devised is shown, e.g., in the Model Draft Treaty establishing an Ocean Regime (Center for the Study of Democratic Institutions, 1968; revised edition, Pacem in Maribus, New York: Dodd, Mead and Co., 1972).

IMCO divides nations into various categories, according to the ship/tonnage navigating under their flag. This division would obviously not be applicable

Appendix A and B

On July 12 I had the honor to present to this Committee the first part of a statement dealing with the implications of ^{a large area under national jurisdiction} ~~the Economic Zone~~ for the International Regime governing activities in the area beyond national jurisdiction.

[In our opinion, which can be substantiated by a considerable amount of research documentation, the area and resources of the abyssal ocean floor are, for decades to come, not adequate as a basis for a meaningful sharing of benefits or economic and scientific transfers from richer to poorer nations, nor for a machinery, strong enough to ensure effective participation of the technologically less advanced nations in the management of the common heritage of mankind. If the principles solemnly adopted by the XXV General Assembly are to be embodied in an adequate machinery, then the concept of the common heritage, decreased by the subtraction of the economic zone, must again be increased by including the superjacent waters and their resources together with the ocean floor.]

Mr. Chairman, I should like to propose for your consideration today some of the interactions between the zone under national jurisdiction and the zone under international jurisdiction, and the managerial and structural requirements arising therefrom. For it is the requirements of the national zone that must determine, to a large extent, the functions and structure of the regime for the international zone. Otherwise the international regime is abstract, or built on nonreality.

Self-sufficiency of Economic Zone

The self-sufficiency of the economic zone depends on a number of factors. ~~Among these are:~~ such as

area under national jurisdiction

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B

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deals in simplification
and forecasting.

- (1) length of coast line facing the open sea;
- (2) distance of opposite shore
- (3) geophysical structure of seabed and availability of seabed minerals;
- (4) rivers flowing into sea, their origin and course through other nations;
- (5) currents, tides, winds; *and I could mention half a dozen more.*
- (6) nature of coast line (bays, natural harbors, panoramic scenery, etc.)
- (7) maritime traffic patterns;
- (8) available coastal fisheries and potential fisheries (fish culture potential);
- (9) range of available technologies (domestic and imported)
- (10) presence of land-locked nations in hinterland.

Under the impact of variables of this type, coastal management interacts with *in a number of ways with the uses of land, ocean space, and atmosphere, under*

1. ~~land use and land-based ecological and economic factors~~
 - (a) under the same national jurisdiction *the national jurisdiction, or*
 - (b) under the jurisdiction of land-locked states *He is under the jurisdiction of neighboring coastal*
in its hinterland; *or land-based nations, or under international*
2. with uses of ocean space and sea-based ecological and economic factors
 - (a) under the jurisdiction of neighboring ~~opposite~~ coastal states;
 - (b) under international jurisdiction
3. air-borne and atmospheric factors.

Waste is contained

P It can be seen that this makes for an extremely complex management model. Obviously, the longer the coast line facing open sea, the more simplified the model, and the more favorable the cost/benefit ratio. Thus countries like the United States, Canada, New Zealand, Australia, Brazil, Argentina, and South Africa are undoubtedly going

P

to be advantaged. The shorter the coast line, the more complex the interactions, and the less favorable the cost/benefit ratio. Econometric models for nations with different variables determining these interactions are needed.

Example

What are the international requirements for effective national fisheries management in a country with a relatively short coast line?

national management measures (resulting from effective national coastal management balancing and zoning conflicting national uses of ocean space) may be come ineffective where the stock to be managed

- (a) is ranging beyond the limits of national jurisdiction;
- (b) feeds on stocks ranging beyond the limits of national jurisdiction
- (c) is vulnerable to environmental factors beyond the control of the coastal state.

Joint management measures thus might have to include

1. licencing of the fishery beyond the limits of national jurisdiction

- (a) under the jurisdiction of a neighboring or opposite state;
- (b) under international jurisdiction;

2. management of the trophic levels below and reaching up to the fishery in question beyond the limits of national jurisdiction;

3. regulation of interactions between the fishery in question and other uses of ocean space beyond national jurisdiction (assessment of environmental impact of shipping, mining, industrialization and urbanization of shore line beyond the limits of national jurisdiction; social and economic implications; cost, benefit analyses and setting of priorities in relation to

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other stocks or plankton on which the fishery in question depends

- landlocked*
(a) ~~hinterland~~ nations *in the region*
(b) neighboring or opposite coastal nations
(c) other users of international ocean space
(d) global environmental factors and their regulation.

It seems obvious that a fragmented international regime would put an undue burden on national management by making national/international management extremely complicated, time consuming, requiring duplication of effort, and beset with competence gaps and legal lacunae.

International fishery commissions would have to be restructured and strengthened, be given independent scientific capability as well as managerial competence which they now totally lack. Even then, however, they could not cope with the interaction between fishing and other uses of ocean space, which is essential for rational management.

Thus restructured and strengthened fishery commissions must be integrated in an international system which must be functionally as comprehensive as the coastal-zone management system; only then can they cooperate effectively.

The same argument could be made for other uses of national ocean space.

Shipping is likely to meet with an increasing number of problems, arising from advanced nautical technologies, the construction of atomic-powered giant freighters, hovercraft, VLCCs and ULCCs (Ultra Large Crude Carriers), commercial submarines, etc., on the one hand, and from the intensification of industrial uses of ocean space (rigs, underwater storage tanks, underwater habitats, artificial islands, etc.) on the other. Harbors like Hamburg and Bremen ^{thus} may not be able to receive many ships, in the foreseeable future.

Again, a network of complex consultation and co-

operation is needed to cope with these problems. IMCO has done exceedingly useful work, not only in the technical sense but also by extending cooperation with a host of organizations and institutions, inside and outside the U.N. system. All this provides already an admirable infrastructure for the comprehensive system that is needed: but it is a system that is needed, to avoid, again, ~~d~~duplication of efforts, competence gaps, and the effective regulation of interactions of uses. Within a comprehensive framework, furthermore, IMCO should have more than advisory power. It should have decision-making and managerial competence, to operate in effective partnership with coastal management.

Mr. Chairman. I do not wish to take up more space to demonstrate the need for inserting scientific research into a comprehensive system with independent research capability -- which IOC does not now possess or for regulating new uses of the oceans, for which there exists at present not even a forum for technical discussion, to take account ^{of} their interaction with traditional uses, inside and outside the zone of national jurisdiction, their environmental impact, and an analysis of their cost and benefit to the national and international communities. Among these are ocean-linked energy production technologies; artificial islands and submarine habitats, new military technologies including tracking systems of huge dimensions which may interfere with the peaceful uses of the oceans and with ecology. Technological capability is developing to modify the natural state of the marine environment over significant areas, thus potentially affecting climates and the flora and fauna of the sea -- even without causing pollution. There must be a forum with recognized competence to deal with such matters.

To sum up: The effective management of the coastal zone requires, as a complement, the effective management of the international zone. And the requirements of effective management are the same, in both zones. Fragmentation, ~~Waste~~, proliferation of institutions, duplication of efforts and competence gaps must be eliminated on both sides of the boundaries of national jurisdiction. Integration, coordination of efforts and the filling of legal and management gaps must take their place.

Organic structuring of marine activities of Specialized Agencies and of functional organizations.

One of the first requirements for the rational management of the international zone would seem more effective cooperation between the marine activities of IMCO, UNESCO, UNCTAD, UNEP, WMO, WHO, IAEA and others. Such cooperation should not be merely at the technical or consultative level -- for, in many cases, the implementation of excellent decisions fails because of the lack of a broader, political basis -- it should be on the basic, policy-making level. There are many ways in which this could be achieved, and details depend on the over-all structure of the future ocean authority. One possibility would be to use IMCO as a foundation since it already has the broadest organizational base, and all its activities are ocean-centered whereas the other specialized agencies dedicate only a part of their activities to marine affairs. Thus one could take the IMCO Assembly, duly modified, as the basis for the whole structure, and one might then detach IOC from UNESCO, and the Fisheries section from FAO, and attach them as "Departments" to the IMCO basis. Other "Departments" might be based on IMCO on the one hand and on UNCTAD, UNEP, WMO, WHOM, IAEA respectively

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New forms of cooperation, for all mixed national/international competences must, in some cases, be established.

We shall now try to draw the structural consequences from the above

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itions.

on the other, thus insuring organic policy making on the enlarged IMCO basis, and interaction between marine economy and ecology on the one hand and land-based economy and ecology on the other.

IMCO has already ^{to some extent} integrated into its activities a number of other organizations such as the International Hydrographic Organization or the International Lighthouse Association. The participation of nongovernmental functional organization at the Assembly, or policy-making level should be strengthened, since it is on their participation that ultimate success in carrying out ocean policies depends. IMCO has already a basis for such participation.

Organic structuring of regional cooperation

Rational management of national ocean space (economic zone) will require a great deal of regional cooperation. The need for regional cooperation grows in inverse proportion to the length of coastline facing the open sea, and in direct proportion to the pressure of landlocked nations ^{in the region} ~~in the hinterland of a coastal nation~~. In closed and semi-enclosed seas such as the Baltic, ^{the} Mediterranean, or the Caribbean, regional cooperation ~~may~~ indeed lead to a regional merger of economic zones, or the concept of a "matrimonial sea." ~~Treaties establishing regional organizations, such as the Baltic Treaty are~~ likely to be concluded in other regions as well. Such treaties may provide, inter alia, a general policy- and standard-setting organ or assembly; an organ coordinating national and subnational coastal management bodies; a fisheries management body; a regional scientific organization; and, where applicable, a regional "Enterprise" for mineral mining. Regional organizations of this sort could play an essential role in complementing management at the national and subnational level as well as articulating the work of the global authority. The structure of regional organization may differ in

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the North Sea,

is all this necessary?

such as the one established at least in embryonic form by the Baltic Treaty,

accordance with the different needs of various regions. They must, nevertheless, be organically structured into the decision-making processes of the global Authority.

Regional ocean space, like national ocean space, is too restricted to permit a separation of functions and a multiplicity of independent regimes. It is especially at the regional level, in fact, that single-purpose organizations, such as fishery commissions, have proved severely handicapped. The interaction of all uses of ocean space and resources is intense at the regional level.

If regional organizations, in turn, have to be integrated at the global level, it is obvious that this requires a comprehensive ocean authority. A sea-bed authority does not provide a proper basis for their integration.

Legal personality

The ocean authority must have legal personality. For instance, it should have the right to sail vessels under its own flag. Otherwise it cannot engage in effective resource management and research.

Relationship to the United Nations system

Such a relationship must obviously exist. There can be no doubt that the new authority must emanate from, and be legitimized by the United Nations Organization and must operate in accordance with the Charter of the United Nations. It is equally clear, however, that the functions of the new authority will essentially differ from those of the U.N. and that its structure must be adapted to its special functions. No purpose would be served by copying the structure of the United Nations organs which were created in a different era and for different purposes. The new authority, having different

STATEMENT

(second part)

by

Elisabeth Mann Borgese

International Ocean Institute

before the

Third U.N. Conference on the Law of the Sea

First Committee

Caracas, August 6, 1974.

On July 12 I had the honor to submit to this Committee the first part of a statement dealing with the implications for the proposed international seabed regime and authority of a very wide marine area under national jurisdiction.

Since then, you Sir, held a most interesting seminar largely on this point, and there has been distributed a document by UNCTAD, which all confirmed our preoccupations. However, it has not been clearly pointed out that, as a result of present trends in delimiting national jurisdiction, it may be anticipated that a substantial part of the manganese nodules of the abyss would either pass immediately under national jurisdiction or could be claimed by a coastal State through appropriate adjustments within baseline and other delimitation provisions likely to be included in any treaty adopted by this Conference. Hence prospective exploiters of manganese nodules would, in many cases, have the choice of exploitation either in the international seabed area or within national jurisdiction. Thus the proposed international seabed authority, in the event of a licensing or service contract system of exploitation being adopted, would not be able freely to determine royalty provisions within the international area nor would it be able to adopt effective arrangements to ensure that mineral output from the seabed will not result in prices which are not equitable to landbased producers, since attempts to impose conditions not acceptable to the limited number of consortia interested in deep seabed exploitation would merely result in most cases in such exploitation taking place within national jurisdiction.

At Pacem in Maribus we have done a considerable amount of work on the Enterprise system, which, to many of us, seems to offer the only realistic instrument for the realization of a comprehensive concept of the common heritage of mankind. I am annexing to this Statement our proposal, published in 1972, for the structure of such an enterprise. In the present context, however, it seems highly unlikely that the Enterprise, or the Authority, could raise the large capital and obtain the technological capacity to compete successfully with industrial consortia exploiting manganese nodules within national jurisdiction.

At the same time, joint ventures with consortia can be predicted to benefit mostly the latter, since these would have the choice of exploitation within national jurisdiction.

Thus it can be confidently anticipated that the revenues of the international seabed authority will be quite small -- probably insufficient to cover the administrative expenditure of the proposed machinery -- and that the authority itself will be unable to implement any revenue sharing, to undertake scientific research or to engage in any meaningful programs of transfer of technology. In short, an international seabed authority, as presently envisaged, can have a marginal role at best; more probably it simply will not be viable and will

require continuous and substantial financial support from Member States.

In the present circumstances, as I pointed out in my previous statement, only the creation of an international ocean space authority can serve an internationally useful purpose.

In the first place, revenues of an ocean space authority -- through licensing of fishing and other economic activities beyond national jurisdiction -- would be much larger than those that can be expected by an international seabed authority. Such revenues, while still probably insufficient to effect significant revenue sharing, would certainly be sufficient to enable an ocean space authority both to engage in meaningful programs of scientific research, training and transfer of technology and to cover fully its administrative expenditures.

This, however, is by no means the only reason why an ocean space authority is an indispensable outcome of this Conference.

Mr. Chairman. Other Committees of this Conference are not discussing the seabed alone, but ocean space in all its dimensions. We must assume that a large portion of ocean space will pass under coastal state sovereignty or exclusive jurisdiction in the near future. On this assumption, it appears inconceivable that the conference could limit itself to proclaiming the seabed beyond national jurisdiction a common heritage of mankind subject to international administration and regulation and to re-affirming that the waters above the international seabed area are high seas where freedom reigns! This would lead rather rapidly to unfortunate results.

Freedom of activities beyond national jurisdiction -- whether fishing, navigation, or disposal of noxious wastes -- will inevitably affect the area of ocean space under national jurisdiction; equally inevitably coastal States will seek to protect themselves from such activities by further extending their national jurisdiction through expansive interpretations of baseline and other delimitation provisions of the future convention. It should be noted in this connection that, for instance, distant-water fishing efforts, displaced from Economic Zones, are likely to increase greatly in marine areas beyond national jurisdiction, with serious adverse effects on anadromous stocks and of fish species that migrate between coastal areas and the high seas.

Secondly, much intensified activities in ocean space within national jurisdiction -- an inevitable consequence of rapid advance in marine technology -- must necessarily affect ocean space areas subject to the jurisdiction of neighboring States, and this in turn will give rise to a variety of controversies and disputes between States. Draft articles on the compulsory settlement of disputes submitted by some States do not appear

to be entirely credible since dispute settlement provisions included in any future treaty are likely to remain quite ineffective, unless they are conceived as part of a viable and strong international machinery.

Finally, maintaining unaltered the concept of high seas totally ignores the serious implications for the international community of the possibility of unrestricted use of new and powerful technologies, still in the experimental stage, which can have significant effects over vast areas. I refer here to matters such as weather modification, current diversion, and massive extraction of energy from the seas.

The following words of the distinguished President of Mexico excellently state the need for changing the concept of high seas and for international administration of ocean space beyond national jurisdiction:

Toda la actitud del hombre frente al mar tendra que cambiar....El aumento dramático de la población mundial y el consiguiente incremento en la demanda de alimentos de origen marino; la creciente industrialización en todos los continentes la concentración de las poblaciones en las áreas costeras; la extracción cada vez mayor de hidrocarburos de los yacimientos continentales; el aumento de la navegación y el uso cada vez más frecuente de petroleros gigantes, de transportadores de gas licuado y de embarcaciones de propulsión nuclear; y el empleo creciente de sustancias químicas que en elevada proporción terminan en el mar, son otros tantos factores que imponen la necesidad de replantear globalmente, de administrar internacionalmente, los usos de los mares. Cada día surgen nuevos y mayores conflictos entre los distintos usos competitivos de los océanos, que, por supuesto, ningún país podrá resolver solo

Además, se produce una constante interacción entre los múltiples usos de los mares. La explotación de los recursos del lecho marino puede afectar la utilización de las aguas suprayacentes, y viceversa; las actividades en las áreas internacionales y en las zonas costeras nacionales se afectan recíprocamente; y el mar en su conjunto y la atmósfera que lo cubre forman un sistema ecológico. Todas estas interacciones exigen una visión y un tratamiento globales e integrados de los ambientes marinos.

I would, in addition, wish to repropose for your consideration the fact that it is necessary for an exclusive economic zone to "knit" with the marine area beyond national jurisdiction if many foreseeable difficulties are to be avoided. National management measures with regard to fisheries, for instance, could well be largely ineffective when the stock subject to management ranges beyond the limits of national jurisdiction or is vulnerable to environmental and other factors beyond the control of the coastal State. In such cases, joint and cooperative management, either on a regional or on a global basis, is necessary. This kind of cooperation cannot be provided by the present fragmented system of intergovernmental fishery commissions.

Mr. Chairman, it would be premature to try to deal now with the structure of an international ocean space regime. If this session could merely formulate the recognition that the seabed authority, in order to function effectively, must be an integral part of an ocean space authority with the

functions described so eloquently by the President of Mexico -- this would indeed be a great step forward.

Let me mention only two preliminary considerations concerning the structure of an ocean space regime.

First, such a regime, in our opinion, must incorporate a flexible system of regional organizations. Good management of ocean areas under national jurisdiction will require close regional cooperation. In some closed and semi-enclosed seas, regional cooperation could lead, if political conditions are favorable, to a merger of national jurisdictional areas. Regional Treaties such as the one recently concluded by the Baltic States could set precedents for other regions. Such treaties and their contents and purposes will differ in accordance with the different needs of different regions but will usually complement national management of resources and deal with problems, such as pollution, that cannot be dealt with at the national level. Regional treaties, whatever they may be, however, will be more effective within the general structure of a global authority.

A second consideration which, it seems to us, is not premature is that it is becoming increasingly urgent to strengthen the activities at least of IMCO, IOC, and the Fisheries Department of FAO in order that more effective and operational support and cooperation can be offered at the international level to the increasing activities of coastal States within national jurisdictional areas. By this I mean not merely increased financial resources and inter-agency consultation and coordination at the administrative level, but organic integration. There are many ways in which this could be achieved, and details depend on the over-all structure of a future ocean authority. One of several possibilities would be to use IMCO as a foundation since it already has the broadest organizational base and all its activities are ocean-centered. IOC and the Fisheries Department of FAO, which have limited possibilities of growth within UNESCO and FAO, could be detached from their respective organizations and, together with a seabed authority, attached as departments to IMCO. Such reorganization within the UN system permitting closer and more effective cooperation between the Seabed Authority, IMCO, IOC, and the Fisheries Department of FAO would be useful and has considerable attraction.

With great respect and with some hesitation I would conclude, Mr. Chairman, by simply enumerating the options before this Committee.

The first and simplest option is the **conclusion** of a treaty creating a seabed authority on the lines presently being considered. The procedural and negotiating advantages of such a course appear outweighed however by the fact that the authority could only be marginally useful and might be quite useless.

A second option could include, in a treaty creating an international seabed authority, provisions stipulating that the Authority would receive a portion of the financial benefits obtained by coastal States from resource exploitation in

marine areas under their national jurisdiction. This would enable the Authority to play a significant developmental role. Difficulties in devising an equitable formula for benefit sharing within national jurisdiction could be overcome for the time being by incorporating the principle in appropriate treaty articles and leaving their practical implementation to further negotiations within the framework of the future authority. On the other hand there may be serious political difficulties, and revenue sharing alone is an inadequate way to implement the concept of common heritage which implies sharing in management as well as in profits.

A third option would be appropriate treaty articles uniting IMCO, IOC and the Fisheries Department of FAO with their present functions into one organization and adding thereto an Authority for the international seabed area. This option might eventually provide a world forum for the discussion of matters relating to the oceans and in the short term would improve quite significantly the present functioning of the U.N. system with regard to marine matters. The new organization, of course, would have to rely on Member State contributions for support. The difficulties in considering this option would appear to be more procedural and bureaucratic than seriously political.

A fourth option, which the International Ocean Institute deems preferable by far in the light of the contemporary revolution in marine technology and ocean uses and in the relations between developing and developed nations, would be the creation of an ocean space authority, with or without benefit sharing within national jurisdiction, embodying the trends of regional development and the integration of intergovernmental agencies mentioned above, but having a number of other, novel features. It would possess general functions with regard to ocean space as a whole and precisely defined functions of administration and benefit sharing with regard to ocean space beyond national jurisdiction. The wide variety of functions undertaken would permit all sectors of the international community to benefit. The difficulties here are political. It may however not be entirely impossible to remove some serious misunderstandings with regard to this option.

Mr. Chairman:

It is likely that the Third United Nations Conference on the Law of the Sea will greatly strengthen national rights in ocean space. It would be unfortunate indeed if this achievement were not matched by equal progress in international cooperation in the oceans, for in this technologically interdependent world national rights can be exercised effectively only within the context of international cooperation.

I beg your indulgence, Mr. Chairman, for having spoken more frankly and at greater length than is normal for a representative of a Non-Governmental Organization.