

# UNICPO

## *The First Session*

*Elisabeth Mann Borgese*

### *INTRODUCTION*

The first session of the *United Nations Informal Consultative Process on the Oceans and the Law of the Sea (UNICPOLOS)* took place in New York on May 30 - June 2, 2000. The establishment of UNICPOLOS by the General Assembly must be considered a break-through in the process of building a global system of ocean governance. It is the only body in the United Nations System, with a membership comprising the *whole membership of the General Assembly*, intergovernmental and regional organizations as well as the “*major groups*” of “civil society,” with a mandate to consider the closely interrelated problems of ocean space as a whole. The consensus-building capability of the two Co-chairpersons — Ambassador Neroni Slade of Samoa (developing countries); Mr. Alan Simcock, UK (developed countries) was remarkable, and the Session’s well structured and detailed output will most certainly “facilitate the annual review by the General Assembly, in an effective and constructive manner, of developments in ocean affairs by considering the Secretary-General’s report on oceans and the law of the sea and by suggesting particular issues to be considered by it, with an emphasis on identifying areas where coordination

and cooperation at the intergovernmental and inter-agency levels should be enhanced.”<sup>1</sup>

I.

The International Ocean Institute has been deeply involved with the establishment of UNICPOLOS and will follow and support its activities in every possible way.

*The Oceanic Circle*. A Report to the Club of Rome<sup>2</sup>, contains the following passage:

When, with the adoption and opening for signature of the Law of the Sea Convention, UNCLOS III came to its end in 1982, it was clear that there no longer existed a body in the UN system, capable of considering the closely inter-related problems of ocean space as a whole. During the decade and a half that has passed since then, the need for such a body became ever more glaring.

This problem arises from a lacuna in the Convention itself. In this respect, as in some others, the Convention is unfinished business, a process rather than a product. Unlike other Treaties, which provide for regular meetings of States Parties to review and, eventually, to revise such Treaties, the Law of the Sea Convention severely limits the

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<sup>1</sup>Resolution adopted by the General Assembly, A/RES/54/33, 18 January 2000, establishing the UNICPOLOS.

<sup>2</sup>Elisabeth Mann Borgese, *The Oceanic Circle*, Tokyo: United Nations University Press, 1998.

mandate of the meetings of States Parties restricting it, after the establishment phase, to the periodic election of Judges to the International Tribunal for the Law of the Sea, the approval of the expenses of that institution, and amendments to the Statute thereof. The mandate of the Assembly of the International Sea-bed Authority, the only other body comprising all States parties, obviously is limited to sea-bed issues.

Theoretically, there would be three ways of dealing with the problem:

One could, perhaps first informally and later by amendment, broaden the mandate of the meetings of States Parties, enabling them to review the implementation of the Convention and to formulate an integrated ocean policy;

One could broaden the mandate of the Assembly of the International Sea-bed Authority, considering that, on the one hand, sea-bed mining is not going to require very much time for the foreseeable future, while, on the other, "the problems of ocean space are closely interrelated and need to be considered as a whole."

Thirdly, the General Assembly of the United Nations could be given the responsibility for examining, periodically, all the interrelated problems of ocean space and generating an integrated ocean policy.

The first two alternatives would have the advantage of utilizing existing and otherwise under-utilized bodies for a function for which they would be well prepared.

Both would have the disadvantage of a membership that is less than universal. It should also be noted that “closely interrelated problems of ocean space” arise also within other, post-UNCED Convention regimes with a different membership. The first two alternatives would not be suitable for dealing with ocean-related interactions between various Convention regimes, e.g., the overlaps between the Biodiversity and Climate Conventions and the Law of the Sea

As emphasized in the Report of the Secretary-General of the United Nations<sup>3</sup> it is only the General Assembly, with its universal membership that has the capability of dealing with all the closely interrelated problems of ocean space, including those arising from the interactions of various Convention regimes. The disadvantage of the General Assembly, however, is that it cannot possibly devote sufficient time to these problems which would require several weeks, at least every second year.

To solve this problem, the General Assembly should establish a Committee of the Whole to devote the time needed for the making of an integrated ocean policy. Representatives of the upgraded Regional Seas Programmes, the Specialized Agencies of the UN system with ocean-related mandates, as well as the nongovernmental sector should participate in the sessions of this Committee of the Whole -- a sort of “Ocean

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<sup>3</sup> Doc.A/51/645

Assembly of the United Nations,” meeting every second year. The integrated policy should be prepared by DOALOS in cooperation with the CSD.

Before resigning from the Independent World Commission on the Ocean, this author introduced the same proposal in that Commission, which included it in its Report<sup>4</sup> but did not follow up with any action.

The IOI instead started an intensive campaign. The proposal was sent to all Missions to the United Nations in New York, and meetings with various heads of Delegations were arranged. Innumerable letters were written to Ministries in the capitals. These even included a “pre-pre-draft resolution” of the kind that we hoped would eventually be adopted by the General Assembly. It read:

*:The General Assembly,*

*Convinced* that the closely interrelated problems of ocean space need to be considered as a whole;

*Aware* that these problems concern all States, including States Parties to the United Nations Convention on the Law of the Sea, as well as to other ocean-related Conventions, Agreements and Programmes which may have different memberships;

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<sup>4</sup> *The Oceans Our Future*, a Report of the Independent World Commission on the Oceans, Chaired by Mario Soares, Cambridge: Cambridge University Press, 1998.

*Convinced* that the United Nations Convention on the Law of the Sea is the framework/constitution for the oceans;

*Welcoming* regional and functional endeavors within this framework;

*Noting* that aspects of the Law of the Sea are now considered in a disparate way and in numerous fora;

*Recognizing* that only the General Assembly, with its universal membership is capable of effectively dealing with these interrelationships;

*Determined* to celebrate the conclusion of this International Year of the Ocean with a concrete contribution to the enhancement of ocean governance for sustainable development,

*has adopted the following decision:*

1. A Committee of the Whole shall be established to follow developments relating to ocean affairs and the law of the sea, to foster a coherent approach to the implementation of the global ocean regime established by UNCLOS, to encourage its ratification; and to identify emerging issues and persistent problems which require international action that would be built upon the basis provided by the Convention, in its interaction with the other ocean-related Conventions, Agreements and Programmes.
2. The Committee, comprising all Member States of the United Nations, should be open to

the participation of competent nongovernmental organizations.

3. The Committee should meet in regular session every second year.
4. The work of the Committee should be prepared by DOALOS and the CSD.

Ambassador Saviour Borg, then Director of the Division for United Nations, International Organizations and Common Wealth Affairs at the Ministry of Foreign Affairs of Malta,

Recalls the IOI campaign as follows:

The Year of the Oceans, one could say, provided another opportunity for Malta, spurred by the Report of the Club of Rome, and the unstinting efforts of the Founder and Honorary Chair of the International Ocean Institute, Professor Elisabeth Mann Borgese, to launch another initiative on ocean space. In June 1998, the then Minister of Foreign Affairs and the Environment, Dr. George W. Vella, requested me to give careful consideration to a letter addressed to the then Prime Minister of Malta Dr. Alfred Sant by Professor Mann Borgese. In her letter, the latter stated that she believed that the Year of the Oceans, which at that time was entering its final phase, should not be allowed to pass without leaving a concrete result for the future. In this regard, something was needed to enhance the implementation and progressive development, not only of the Law of the Sea Convention but of all the Conventions, Agreements, and Programmes of the UNCED process, all of

which have an important ocean dimension. In the words of Professor Mann Borgese, “It would be splendid, and historically just, if Malta could take this initiative.”

She continued by stating that widespread agreement existed that a forum was needed where the closely interrelated problems of ocean space can be considered as a whole. It was therefore suggested that the General Assembly should institute a Committee of the Whole, which should be convened every second year for the necessary length of time — probably at least one month, if not two.

In my response to Minister Vella’s request, and in my capacity as Director for Multilateral Affairs, I remarked that the proposal was a valid one having recalled that at one time, Ambassador Pardo had made a more or less similar proposal to integrate the problems of ocean space in one body. Moreover, I added that at a time when efforts were being made to give the United Nations General Assembly a more leading role in international affairs, it would be an opportune moment to put forward this proposal....

Following my recommendation to Foreign Minister Vella the proposal by Professor Mann Borgese was endorsed and given backing by the Maltese Government. Malta’s Permanent Representative to the United Nations, Ambassador George Saliba was instructed to start the ball rolling on the initiative and to conduct the necessary consultations with interested delegations. In the next General Assembly, the then Deputy



Prime Minister and Minister of Foreign Affairs, Professor Guido de Marco, who had replaced Dr. George W. Vella following General Elections in Malta, in his address to the Plenary of the 53<sup>rd</sup> Session, called for the creation of a forum to consider the closely interrelated problems of ocean space as a whole, and in this connection to establish a Committee of the Whole to meet on a biennial basis to review ocean-related questions in an integrated manner.<sup>5</sup>

The response of Delegations, and of the UN Secretariat was cautious. A certain degree of “Law of the Sea fatigue” was perceptible. Four new institutions had been established in the wake of the entering into force of the Convention — the International Sea-bed Authority in Jamaica; the International Tribunal for the Law of the Sea in Hamburg, the Commission on the Limits of the Continental Shelf in New York; and the Meeting of States Parties in New York. They all had problems and required considerable budgets -- who would want to create yet another institution?

We pointed out that this was not to be a new institution, but merely a mechanism to enable the General Assembly to make better informed decisions on ocean affairs and the law of the sea, on the basis of the Secretary-General’s Annual Report, which became longer and more complex

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<sup>5</sup>Saviour Borg, “The IOI Training Programme and Oceans Policy” in *The IOI Alumni Book*. Publication forthcoming.

with every year that passed, so that it became almost ludicrous for the General Assembly to try to consider it in one single day.

But this was as far as we got, during 1998. With the Maltese Minister's intervention, however, the proposal was now officially before the General Assembly, and it would not go away any more.

The break-through came the following year, with the meeting of the 7<sup>th</sup> session of the UN Commission on Sustainable Development (CSD7), chaired by the then Minister of the Environment of New Zealand, Mr. Simon Upton. New Zealand fully embraced the concept. Success or failure of the entire CSD7 session, in Mr. Upton's opinion, depended on success or failure to establish the needed mechanism.

In spite of considerable resistance, Mr. Upton succeeded. The report on CSD7 to the Economic and Social Council<sup>6</sup> emphasizes that "because of the complex and interrelated nature of the oceans, ocean and seas present a special case as regards the need for international coordination and cooperation," that "the General Assembly is the appropriate body to provide the coordination to ensure that an integrated approach is taken to all aspects of oceans issues..." and that "to accomplish this goal, the General Assembly needs to give more time for the consideration and the discussion of the Secretary-General's report on oceans and the law of the sea and for the

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<sup>6</sup>Official Records, 1999, Supplement No.9, e/1999/29

preparation for the debate on this item in the plenary.” The Report therefore recommends “that the General Assembly, bearing in mind the importance of utilizing the existing framework to the maximum extent possible, consider ways and means of enhancing the effectiveness of its annual debate on oceans and the law of the sea” (38d).

39. In order to promote improved cooperation and coordination on oceans and seas, in particular in the context of paragraph 38(d) above, the Commission recommends that the General Assembly establish an open-ended informal consultative process, or other processes which it may decide, under the aegis of the General Assembly, with the sole function of facilitating the effective and constructive consideration of matters within the General Assembly’s mandate (contained in General Assembly resolution 49/28 of 1994)...

On the basis of this recommendation, the General Assembly adopted Resolution 54/33 which effectively established UNICPO<sup>7</sup>, with the task of considering the annual report of the Secretary-General on the oceans and the law of the sea and suggesting particular issues to be considered by the General Assembly, with an emphasis on identifying areas where coordination and cooperation at the intergovernmental and interagency levels.

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<sup>7</sup>The name originally adopted was UNICPO. It was after the first session of UNICPO, in response to the request of some Delegations, that the name was changed to “UNICPOLOS,” adding a reference to the Law of the Sea.

should be enhanced.

On February 14, 2000 the President of the General Assembly appointed the two co-chairmen for UNICPO.

The appointment of the Co-chairs was followed by a period of intense consultations, among Delegations, with intergovernmental organizations and major groups., to decide on the “format” of the process, and to select a couple of specific issues which should be brought to the attention of the General Assembly.

The issues that were eventually chosen were “Illegal, Unregulated and Unreported Fishing, (IUU Fishing): Moving from principles to implementation,” and “Economic and social impact of marine pollution, especially in coastal areas.”

To the outsider, this choice might have been somewhat disappointing. Were there not other fora that could deal quite efficiently with these issues, such as FAO and CSD? These subjects seemed to be tied closer to the agenda of the CSD than to that of the General Assembly. Would the unique opportunity of this first session of UNICPOLOS, to consider the closely interrelated problems of ocean space as a whole, be wasted?

In retrospect, the choice was an extremely wise one. Given the suspicion and resistance which still existed among many Delegations, any controversial issue, such as for instance, “bio-diversity and bioprospecting in international waters, including the sea-bed” would have broken up

he “process” from the outset. The session would have ended in failure. In another couple of years, UNICPOLOS would have been abolished as useless. IUU Fishing, and pollution are “motherhood issues.” Nobody could be against dealing with them. It was possible to reach consensus on ways and means to combat them more effectively.

At the same time, both issues are quite complex. To deal with them in depth, to consider their root causes, to agree on sanctions, and to enforce them effectively, requires the cooperation of quite a few of the UN Agencies and regional organizations such as UNEP, FAO, IMO, ILO, UNDP, etc. as well as the application of a number of legal instruments, such as the Law of the Sea Convention, the Straddling Stocks Agreement, Agenda 21, the Global Programme of Action, the FAO Compliance Agreement and Code of Conduct and others. This would inevitably lead the General Assembly to consider the closely interrelated problems of ocean space as a whole.

On the basis of these consultations, the Co-chairs, in cooperation with the Division for Ocean Affairs and the Law of the Sea, prepared detailed background material (25 March, 2000), on the format of, and draft annotated agenda for, the first meeting, 30 May - 2 June, 2000.

Even the general debate, on the first day, was carefully structured, requesting Delegates to address specific questions, and not to waste time on generalities. Also the format of the final report and recommendations, which was to be the result of this “process” were already agreed and included in this background briefing.

II.

Thus the Delegations were well prepared when UNICPOLOS met for its first session on May 30.

While a few Delegations stressed the *limitations* of UNICPOLOS's mandate — it was *not* to be a *negotiating* forum, but a *consultative* process whose outcome was *not* to prejudice the decisions to be made by other fora, including the General Assembly — on the whole, the atmosphere, now that UNICPOLOS had been established, was one of support and commitment. UNICPOLOS is here to stay.

New Zealand, which, through its Minister Simon Upton had such an important role in the establishment of UNICPOLOS, was perhaps the most precise, during the general debate of this first session, in defining UNICPOLOS's role vis-a-vis other components of the UN system and in making specific recommendations.

UNICPOLOS, he said, will most certainly not attempt to undermine the Law of the Sea Convention, “which is the source of legitimacy in our work on ocean matters.” Nor would UNICPOLOS usurp the role of the meeting of States Parties to that Convention. UNICPOLOS “is an opportunity to exchange information and ideas, and to give the Secretary-General's report on Oceans and the Law of the Sea some consideration in advance of the General Assembly debate at the end of the year. It should energize and inform the General Assembly's consideration of Oceans and enhance the ability of the General Assembly to carry out its annual review of ocean

affairs and law of the sea.”

In my view, UNICPOLOS’s position vis-a-vis the General Assembly, on one hand, and the meeting of States Parties, on the other, should be considered together. UNICPOLOS and the General Assembly are not two different things whose relationship needs to be defined. UNICPOLOS has been established *by the General Assembly as a process of the General Assembly enabling it to spend more time on ocean affairs and the law of the sea as presented in the Secretary-General’s Report*. Even though this process was initiated by the CSD, it is not a body of the CSD, advising the General Assembly: It is the General Assembly. It comprises the whole membership of the General Assembly. Once this is clear, also the relationship to the States Parties becomes clear.

The meeting of States Parties -- even when its presently very restricted mandate will have been broadened, and there are many voices already today calling for such a broadening — the new mandate will, and should, still be restricted to matters concerning the Law of the Sea Convention. This, after all, is a meeting of the States Parties to that Convention. Issues that need to be dealt with by that meeting will undoubtedly arise. It is already obvious, for instance, that the mandate of the International Sea-bed Authority will have to be adjusted to take into account new and important scientific, technological, and economic developments which make many of its provisions obsolete and inapplicable. The meeting of States Parties would be the appropriate

forum to take care of the needed adjustments, probably in the form of Protocols or an Implementation Agreement.

The meeting of States Parties to the Law of the Sea Convention, however, would *not* be the appropriate forum for the discussion of the overlaps between the Law of the Sea Convention and the ocean-related parts of the UNCED Conventions, Agreements and Programmes, with their different memberships. Only the General Assembly, with its universal membership comprising the States Parties to *all* the Conventions, Agreements and Programmes, can deal with these questions, and it will do so through its consultative process. “If we are to make progress,” the New Zealand UNICPOLOS statement reads, “we have to get effective linkages between the different processes under different conventions especially at the regional level.”

It is only if and when the membership of the Law of the Sea Convention will be as universal as that of the General Assembly that a merger of UNICPOLOS and the meeting of States Parties to the Law of the Sea Convention would become possible and indeed desirable and cost-effective.

The conceptualization of UNICPOLOS as a *process of the General Assembly with its universal membership* raises a problem of *timing*.

In his report to the Economic and Social Council, the Chair of CSD7, Minister Simon



Upton of New Zealand had the following recommendation:(Supplement No.9 (E/1999/29))<sup>8</sup>

44. The general Assembly should consider the optimum timing for the informal consultative process, taking into account, *inter alia*, the desirability of facilitating the attendance of experts from the capitals and the needs of small delegations.

This would seem a good reason for proposing to have UNICPOLOS meet just before the opening of the GA. Not only would it be cost-effective, but it would ensure that the Delegates participating in the process would indeed be the same as those attending the General Assembly: that the “process” would really be a process of the General Assembly, and not a different body making recommendations from the outside. If the General Assembly were to receive recommendation “from the outside,” this would undoubtedly be better than nothing, but an opportunity would have been missed. The General Assembly itself would miss going through the *learning process* inherent in spending at least 30 hours on examining ocean issues in some depth.

III.

Space does not permit to go into *all* of the recommendations made by the New Zealand statement.

We will focus on those that have wider implications

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<sup>8</sup>Supplement No.9 (E/1999/29)

In dealing with the fisheries issues, which were the subject of Panel 1 of the UNICPO session (“Responsible fisheries and illegal, unregulated and unreported fisheries. Moving from principles to implementation”) the New Zealand statement recommends:

- 9 (c) Recognition that good science is key to assessing the status of fishstocks and developing sustainable management measures. Invite the ACC Subcommittee on Oceans and Coastal Areas to arrange a series of workshops for regional fisheries organizations, regional seas programmes and other regional organizations. The aim of the workshops would be to develop a work programme to assess the status of biodiversity within regional ecosystems and the means to achieve the sustainable management of commercial fishstocks. Part of this will involve identifying the capacity building needs of developing countries and identification of best practice.

There were indeed numerous proposals for regional workshops, whether on the economic and social costs of pollution, or on the IUU Fisheries. There were also numerous recommendations for, or warm endorsements of, various arrangements for the cooperation of UN Agencies to work together on these issues, such as the IMO-FAO working group on IUU fishing; or UNEP-ILO-UNDP-IMO cooperation on the economic-social costs of pollution. But somehow, these proposals were still fragmentary. They were lacking an over-all integrating structure. And

yet, that structure already exists even though not yet fully implemented.

The strategic document for the implementation of the GPA in the context of the Regional Seas Programme is the *Proposal Submitted by the United Nations Environment Programme on Institutional Arrangements for Implementation of the Global Programme of Action for the Protection of the Marine Environment from Land-Based Activities (28 October 1996)*. the institutional framework proposed in this document is comprehensive, including also

*regional institutions concerned with the marine environment, other regional institutions such as regional development banks, the private sector and non-governmental organisations*

whose interests must also be reflected on the agenda which must necessarily be broadened The Proposal, in fact, repeatedly states that it should serve to

*Revitalize the UNEP Regional Seas Programme, in particular by facilitating appropriate activities of the regional programmes*

The Proposal states:

*The collaboration of UNEP and its partner agencies as well as relevant global and*

*regional programmes, structures and agreements, will be essential for successful implementation of the Global Programme of Action. Such collaboration will ensure that implementation of the Global Programme of Action will be approached in a wider context, encompassing, inter alia, concern for human health (WHO), productivity of coastal areas (FAO), loss of biodiversity (CBI and others), radiation protection and marine pollution monitoring (IAEA and WHO), retarded development and poverty (UNDP), shifting demographic patterns (UNCHS/Habitat), declining food security (FAO, WFP), global environmental change (IGBP of ICSU), nature conservation (WWF, IUCN), marine pollution monitoring and radiation protection (IAEA and others).*

The proposal also envisages the establishment of an inter-organisational steering group which will be chaired by UNEP and will meet on a regular basis. (This, perhaps, has been superseded by SOCA)

The proposal foresees 10 regional workshops in 1997, as follows:

- (1) East Asian Seas (Bangkok, February 1997, 10 States);
- (2) Mediterranean (Athens, March 1997, 10 States);
- (3) South Pacific (Apia, April 1997, 19 States);

- (4) Caribbean (Kingston, May 1997, 28 States);
- (5) West and Central Africa (Abidjan, June 1997, 21 States);
- (6) Eastern Africa (Nairobi, July 1997, 9 States);
- (7) South-West Atlantic (Rio de Janeiro, August 1997 (3 States);
- (8) Black Sea (Istanbul, September 1997,6 State)
- (9) South Asian Seas (Colombo, October 1997, 5 States); and
- (10) Northwest Pacific (Beijing, November 1997, 5 States).

Due to the lack of funding and the generally slow start of the implementation of the GPA, these workshops were variously postponed, they all ave been conducted between 1996 and 1999, albeit on a very reduced scale. A full report on the results of all ten workshops, with a summary, has been published.<sup>9</sup>

It appears, however, that this broad institutional framework designed by UNEP for the implementation of the GPA would be the ideal institutional structure for all the workshops and all the inter-agency cooperation recommended by UNICPO. We need **One** integrated institutional framework to consider all these complex issues, involving different Conventions and different

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<sup>9</sup> The individual regional reports are available on the UNEP-GPA web-site [http://www.gpa.unep.org/documents/technical/rseas\\_reports/](http://www.gpa.unep.org/documents/technical/rseas_reports/)

Agencies, Institutions, and “Major Groups.” This institutional framework would be the counterpart to UNICPO, at the regional level. .

If, within the next two years, a new series of workshops could be held with the broad scope proposed in the UNEP document, this would provide the opportunity to set IUUF and GPA, including the social and economic impact of marine pollution, into their trans-sectoral, integrated context, which could not yet be fully realized in this first session of UNICPOLOS.

#### IV.

In dealing with “Capacity Building for Implementation of the Convention and Agreed Plans of Action (A/54/429 paras 51-61, 587-630, A/55/61, paras 25-29, 265-273), The New Zealand statement comes up with another very interesting issue. “A good example of this, which was discussed last week in the Meeting of States Parties to UNCLOS, is the issue of the need for many coastal developing States to make submissions to the Commission on the Limits of the Continental Shelf...However, the task of preparing a submission to the CLCS in accordance with Article 76 of the Convention is a complex and expensive one. Developing countries should not be precluded from exercising their sovereign rights for lack of resources.”

The suggested Recommendations are:

*Emphasise the importance of all States with continental shelves beyond 200 nautical miles*

*being in a position to exercise their rights. Acknowledge that the continental shelves may be an important resource for many developing States, in particular SIDS and LDCs and encourage bilateral and multi-lateral donors in consultation with relevant developing States to develop a strategy to ensure that the developing States have the necessary scientific, legal and financial capacity to make a submission to the Commission on the Limits on the Continental Shelf in accordance with Article 76 of UNCLOS.*

The New Zealand statement was the only one to raise this issue, which, however was dealt with extensively in the working paper submitted to UNICPOLOS by the International Ocean Institute: A comparative study of eight of the major Conventions, Agreements, and Programmes of the UNCLOS/UNCED process and an examination of their overlaps, with recommendations as to how to deal with them in a manner that would strengthen the whole system

A comparison between the LOS Convention and the Straddling Stocks Agreement may give rise to an unexpected institutional innovation, that study suggests..

In Article 7.5 The Straddling Stocks Agreement takes over textually Article 74 of the LOS Convention.<sup>10</sup> In the LOS Convention, however the article refers to *relations between States with*

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<sup>10</sup> Art.74, para.3: “Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and co-operation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to

*opposite or adjacent coasts.* In the Straddling Stocks Agreement, it refers to *relations between a State and an international organization.*

Article 74 of the LOS Convention is essentially repeated in Article 83, on the delimitation of the continental shelf boundary between States with adjacent or opposite coasts. These articles, as is well known, have given rise to a slew of agreements establishing *joint development zones* or *joint management zones*, most often involving oil and gas, but in some cases also living resources (e.g., in the joint development zone between Senegal and Guinea Bissau), .

In an article just published by the *American Journal of International Law* (dated October 1999), the author, David Ong, makes a convincing case for the thesis that, in cases of boundary conflicts regarding “straddling” hydrocarbon resources, the state practice of establishing a joint development or joint management zone, has become so pervasive that one can consider it already as customary international law. Furthermore, basing himself on Article 142 of the LOS Convention,<sup>11</sup> he comes to the interesting conclusion that such joint development zones need not

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jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.”

<sup>11</sup>Article 142 deals with the “Rights and legitimate interests of coastal States and prescribes that “Consultations, including a system of prior notifications, shall be maintained with the State concerned, with a view to avoiding infringements of such rights and interests. In cases where activities in the Area may result in the exploitation of resources lying within national jurisdiction, the prior consent of the coastal State concerned shall be required.”



be restricted to the relations between two or more States but could equally be established between an international agency such as the ISA and a coastal State.

Indeed, these principles and procedures [described in Article 142] *could form the basis for a joint development regime between the interested State(s) and the International Sea-Bed Authority*, as well as between two or more states. [Italics added]

This is what had been suggested in *The Oceanic Circle*. The recommendation there went one step further. It was suggested that the area between 300 NM and 400 NM measured from the baselines of the Coastal State should be considered *a Joint Development Zone*, to be managed on the basis of an agreement between the coastal State and the International Sea-bed Authority. This, evidently, would be a most cost-effective measure. Presently, coastal States, in consultation with the Commission on the Limits of the Continental Shelf, have to determine these limits in accordance with Article 76 and register them with the Secretary-General within 10 years from the date the Convention entered into force for them. As is well known, this may be a rather difficult and costly task to fulfil. If they could be given an alternative: to freeze the idea of the boundary and, instead, establish a joint development zone with the Authority, either as a provisional measure or permanently, they could save that money and effort and devote them more productively to the development of their deep-sea mineral resources. Over the next 10-20 years

one could see whether this would become state practice and, eventually customary international law. At that point one could abolish the Commission on the Limits of the Continental Shelf, with a financial saving for the international community.

Rather than spending more funding on an obsolescent concept, it would seem more profitable for all parties concerned to move with the changing times and to recognize that “boundaries,” to use the Brundtland Report language, are becoming “transparent” -- in the oceans even more so than on land -- and that the traditional concept of a “boundary” is being transcended by the more dynamic and functional concept of the “joint development zone.”

The introduction of joint development zones between the Authority and coastal States would be a means to safeguard the integrity of the Law of the Sea Convention which threatens to be undermined by escalating claims to extend national jurisdiction beyond the limits set by the Convention.

V.

There is, finally, one more extremely useful recommendation in the New Zealand statement, and that concerns “the Need for Better Cooperation within Governments (A/55/61 para. 11,303)” “Accordingly we believe,” the statement said, “that the General Assembly should strongly reiterate (a) the importance of coordination and cooperation at the national level in order to promote an integrated approach to ocean affairs so as to, *inter alia*, facilitate the effective

participation of States in UNICPO and other international fora; and (b) its invitation to Member States to urge the competent bodies of international organisations involved in oceans and Law of the Sea related work to participate in the consultative process, and contribute to the Secretary-General's report on which it is based."

This recommendation, as well as some of the others, was taken up in the final set of recommendations of the meeting ("the Output of the Meeting") to which the final pages of this analysis will be devoted.

## VI

This "Output" is organised in three major Parts. Part A lists "Issues to be suggested, and elements to be proposed to the General Assembly. The issues listed are 13:

- A The strategic importance of the 1982 United Nations Convention on the Law of the Sea and the Agreement relating to the implementation of Part XI of the Convention, and the importance of their effective implementation;
- B The need for capacity-building to ensure that developing countries, and especially the least developed countries and those that are land-locked, have the ability both to implement the United Nations Convention on the Law of the Sea and to benefit from the many possibilities for sustainable development of their resources which it offers, and the need to

ensure that small island developing States can have access to the full range of skills essential for these purposes.

- C The importance of concerted action at the intergovernmental level to combat illegal, unregulated fishing (this having been the subject treated by Panel 1 of the session)
- D Improving the environment in which regional fisheries organisations function, to enable them to discharge better their important tasks
- E The importance of marine science for fisheries management
- F The importance, for achieving sustainable development, of combatting marine pollution and degradation
- G Integrating action to combat the adverse economic social environmental and public-health effects of marine pollution and degradation from land-based activities into regional and national sustainable development strategies and their implementation;
- H Integrating action to prevent and eliminate marine pollution and degradation from land-based activities with the multilateral environmental agreements (MEAs)
- I Building the capacity to manage the coastal zone in an integrated way
- J How to implement effectively Part XIII (Marine scientific research) and Part XIV (Development and transfer of marine technology of the United Nations Convention on the Law of the Sea?)

K How to promote the safety of marine navigation against piracy and armed robbery at sea and against the threats of such crimes?

L Participation in the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea.

M The role of the Secretary-General and the UN Secretariat.

Each “issue had a number of sub-issues which, altogether, added up to 50.

Issue A was covered by the plenary of the session Sub-issues 4 and 5 reflect the New Zealand (and other) recommendations:

1. The importance, at regional, national and local levels, of integrated processes, which enable all the sectors involved to contribute, for the purpose of formulating policy and making decisions.
2. A reminder to national governments of their responsibility to establish such processes, and to coordinate their strategies and approaches in the different international forums, so as to avoid the fragmentation of decision-making on the oceans.

These sub-issues highlight another important aspect of UNICPOLOS: which not only has to play a unique and essential role at the global level of the General Assembly, but will also act as a stimulus for the creation of corresponding integrative processes at regional, national and local levels. The whole system must move together, each level reflecting the other, otherwise decisions

taken at any one level will not be implemented effectively. Or, as the Delegation of Norway pointed out in its intervention, “Progress in particular fields can be achieved through increased cooperation and coordination at the international and inter-agency levels. *This presupposes, moreover, appropriate measures of the same nature at the national level. There is an interface between national and international coordination.*”(Emphasis added.)

The need for capacity building is split between issues B and I. Actually, it could have been listed as a sub-issue in each one of the issues listed - or it could have been listed as one cross-cutting trans-sectoral issue. Certainly more work will be needed on this, and UNICPOLOS will come back to it in future sessions.

Issue C takes up the main theme of Panel 1, while D and E covering related issues, indicate the complexity of the IUUF issue and the need to deal with it in a genuinely integrative manner. Issue E is logically linked with issue J, while issue F builds a bridge to issue G, which was the theme of Panel 2 of the Session. Pollution from land-based activities, of course, accounts for over 80 percent of the over-all pollution of the seas and oceans, and is given commensurate importance in the work of Panel 2. H, I, and J, again, are complementary to G and indicate the immense complexity of issue G.

K brings up a fundamentally important issue: How to integrate sustainable development and regional security. The remedies proposed under the three sub-issues are somewhat timid,

which is understandable, given the highly controversial nature of the issue. It would seem already quite clear that IMO, although it is “the leading agency to prevent, combat and eliminate piracy and armed robbery at sea,” will not be able to solve the problem alone. This will require cooperation within the broad institutional framework suggested by UNEP for the implementation of the GPA, supposing it will be possible to include the Departments of Navy and coastguards into this framework to deal with matters of joint surveillance and enforcement and the peaceful and humanitarian uses of navies and coastguards.

Issue L is linked to the problem of timing UNICPO sessions, addressed in the opening pages of this analysis.

Issue M, finally, was the subject of Panel 3 and was discussed on the basis of a very comprehensive Report of the ACC Subcommittee on Oceans and Coastal Areas on its eighth session.

Part A is the most important and creative part of the “Output.” It required most of the time available at this session of UNICPOLOS for its adoption.

Part B is a summary of the session’s discussions by the two Co-chairpersons. It did not require any “consultations” as it was not the meeting, but the two co-chairpersons who were responsible for its contents,

It is an extremely well organised and detailed summary, revealing some of the original and

creative suggestions brought out during the discussions.

Thus “The prevalence of illegal, unreported and unregulated (IUU) fishing in contravention of the international law and the conservation and management measures adopted by subregional and regional fisheries management organizations and arrangements was considered to be one of the most severe problems currently affecting world fisheries.” (Para. 16) The remedies suggested are complex and involve quite a number of UN Agencies and legal instruments. Thus social and economic measures are needed to alleviate the root causes, which would be the responsibility of GEF and UNDP, Attention was drawn to the the very poor and often abusive conditions that fisherfolks are subjected to. ILO participation in combatting IUU fishing was therefore essential, and there was a need to address the social implications of responsible fisheries and the restructuring of the fishing industry, including the need for social adjustment strategies for fish workers. Enhancement of the control of flag States, coastal States, and port States was stressed, including the development of regional port State control mechanisms for fisheries and the development of WTO-consistent trade-related measures, as a last resort. Other measures mentioned include the early entry into force of the 1995 Straddling Stocks Agreement, the FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas; the application at the national level of the FAO Code of Conduct for Responsible Fisheries; support for the FAO draft International Plan of Action to



prevent, deter, and eliminate IUU fishing; enhanced cooperation at the regional level, including regional cooperation in monitoring, control and surveillance (MCS) for effective enforcement. . The problem of the re-flagging of fishing boats, and the need for defining the “genuine link” was repeatedly stressed. One speaker on Panel 1 went as far as to advocate the abolition of the flag of convenience system altogether. In the present situation, and given the inability of flag of convenience states to control ships registered under their flag, due to the absence of a “genuine link,” it was suggested “that a special regime for fishing vessels be developed, which would extend the responsibility from the flag State to the State whose nationals owned the fishing vessel and the State whose nationals served as crew on board such vessels.” (Para.79)

The Panel on economic and social impacts of marine pollution heard a presentation by Dr. Veerle Vandeweerd, who focussed on the revitalization of the regional seas programme underway in UNEP (para. 86). She pointed out “that implementation of the GPA through the regional seas programme can be an effective instrument” to trigger this process of revitalization which is essential for the implementation of the Law of the Sea Convention as well as of all the conventions, agreements and programmes of the UNCED process. “Building on proposals of the International Ocean Institute, she envisaged a broader mandate of the regional seas programme, greater participation in its implementation by United Nations agencies, regional banks, private sector and non-governmental organizations, as well as upgrading and broadening of its

institutional structure.”

Another member of this panel, Mr. John Karau of Canada suggested better integration of inter-Agency activities on the basis of a memorandum of understanding by UNDP, UNEP, FAO, IMO, and UNESCO to prepare coordinated joint work programmes for technical cooperation and assistance directed at integrated coastal management training and institutional support.

“Attention was drawn by several delegations to the importance of reaching early agreement, under the aegis of UNEP, on control measures on persistent organic pollutants (POPs); in IMO, on hazardous substances... in IMO and the Convention on Biological Diversity, on the spread of harmful aquatic organisms in ballast waters; and in the International Seabed Authority, on environmental standards for seabed mining and the adoption of the Mining Code.” (Para. 118). This can be considered as at least a beginning to deal with the overlaps between different convention regimes.

Part C of the “Output,” finally, consists of only half a page and covers issues for consideration for inclusion in the agendas of future meetings of UNICPOLOS. They are divided into two categories: one, on which there was broad consensus in this first meeting. It contained only one item: marine science as an area of focus for the second Meeting of UNICPOLOS. The second category consisted of items that had been proposed, but on which there was less consensus. 7 such

items were listed: Capacity building and regional cooperation; Crimes at sea, especially piracy and armed robbery; Development and transfer of marine technology; Implementation of IMO and ILO conventions; Marine protected areas; Strengthening regional fisheries organizations; and Strengthening regional seas programmes. It was also suggested that there should be a follow-up on the two issues considered by UNICPOLOS 1, while some delegations had reservations against suggesting focus areas for UNICPOLOS 2 at this time

## VII.

The UNICPOLOS report was considered by the General Assembly on October 26 during the morning session. Undoubtedly it gave a new direction to the discussion of the Secretary-General's report and to the extremely comprehensive *Resolution* adopted by the Fifty-Fifth Session of the General Assembly.<sup>12</sup> The *Resolution* reaffirms the importance of the annual consideration and review of developments relating to ocean affairs and the law of the sea by the General Assembly as the global institution having the competence to undertake such a review and took note of the outcome of the first meeting of the Consultative Process (UNICPOLOS), established by the General Assembly in its resolution 54/33 in order to facilitate the annual review by the Assembly of developments in ocean affairs. Among its numerous recommendations, the Resolution stresses

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<sup>12</sup>A/55/L.10

the need to consider as a matter of priority the issues of marine science and technology and to focus on how best to implement the many obligations of States and competent international organizations under Parts XIII and XIV of the Convention.<sup>13</sup> and it urges all States, in particular coastal States, in affected regions to take all necessary and appropriate measures to prevent and combat incidents of piracy and armed robbery at sea, including through regional cooperation, and to investigate or cooperate in the investigation of such incidents wherever they occur and bring the alleged perpetrators to justice in accordance with international law.<sup>14</sup>

It reaffirms its decision to undertake an annual review and evaluation of the implementation of the Law of the Sea Convention and other developments relating to ocean affairs and the law of the sea, taking into account the establishment of UNICPOLOS<sup>15</sup> to facilitate this review. It requests the Secretary-General to convene the second meeting of UNICPOLOS in New York from May 7 to 11, 2001<sup>16</sup> and recommends that, in its deliberations on the report of the Secretary-General, UNICPOLOS should organize its discussions around two specific issues, i.e., Marine Science and the development and transfer of marine technology as mutually agreed,

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<sup>13</sup> Operative paragraph 32.

<sup>14</sup> Para. 33.

<sup>15</sup> Resolution 54/33.

<sup>16</sup> Para.40.

including capacity-building in this regard; and Coordination and cooperation in combatting piracy and armed robbery at sea.

The selection of these two issues is in accordance with recommendations J and K of the “Output” of UNICPOLOS I.

Both of these “issues” are extremely timely. Both will have to be discussed “with an emphasis on identifying areas where coordination and cooperation at the intergovernmental and interagency levels should be enhanced.”

Capacity building in the marine sciences and technology cooperation and “transfer” are now splintered. The Law of the Sea Convention had provided for a system of technology cooperation that reached from capacity building at the national level, providing the essential basis for international cooperation, through the regional level, where Articles 276 and 277 mandated the establishment of “regional centres,” to the global level, where the specialized agencies, especially the Intergovernmental Oceanographic Commission (IOC), the United Nations Industrial Development Organisation (UNIDO) the Food and Agriculture Organisation (FAO) the United Nations Environment Programme (UNEP), and the International Maritime Organisation (IMO) should have made their contributions But coordination and integration of efforts have left much to be desired. The UNCED Conventions, Agreements and Programmes, each limiting capacity building and technology cooperation to its own sectoral field, have further complicated the

picture. Within the limits of the strictly sectoralized structure of the UN institutions and secretariats it is indeed immensely difficult to initiate a real integrated approach. A break-through is needed. The time has come to take up the challenge. New approaches are now possible within the framework of the "revitalization of the Regional Seas Programme, using the implementation of the Global Programme of Action on land-based sources of pollution as a trigger mechanism. *One system, regionally decentralized, for capacity building in the sciences and technology cooperation and transfer, should and could now be designed, to serve the needs of all Conventions, agreements, codes, and programmes.*

The International Ocean Institute has done policy research for such a system for many years. UNICPOLOS II has a unique opportunity to make a real breakthrough and get it followed up by the 56<sup>th</sup> General Assembly.

Similar arguments could be made with regard to the second topic. The suppression of piracy and armed robbery at sea has become an urgent matter of vital importance for the implementation and enforcement of the whole UNCLOS/UNCED process. IMO has been designated as the lead agency and has contributed, and continues to contribute, most valuable studies on the subject, which provide a basis for action.<sup>17</sup> But action is needed, new forms of

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<sup>17</sup>As an indication of the scale of the problem, in 1984 the IMO Maritime Safety Committee (MSC) established 'piracy and armed robbery at sea' as a separate and fixed item on its agenda. Since then, several of the MSC meetings have focused on this issue. (For most recent

regional cooperation between navies and coast guards, if the problem is really to be solved. If crime has been “globalized,” so must be the suppression of crime. Experience has already amply demonstrated that individual States, especially if they are small and poor, and responsible for very large pieces of ocean space, are not able to cope with the problem. In the Mediterranean, the Euro-Mediterranean Process has had some discussion on the very forward-looking but highly controversial proposal for the establishment of a Mediterranean Regional Coast Guard.<sup>18</sup> This is a concept that deserves to be studied in this context, and perhaps IMO could be requested to prepare a Protocol for its implementation.

One should look at it, however, from the point of view of “integration.” Obviously, piracy and armed robbery are not the only crimes at sea, and if a cooperative instrument for implementation and enforcement were to be created at the regional level, it could do far more than suppress piracy and armed robbery. It could enhance the whole process of implementation and enforcement, including the suppression of other internationalized crime such as drug trafficking, the illegal transport of persons, as well as humanitarian assistance and intervention.

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developments *c.f.* MSC/Circ.622/rev.1 and MSC/Circ.623/rev.1).

<sup>18</sup> IMO, *Focus on IMO*, January 2000 <<http://www.imo.org>>; Tim M. Shaw and Glen. J. Herbert, “Oceans Governance and Human Security Towards the End of the Century: Regional Approaches,” in Chircop, Gerolymatos, and Iatrides, *The Aegean Sea after the Cold War*, International Political Economy Series, Macmillan Distribution Ltd. UK, 2000.

Again, all these sectors are covered by separate Convention regimes, but at the operational level of implementation and enforcement, they should be integrated into one system of multi-purpose naval cooperation. Such an approach, “with an emphasis on identifying areas where coordination and cooperation at the intergovernmental and interagency levels should be enhanced,” would also mean a continuation and development of the subjects covered by UNICPOLOS I: For both the suppression of Illegal, Unregulated and Unreported Fishing (IUUF) and the mitigation of the economic and social consequences of pollution through improved surveillance and enforcement, would be improved. Here again, UNICPOLOS II has a unique opportunity to be innovative and initiate a break-through.

It is fortunate that the two excellent co-chairmen of UNICPOLOS I, Ambassador Neroni Slade of Samoa and Mr. Alan Simcock of the UK, have been reappointed as co-chairs for UNICPOLOS II. This will ensure continuity as well as development. It is to be hoped that developing countries will play a more active role. The “Consultative Process” is open to the participation of all members of the General Assembly and should become increasingly a process of the General Assembly as a whole.



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## UNICPOLOS *The First Session*

*Elisabeth Mann Borgese*

### *INTRODUCTION*

The first session of the *United Nations Informal Consultative Process on the Oceans and the Law of the Sea (UNICPOLOS)* took place in New York on May 30 - June 2, 2000. The establishment of UNICPOLOS by the General Assembly must be considered a break-through in the process of building a global system of ocean governance. It is the only body in the United Nations System, with a membership comprising the *whole membership of the General Assembly*, intergovernmental and regional organizations as well as the *major groups* of civil society, with a mandate to consider the closely interrelated problems of ocean space as a whole. The consensus-building capability of the two Co-chairpersons X Ambassador Neroni Slade of Samoa (developing countries); Mr. Alan Simcock, UK (developed countries) was remarkable, and the Session's well structured and detailed output will most certainly facilitate the annual review by the General Assembly, in an effective and constructive manner, of developments in ocean affairs by considering the Secretary-General's report on oceans and the law of the sea and by suggesting particular issues to be considered by it, with an emphasis on identifying areas where coordination and cooperation at the intergovernmental and inter-agency levels should be enhanced.<sup>1</sup>

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<sup>1</sup>Resolution adopted by the General Assembly, A/RES/54/33, 18 January 2000, establishing the UNICPOLOS.

I.

The International Ocean Institute has been deeply involved with the establishment of UNICPOLOS and will follow and support its activities in every possible way.

*The Oceanic Circle*. A Report to the Club of Rome<sup>2</sup>, contains the following passage:

When, with the adoption and opening for signature of the Law of the Sea Convention, UNCLOS III came to its end in 1982, it was clear that there no longer existed a body in the UN system, capable of considering the closely inter-related problems of ocean space as a whole. During the decade and a half that has passed since then, the need for such a body became ever more glaring.

This problem arises from a lacuna in the Convention itself. In this respect, as in some others, the Convention is unfinished business, a process rather than a product. Unlike other Treaties, which provide for regular meetings of States Parties to review and, eventually, to revise such Treaties, the Law of the Sea Convention severely limits the mandate of the meetings of States Parties restricting it, after the establishment phase, to the periodic election of Judges to the International Tribunal for the Law of the Sea, the approval of the expenses of that institution, and amendments to the Statute thereof. The mandate of the Assembly of the International Sea-bed Authority, the only other body comprising all States parties, obviously is limited to sea-bed issues.

Theoretically, there would be three ways of dealing with the problem:

One could, perhaps first informally and later by amendment, broaden the mandate of the meetings of States Parties, enabling them to review the implementation of the Convention and to formulate an integrated ocean policy;

One could broaden the mandate of the Assembly of the International Sea-bed Authority, considering that, on the one hand, sea-bed mining is not going to require very much time for the foreseeable future, while, on the other, the problems of ocean space

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<sup>2</sup>Elisabeth Mann Borgese, *The Oceanic Circle*, Tokyo: United Nations University Press, 1998.

are closely interrelated and need to be considered as a whole. A

Thirdly, the General Assembly of the United Nations could be given the responsibility for examining, periodically, all the interrelated problems of ocean space and generating an integrated ocean policy.

The first two alternatives would have the advantage of utilizing existing and otherwise under-utilized bodies for a function for which they would be well prepared. Both would have the disadvantage of a membership that is less than universal. It should also be noted that closely interrelated problems of ocean space arise also within other, post-UNCED Convention regimes with a different membership. The first two alternatives would not be suitable for dealing with ocean-related interactions between various Convention regimes, e.g., the overlaps between the Biodiversity and Climate Conventions and the Law of the Sea

As emphasized in the Report of the Secretary-General of the United Nations<sup>3</sup> it is only the General Assembly, with its universal membership that has the capability of dealing with all the closely interrelated problems of ocean space, including those arising from the interactions of various Convention regimes. The disadvantage of the General Assembly, however, is that it cannot possibly devote sufficient time to these problems which would require several weeks, at least every second year.

To solve this problem, the General Assembly should establish a Committee of the Whole to devote the time needed for the making of an integrated ocean policy. Representatives of the upgraded Regional Seas Programmes, the Specialized Agencies of the UN system with ocean-related mandates, as well as the nongovernmental sector should participate in the sessions of this Committee of the Whole -- a sort of Ocean Assembly of the United Nations, meeting every second year. The integrated policy should be prepared by DOALOS in cooperation with the CSD.

Before resigning from the Independent World Commission on the Ocean, this author introduced the same proposal in that Commission, which included it in its Report<sup>4</sup> but did not follow up with any action.

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<sup>3</sup> Doc.A/51/645

<sup>4</sup> *The Oceans Our Future*, a Report of the Independent World Commission on the Oceans, Chaired by Mario Soares, Cambridge: Cambridge University Press, 1998.

The IOI instead started an intensive campaign. The proposal was sent to all Missions to the United Nations in New York, and meetings with various heads of Delegations were arranged. Innumerable letters were written to Ministries in the capitals. These even included a pre-pre-draft resolution of the kind that we hoped would eventually be adopted by the General Assembly. It read:

*The General Assembly,*

*Convinced* that the closely interrelated problems of ocean space need to be considered as a whole;

*Aware* that these problems concern all States, including States Parties to the United Nations Convention on the Law of the Sea, as well as to other ocean-related Conventions, Agreements and Programmes which may have different memberships;

*Convinced* that the United Nations Convention on the Law of the Sea is the framework/constitution for the oceans;

*Welcoming* regional and functional endeavors within this framework;

*Noting* that aspects of the Law of the Sea are now considered in a disparate way and in numerous fora;

*Recognizing* that only the General Assembly, with its universal membership is capable of effectively dealing with these interrelationships;

*Determined* to celebrate the conclusion of this International Year of the Ocean with a concrete contribution to the enhancement of ocean governance for sustainable development,

*has adopted the following decision:*

1. A Committee of the Whole shall be established to follow developments relating to ocean affairs and the law of the sea, to foster a coherent approach to the implementation of the global ocean regime established by UNCLOS, to encourage its ratification; and to identify emerging issues and persistent problems which require international action that would be built upon the basis provided by the Convention, in its interaction with the other ocean-related Conventions, Agreements and Programmes.
2. The Committee, comprising all Member States of the United Nations, should be open to the participation of competent nongovernmental organizations.
3. The Committee should meet in regular session every second year.

4. The work of the Committee should be prepared by DOALOS and the CSD.

Ambassador Saviour Borg, then Director of the Division for United Nations, International Organizations and Common Wealth Affairs at the Ministry of Foreign Affairs of Malta,

Recalls the IOI campaign as follows:

The Year of the Oceans, one could say, provided another opportunity for Malta, spurred by the Report of the Club of Rome, and the unstinting efforts of the Founder and Honorary Chair of the International Ocean Institute, Professor Elisabeth Mann Borgese, to launch another initiative on ocean space. In June 1998, the then Minister of Foreign Affairs and the Environment, Dr. George W. Vella, requested me to give careful consideration to a letter addressed to the then Prime Minister of Malta Dr. Alfred Sant by Professor Mann Borgese. In her letter, the latter stated that she believed that the Year of the Oceans, which at that time was entering its final phase, should not be allowed to pass without leaving a concrete result for the future. In this regard, something was needed to enhance the implementation and progressive development, not only of the Law of the Sea Convention but of all the Conventions, Agreements, and Programmes of the UNCED process, all of which have an important ocean dimension. In the words of Professor Mann Borgese, "It would be splendid, and historically just, if Malta could take this initiative.

She continued by stating that widespread agreement existed that a forum was needed where the closely interrelated problems of ocean space can be considered as a whole. It was therefore suggested that the General Assembly should institute a Committee of the Whole, which should be convened every second year for the necessary length of time - probably at least one month, if not two.

In my response to Minister Vella's request, and in my capacity as Director for Multilateral Affairs, I remarked that the proposal was a valid one having recalled that at one time, Ambassador Pardo had made a more or less similar proposal to integrate the problems of ocean space in one body. Moreover, I added that at a time when efforts were being made to give the United Nations General Assembly a more leading role in international affairs, it would be an opportune moment to put forward this proposal....

Following my recommendation to Foreign Minister Vella the proposal by Professor Mann Borgese was endorsed and given backing by the Maltese Government. Malta's Permanent Representative to the United Nations, Ambassador George Saliba was instructed to start the ball rolling on the initiative and to conduct the necessary consultations with interested delegations. In the next General Assembly, the then Deputy

Prime Minister and Minister of Foreign Affairs, Professor Guido de Marco, who had replaced Dr. George W. Vella following General Elections in Malta, in his address to the Plenary of the 53<sup>rd</sup> Session, called for the creation of a forum to consider the closely interrelated problems of ocean space as a whole, and in this connection to establish a Committee of the Whole to meet on a biennial basis to review ocean-related questions in an integrated manner.<sup>5</sup>

The response of Delegations, and of the UN Secretariat was cautious. A certain degree of Law of the Sea fatigue<sup>≅</sup> was perceptible. Four new institutions had been established in the wake of the entering into force of the Convention – the International Sea-bed Authority in Jamaica; the International Tribunal for the Law of the Sea in Hamburg, the Commission on the Limits of the Continental Shelf in New York; and the Meeting of States Parties in New York. They all had problems and required considerable budgets -- who would want to create yet another institution?

We pointed out that this was not to be a new institution, but merely a mechanism to enable the General Assembly to make better informed decisions on ocean affairs and the law of the sea, on the basis of the Secretary-General's Annual Report, which became longer and more complex with every year that passed, so that it became almost ludicrous for the General Assembly to try to consider it in one single day.

But this was as far as we got, during 1998. With the Maltese Minister's intervention, however, the proposal was now officially before the General Assembly, and it would not go away any more.

The break-through came the following year, with the meeting of the 7<sup>th</sup> session of the UN

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<sup>5</sup>Saviour Borg, AThe IOI Training Programme and Oceans Policy in *The IOI Alumni Book*. Publication forthcoming.

Commission on Sustainable Development (CSD7), chaired by the then Minister of the Environment of New Zealand, Mr. Simon Upton. New Zealand fully embraced the concept. Success or failure of the entire CSD7 session, in Mr. Upton's opinion, depended on success or failure to establish the needed mechanism.

In spite of considerable resistance, Mr. Upton succeeded. The report on CSD7 to the Economic and Social Council<sup>6</sup> emphasizes that because of the complex and interrelated nature of the oceans, ocean and seas present a special case as regards the need for international coordination and cooperation, that the General Assembly is the appropriate body to provide the coordination to ensure that an integrated approach is taken to all aspects of oceans issues... and that to accomplish this goal, the General Assembly needs to give more time for the consideration and the discussion of the Secretary-General's report on oceans and the law of the sea and for the preparation for the debate on this item in the plenary. The Report therefore recommends that the General Assembly, bearing in mind the importance of utilizing the existing framework to the maximum extent possible, consider ways and means of enhancing the effectiveness of its annual debate on oceans and the law of the sea (38d).

39. In order to promote improved cooperation and coordination on oceans and seas, in particular in the context of paragraph 38(d) above, the Commission recommends that the General Assembly establish an open-ended informal consultative process, or other processes which it may decide, under the aegis of the General Assembly, with the sole function of facilitating the effective and constructive consideration of matters within the General Assembly's mandate (contained in General Assembly resolution 49/28 of 1994)...

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<sup>6</sup>Official Records, 1999, Supplement No.9, e/1999/29

On the basis of this recommendation, the General Assembly adopted Resolution 54/33 which effectively established UNICPO<sup>7</sup>, with the task of considering the annual report of the Secretary-General on the oceans and the law of the sea and suggesting particular issues to be considered by the General Assembly, with an emphasis on identifying areas where coordination and cooperation at the intergovernmental and interagency levels should be enhanced.

On February 14, 2000 the President of the General Assembly appointed the two co-chairmen for UNICPO.

The appointment of the Co-chairs was followed by a period of intense consultations, among Delegations, with intergovernmental organizations and major groups, to decide on the format of the process, and to select a couple of specific issues which should be brought to the attention of the General Assembly.

The issues that were eventually chosen were Illegal, Unregulated and Unreported Fishing, (IUU Fishing): Moving from principles to implementation, and Economic and social impact of marine pollution, especially in coastal areas.

To the outsider, this choice might have been somewhat disappointing. Were there not other fora that could deal quite efficiently with these issues, such as FAO and CSD? These subjects seemed to be tied closer to the agenda of the CSD than to that of the General Assembly. Would the unique opportunity of this first session of UNICPOLOS, to consider the closely interrelated problems of ocean space as a whole, be wasted?

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<sup>7</sup>The name originally adopted was UNICPO. It was after the first session of UNICPO, in response to the request of some Delegations, that the name was changed to UNICPOLOS, adding a reference to the Law of the Sea.



In retrospect, the choice was an extremely wise one. Given the suspicion and resistance which still existed among many Delegations, any controversial issue, such as for instance, bio-diversity and bioprospecting in international waters, including the sea-bed would have broken up the process from the outset. The session would have ended in failure. In another couple of years, UNICPOLOS would have been abolished as useless. IUU Fishing, and pollution are motherhood issues. Nobody could be against dealing with them. It was possible to reach consensus on ways and means to combat them more effectively.

At the same time, both issues are quite complex. To deal with them in depth, to consider their root causes, to agree on sanctions, and to enforce them effectively, requires the cooperation of quite a few of the UN Agencies and regional organizations such as UNEP, FAO, IMO, ILO, UNDP, etc. as well as the application of a number of legal instruments, such as the Law of the Sea Convention, the Straddling Stocks Agreement, Agenda 21, the Global Programme of Action, the FAO Compliance Agreement and Code of Conduct and others. This would inevitably lead the General Assembly to consider the closely interrelated problems of ocean space as a whole.

On the basis of these consultations, the Co-chairs, in cooperation with the Division for Ocean Affairs and the Law of the Sea, prepared detailed background material (25 March, 2000), on the format of, and draft annotated agenda for, the first meeting, 30 May - 2 June, 2000.

Even the general debate, on the first day, was carefully structured, requesting Delegates to address specific questions, and not to waste time on generalities. Also the format of the final report and recommendations, which was to be the result of this process were already agreed and included in this background briefing.

II.

Thus the Delegations were well prepared when UNICPOLOS met for its first session on May

30.

While a few Delegations stressed the *limitations* of UNICPOLOS's mandate, it was *not* to be a *negotiating* forum, but a *consultative* process whose outcome was *not* to prejudice the decisions to be made by other fora, including the General Assembly. On the whole, the atmosphere, now that UNICPOLOS had been established, was one of support and commitment. UNICPOLOS is here to stay.

New Zealand, which, through its Minister Simon Upton had such an important role in the establishment of UNICPOLOS, was perhaps the most precise, during the general debate of this first session, in defining UNICPOLOS's role vis-a-vis other components of the UN system and in making specific recommendations.

UNICPOLOS, he said, will most certainly not attempt to undermine the Law of the Sea Convention, which is the source of legitimacy in our work on ocean matters. Nor would UNICPOLOS usurp the role of the meeting of States Parties to that Convention. UNICPOLOS is an opportunity to exchange information and ideas, and to give the Secretary-General's report on Oceans and the Law of the Sea some consideration in advance of the General Assembly debate at the end of the year. It should energize and inform the General Assembly's consideration of Oceans and enhance the ability of the General Assembly to carry out its annual review of ocean affairs and law of the sea.

In my view, UNICPOLOS's position vis-a-vis the General Assembly, on one hand, and the meeting of States Parties, on the other, should be considered together. UNICPOLOS and the General Assembly are not two different things whose relationship needs to be defined. UNICPOLOS has been established *by the General Assembly as a process of the General Assembly enabling it to spend more time on ocean affairs and the law of the sea as presented in*

*the Secretary-General's Report.* Even though this process was initiated by the CSD, it is not a body of the CSD, advising the General Assembly: It is the General Assembly. It comprises the whole membership of the General Assembly. Once this is clear, also the relationship to the States Parties becomes clear.

The meeting of States Parties -- even when its presently very restricted mandate will have been broadened, and there are many voices already today calling for such a broadening -- the new mandate will, and should, still be restricted to matters concerning the Law of the Sea Convention. This, after all, is a meeting of the States Parties to that Convention. Issues that need to be dealt with by that meeting will undoubtedly arise. It is already obvious, for instance, that the mandate of the International Sea-bed Authority will have to be adjusted to take into account new and important scientific, technological, and economic developments which make many of its provisions obsolete and inapplicable. The meeting of States Parties would be the appropriate forum to take care of the needed adjustments, probably in the form of Protocols or an Implementation Agreement.

The meeting of States Parties to the Law of the Sea Convention, however, would *not* be the appropriate forum for the discussion of the overlaps between the Law of the Sea Convention and the ocean-related parts of the UNCED Conventions, Agreements and Programmes, with their different memberships. Only the General Assembly, with its universal membership comprising the States Parties to *all* the Conventions, Agreements and Programmes, can deal with these questions, and it will do so through its consultative process. As if we are to make progress, as the New Zealand UNICPOLOS statement reads, we have to get effective linkages between the different processes under different conventions especially at the regional level.

It is only if and when the membership of the Law of the Sea Convention will be as

universal as that of the General Assembly that a merger of UNICPOLOS and the meeting of States Parties to the Law of the Sea Convention would become possible and indeed desirable and cost-effective.

The conceptualization of UNICPOLOS as a *process of the General Assembly with its universal membership* raises a problem of *timing*.

In his report to the Economic and Social Council, the Chair of CSD7, Minister Simon Upton of New Zealand had the following recommendation:(Supplement No.9 (E/1999/29))<sup>8</sup>

44. The general Assembly should consider the optimum timing for the informal consultative process, taking into account, *inter alia*, the desirability of facilitating the attendance of experts from the capitals and the needs of small delegations.

This would seem a good reason for proposing to have UNICPOLOS meet just before the opening of the GA. Not only would it be cost-effective, but it would ensure that the Delegates participating in the process would indeed be the same as those attending the General Assembly: that the process would really be a process of the General Assembly, and not a different body making recommendations from the outside. If the General Assembly were to receive recommendation from the outside, this would undoubtedly be better than nothing, but an opportunity would have been missed. The General Assembly itself would miss going through the *learning process* inherent in spending at least 30 hours on examining ocean issues in some depth.

III.

Space does not permit to go into *all* of the recommendations made by the New Zealand statement. We will focus on those that have wider implications

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<sup>8</sup>Supplement No.9 (E/1999/29)

In dealing with the fisheries issues, which were the subject of Panel 1 of the UNICPO session (Responsible fisheries and illegal, unregulated and unreported fisheries. Moving from principles to implementation) the New Zealand statement recommends:

- 9 (c) Recognition that good science is key to assessing the status of fishstocks and developing sustainable management measures. Invite the ACC Subcommittee on Oceans and Coastal Areas to arrange a series of workshops for regional fisheries organizations, regional seas programmes and other regional organizations. The aim of the workshops would be to develop a work programme to assess the status of biodiversity within regional ecosystems and the means to achieve the sustainable management of commercial fishstocks. Part of this will involve identifying the capacity building needs of developing countries and identification of best practice.

There were indeed numerous proposals for regional workshops, whether on the economic and social costs of pollution, or on the IUU Fisheries. There were also numerous recommendations for, or warm endorsements of, various arrangements for the cooperation of UN Agencies to work together on these issues, such as the IMO-FAO working group on IUU fishing; or UNEP-ILO-UNDP-IMO cooperation on the economic-social costs of pollution. But somehow, these proposals were still fragmentary. They were lacking an over-all integrating structure. And yet, that structure already exists even though not yet fully implemented.

The strategic document for the implementation of the GPA in the context of the Regional Seas Programme is the *Proposal Submitted by the United Nations Environment Programme on Institutional Arrangements for Implementation of the Global Programme of Action for the Protection of the Marine Environment from Land-Based Activities (28 October 1996)*. The institutional framework proposed in this document is comprehensive, including also

*regional institutions concerned with the marine environment, other regional institutions such as regional development banks, the private sector and non-governmental organisations*

whose interests must also be reflected on the agenda which must necessarily be broadened The Proposal, in fact, repeatedly states that it should serve to

*Revitalize the UNEP Regional Seas Programme, in particular by facilitating appropriate activities of the regional programmes*

The Proposal states:

*The collaboration of UNEP and its partner agencies as well as relevant global and regional programmes, structures and agreements, will be essential for successful implementation of the Global Programme of Action. Such collaboration will ensure that implementation of the Global Programme of Action will be approached in a wider context, encompassing, inter alia, concern for human health (WHO), productivity of coastal areas (FAO), loss of biodiversity (CBI and others), radiation protection and marine pollution monitoring (IAEA and WHO), retarded development and poverty (UNDP), shifting demographic patterns (UNCHS/Habitat), declining food security (FAO, WFP), global environmental change (IGBP of ICSU), nature conservation (WWF, IUCN), marine pollution monitoring and radiation protection (IAEA and others).*

The proposal also envisages the establishment of an inter-organisational steering group which will be chaired by UNEP and will meet on a regular basis. (This, perhaps, has been superseded by SOCA)

The proposal foresees 10 regional workshops in 1997, as follows:

- (1) East Asian Seas (Bangkok, February 1997, 10 States);
- (2) Mediterranean (Athens, March 1997, 10 States);
- (3) South Pacific (Apia, April 1997, 19 States);
- (4) Caribbean (Kingston, May 1997, 28 States);
- (5) West and Central Africa (Abidjan, June 1997, 21 States);
- (6) Eastern Africa (Nairobi, July 1997, 9 States);
- (7) South-West Atlantic (Rio de Janeiro, August 1997 (3 States);
- (8) Black Sea (Istanbul, September 1997, 6 State)
- (9) South Asian Seas (Colombo, October 1997, 5 States; and

(10) Northwest Pacific (Beijing, November 1997, 5 States).

Due to the lack of funding and the generally slow start of the implementation of the GPA, these workshops were variously postponed, they all have been conducted between 1996 and 1999, albeit on a very reduced scale. A full report on the results of all ten workshops, with a summary, is forthcoming.

It appears, however, that this broad institutional framework designed by UNEP for the implementation of the GPA would be the ideal institutional structure for all the workshops and all the inter-agency cooperation recommended by UNICPO.. We need **One** integrated institutional framework to consider all these complex issues, involving different Conventions and different Agencies, Institutions, and Major Groups. This institutional framework would be the counterpart to UNICPO, at the regional level.

If, within the next two years, a new series of workshops could be held with the broad scope proposed in the UNEP document, this would provide the opportunity to set IUUF and GPA, including the social and economic impact of marine pollution, into their trans-sectoral, integrated context, which could not yet be fully realized in this first session of UNICPOLOS.

IV.

In dealing with Capacity Building for Implementation of the Convention and Agreed Plans of Action (A/54/429 paras 51-61, 587-630, A/55/61, paras 25-29, 265-273), The New Zealand statement comes up with another very interesting issue. A good example of this, which was discussed last week in the Meeting of States Parties to UNCLOS, is the issue of the need for many coastal developing States to make submissions to the Commission on the Limits of the Continental Shelf...However, the task of preparing a submission to the CLCS in accordance with

Article 76 of the Convention is a complex and expensive one. Developing countries should not be precluded from exercising their sovereign rights for lack of resources. . .

The suggested Recommendations are:

*Emphasise the importance of all States with continental shelves beyond 200 nautical miles being in a position to exercise their rights. Acknowledge that the continental shelves may be an important resource for many developing States, in particular SIDS and LDCs and encourage bilateral and multi-lateral donors in consultation with relevant developing States to develop a strategy to ensure that the developing States have the necessary scientific, legal and financial capacity to make a submission to the Commission on the Limits on the Continental Shelf in accordance with Article 76 of UNCLOS.*

The New Zealand statement was the only one to raise this issue, which, however was dealt with extensively in the working paper submitted to UNICPOLOS by the International Ocean Institute: A comparative study of eight of the major Conventions, Agreements, and Programmes of the UNCLOS/UNCED process and an examination of their overlaps, with recommendations as to how to deal with them in a manner that would strengthen the whole system

A comparison between the LOS Convention and the Straddling Stocks Agreement may give rise to an unexpected institutional innovation, that study suggests..

In Article 7.5 The Straddling Stocks Agreement takes over textually Article 74 of the LOS Convention.<sup>9</sup> In the LOS Convention, however the article refers to *relations between States with opposite or adjacent coasts*. In the Straddling Stocks Agreement, it refers to *relations*

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<sup>9</sup> Art.74, para.3: A Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and co-operation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.≅



*between a State and an international organization.*

Article 74 of the LOS Convention is essentially repeated in Article 83, on the delimitation of the continental shelf boundary between States with adjacent or opposite coasts. These articles, as is well known, have given rise to a slew of agreements establishing joint development zones or joint management zones, most often involving oil and gas, but in some cases also living resources (e.g., in the joint development zone between Senegal and Guinea Bissau), .

In an article just published by the *American Journal of International Law* (dated October 1999), the author, David Ong, makes a convincing case for the thesis that, in cases of boundary conflicts regarding straddling hydrocarbon resources, the state practice of establishing a joint development or joint management zone, has become so pervasive that one can consider it already as customary international law. Furthermore, basing himself on Article 142 of the LOS Convention,<sup>10</sup> he comes to the interesting conclusion that such joint development zones need not be restricted to the relations between two or more States but could equally be established between an international agency such as the ISA and a coastal State.

Indeed, these principles and procedures [described in Article 142] *could form the basis for a joint development regime between the interested State(s) and the International Sea-Bed Authority*, as well as between two or more states. [Italics added]

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<sup>10</sup>Article 142 deals with the ARights and legitimate interests of coastal States and prescribes that AConsultations, including a system of prior notifications, shall be maintained with the State concerned, with a view to avoiding infringements of such rights and interests. In cases where activities in the Area may result in the exploitation of resources lying within national jurisdiction, the prior consent of the coastal State concerned shall be required.

. This is what had been suggested in *The Oceanic Circle*. The recommendation there went one step further. It was suggested that the area between 300 NM and 400 NM measured from the baselines of the Coastal State should be considered a *Joint Development Zone*, to be managed on the basis of an agreement between the coastal State and the International Sea-bed Authority. This, evidently, would be a most cost-effective measure. Presently, coastal States, in consultation with the Commission on the Limits of the Continental Shelf, have to determine these limits in accordance with Article 76 and register them with the Secretary-General within 10 years from the date the Convention entered into force for them. As is well known, this may be a rather difficult and costly task to fulfil. If they could be given an alternative: to freeze the idea of the boundary and, instead, establish a joint development zone with the Authority, either as a provisional measure or permanently, they could save that money and effort and devote them more productively to the development of their deep-sea mineral resources. Over the next 10-20 years one could see whether this would become state practice and, eventually customary international law. At that point one could abolish the Commission on the Limits of the Continental Shelf, with a financial saving for the international community.

Rather than spending more funding on an obsolescent concept, it would seem more profitable for all parties concerned to move with the changing times and to recognize that boundaries, to use the Brundtland Report language, are becoming "transparent" -- in the oceans even more so than on land -- and that the traditional concept of a boundary is being transcended by the more dynamic and functional concept of the joint development zone. The introduction of joint development zones between the Authority and coastal States would be a means to safeguard the integrity of the Law of the Sea Convention which threatens to be undermined by escalating claims to extend national jurisdiction beyond the limits set by the

Convention.

V.

There is, finally, one more extremely useful recommendation in the New Zealand statement, and that concerns the Need for Better Cooperation within Governments (A/55/61 para. 11,303)

Accordingly we believe, the statement said, that the General Assembly should strongly reiterate (a) the importance of coordination and cooperation at the national level in order to promote an integrated approach to ocean affairs so as to, *inter alia*, facilitate the effective participation of States in UNICPO and other international fora; and (b) its invitation to Member States to urge the competent bodies of international organisations involved in oceans and Law of the Sea related work to participate in the consultative process, and contribute to the Secretary-General's report on which it is based.

This recommendation, as well as some of the others, was taken up in the final set of recommendations of the meeting (the Output of the Meeting) to which the final pages of this analysis will be devoted.

VI

This Output is organised in three major Parts. Part A lists Issues to be suggested, and elements to be proposed to the General Assembly. The issues listed are 13:

- A The strategic importance of the 1982 United Nations Convention on the Law of the Sea and the Agreement relating to the implementation of Part XI of the Convention, and the importance of their effective implementation;
- B The need for capacity-building to ensure that developing countries, and especially the least developed countries and those that are land-locked, have the ability both to implement the United Nations Convention on the Law of the Sea and to benefit from the

many possibilities for sustainable development of their resources which it offers, and the need to ensure that small island developing States can have access to the full range of skills essential for these purposes.

- C The importance of concerted action at the intergovernmental level to combat illegal, unregulated fishing (this having been the subject treated by Panel 1 of the session)
- D Improving the environment in which regional fisheries organisations function, to enable them to discharge better their important tasks
- E The importance of marine science for fisheries management
- F The importance, for achieving sustainable development, of combatting marine pollution and degradation
- G Integrating action to combat the adverse economic social environmental and public-health effects of marine pollution and degradation from land-based activities into regional and national sustainable development strategies and their implementation;
- H Integrating action to prevent and eliminate marine pollution and degradation from land-based activities with the multilateral environmental agreements (MEAs)
- I Building the capacity to manage the coastal zone in an integrated way
- J How to implement effectively Part XIII (Marine scientific research) and Part XIV (Development and transfer of marine technology of the United Nations Convention on the Law of the Sea?
- K How to promote the safety of marine navigation against piracy and armed robbery at sea and against the threats of such crimes?
- L Participation in the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea.
- M The role of the Secretary-General and the UN Secretariat.

Each issue had a number of sub-issues which, altogether, added up to 50.

Issue *A* was covered by the plenary of the session. Sub-issues 4 and 5 reflect the New Zealand (and other) recommendations:

4. The importance, at regional, national and local levels, of integrated processes, which enable all the sectors involved to contribute, for the purpose of formulating policy and making decisions.
5. A reminder to national governments of their responsibility to establish such processes, and to coordinate their strategies and approaches in the different international forums, so as to avoid the fragmentation of decision-making on the oceans.

These sub-issues highlight another important aspect of UNICPOLOS: which not only has to play a unique and essential role at the global level of the General Assembly, but will also act as a stimulus for the creation of corresponding integrative processes at regional, national and local levels. The whole system must move together, each level reflecting the other, otherwise decisions taken at any one level will not be implemented effectively. Or, as the Delegation of Norway pointed out in its intervention, *Progress in particular fields can be achieved through increased cooperation and coordination at the international and inter-agency levels. This presupposes, moreover, appropriate measures of the same nature at the national level. There is an interface between national and international coordination.* (Emphasis added.)

The need for capacity building is split between issues B and I. Actually, it could have been listed as a sub-issue in each one of the issues listed - or it could have been listed as one cross-cutting trans-sectoral issue. Certainly more work will be needed on this, and UNICPOLOS will come back to it in future sessions.

Issue C takes up the main theme of Panel 1, while D and E covering related issues, indicate the complexity of the IUUF issue and the need to deal with it in a genuinely integrative

manner. Issue E is logically linked with issue J, while issue F builds a bridge to issue G, which was the theme of Panel 2 of the Session. Pollution from land-based activities, of course, accounts for over 80 percent of the over-all pollution of the seas and oceans, and is given commensurate importance in the work of Panel 2. H, I, and J, again, are complementary to G and indicate the immense complexity of issue G.

K brings up a fundamentally important issue: How to integrate sustainable development and regional security. The remedies proposed under the three sub-issues are somewhat timid, which is understandable, given the highly controversial nature of the issue. It would seem already quite clear that IMO, although it is the leading agency to prevent, combat and eliminate piracy and armed robbery at sea, will not be able to solve the problem alone. This will require cooperation within the broad institutional framework suggested by UNEP for the implementation of the GPA, supposing it will be possible to include the Departments of Navy and coastguards into this framework to deal with matters of joint surveillance and enforcement and the peaceful and humanitarian uses of navies and coastguards.

Issue L is linked to the problem of timing UNICPO sessions, addressed in the opening pages of this analysis.

Issue M, finally, was the subject of Panel 3 and was discussed on the basis of a very comprehensive Report of the ACC Subcommittee on Oceans and Coastal Areas on its eighth session.

Part A is the most important and creative part of the Output. It required most of the time available at this session of UNICPOLOS for its adoption.

Part B is a summary of the session's discussions by the two Co-chairpersons. It did not require any consultations as it was not the meeting, but the two co-chairpersons who were responsible for its contents,

It is an extremely well organised and detailed summary, revealing some of the original and creative suggestions brought out during the discussions.

Thus The prevalence of illegal, unreported and unregulated (IUU) fishing in contravention of the international law and the conservation and management measures adopted by subregional and regional fisheries management organizations and arrangements was considered to be one of the most severe problems currently affecting world fisheries (Para. 16) The remedies suggested are complex and involve quite a number of UN Agencies and legal instruments. Thus social and economic measures are needed to alleviate the root causes, which would be the responsibility of GEF and UNDP, Attention was drawn to the the very poor and often abusive conditions that fisherfolks are subjected to. ILO participation in combatting IUU fishing was therefore essential, and there was a need to address the social implications of responsible fisheries and the restructuring of the fishing industry, including the need for social adjustment strategies for fish workers.. Enhancement of the control of flag States, coastal States, and port States was stressed, including the development of regional port State control mechanisms for fisheries and the development of WTO-consistent trade-related measures, as a last resort. Other measures mentioned include the early entry into force of the 1995 Straddling Stocks Agreement, the FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas; the application at the national level of the FAO Code of Conduct for Responsible Fisheries; support for the FAO draft International Plan of Action to prevent, deter, and eliminate IUU fishing; enhanced cooperation at the regional level, including regional cooperation in monitoring, control and surveillance (MCS) for effective enforcement. . The problem of the reflagging of fishing boats, and the need for defining the Agenuine link was repeatedly stressed. One speaker on Panel 1 went as far as to advocate the abolition of the flag of convenience system altogether. In the present situation, and

given the inability of flag of convenience states to control ships registered under their flag, due to the absence of a genuine link, it was suggested that a special regime for fishing vessels be developed, which would extend the responsibility from the flag State to the State whose nationals owned the fishing vessel and the State whose nationals served as crew on board such vessels. (Para.79)

The Panel on economic and social impacts of marine pollution heard a presentation by DR. Veerle Vandeweerd, who focussed on the revitalization of the regional seas programme underway in UNEP (para. 86). She pointed out that implementation of the GPA through the regional seas programme can be an effective instrument to trigger this process of revitalization which is essential for the implementation of the Law of the Sea Convention as well as of all the conventions, agreements and programmes of the UNCED process. Building on proposals of the International Ocean Institute, she envisaged a broader mandate of the regional seas programme, greater participation in its implementation by United Nations agencies, regional banks, private sector and non-governmental organizations, as well as upgrading and broadening of its institutional structure.

Another member of this panel, Mr. John Karau of Canada suggested better integration of inter-Agency activities on the basis of a memorandum of understanding by UNDP, UNEP, FAO, IMO, and UNESCO to prepare coordinated joint work programmes for technical cooperation and assistance directed at integrated coastal management training and institutional support.

Attention was drawn by several delegations to the importance of reaching early agreement, under the aegis of UNEP, on control measures on persistent organic pollutants (POPs); in IMO, on hazardous substances... in IMO and the Convention on Biological Diversity, on the spread of harmful aquatic organisms in ballast waters; and in the International Seabed Authority, on environmental standards for seabed mining and the adoption of the Mining Code.



(Para. 118). This can be considered as at least a beginning to deal with the overlaps between different convention regimes.

Part C of the Output, finally, consists of only half a page and covers issues for consideration for inclusion in the agendas of future meetings of UNICPOLOS. They are divided into two categories: one, on which there was broad consensus in this first meeting. It contained only one item: marine science as an area of focus for the second Meeting of UNICPOLOS. The second category consisted of items that had been proposed, but on which there was less consensus. 7 such items were listed: Capacity building and regional cooperation; Crimes at sea, especially piracy and armed robbery; Development and transfer of marine technology; Implementation of IMO and ILO conventions; Marine protected areas; Strengthening regional fisheries organizations; and Strengthening regional seas programmes. It was also suggested that there should be a follow-up on the two issues considered by UNICPOLOS 1, while some delegations had reservations against suggesting focus areas for UNICPOLOS 2 at this time

In the light of the present analysis, and as a logical conclusion thereto, we would rearrange and complement these topics (our additional suggestions are printed in italics) in the following way:

1. **Strengthening Regional Seas Programmes in accordance with the Proposal Submitted by the United Nations Environment Programme on Institutional Arrangements for Implementation of the Global Programme of Action for the Protection of the Marine Environment from Land-based Activities (28 October 1996). The Regional Workshops enumerated therein should cover**

- (a) **Responsible Fisheries and IUUF. Moving from Principles to Implementation.**
  - (b) **Economic and Social Impacts of Marine Pollution and Degradation, Especially in Coastal Areas.**
  - (c) **Capacity Building and Regional Cooperation**
  - (d) **Integrating Sustainable Development and Regional Security: Dealing with Crimes ad Sea, Especially Piracy and Armed Robbery**
  - (e) **Marine Science**
  - (f) **Development and Transfer of Marine Technology**
2. Not every regional workshop need to cover all of these themes. Taken together, they would constitute an important contribution to the process of integration.
  3. Reports on the progress of these workshops would undoubtedly be included in the Secretary-General's Annual Reports on Oceans and the Law of the Sea and thus would come up for consideration by UNICPOlos 2 (2001) and 3 (2002).
  4. Other suggestions put forward
    - (a) Implementation of IMO and ILO Conventions
    - (b) *Extended Claims to National Jurisdiction and the Integrity of the LoS Convention*
    - (c) *The Future of the International Sea-bed Authority*
    - (d) *The Conservation of Biodiversity in International Waters*
    - (e) *Innovative methods to Generate New and Additional Funding for the Effective Implementation of the UNCLOS/UNCED Process.*

## **UNICPOLOS**

### **The Second Session**

Elisabeth Mann Borgese

The second session of the U.N. General Assembly's "Consultative Process"<sup>1</sup> took place in New York, at the United Nations, from May 7 to May 11, 2001. Participation of Members of the General Assembly was still limited (48) but Delegations were large -- the USA Delegation consisted of 17 members! -- and many heads of Delegation came from their capitals. Even the States which had not only not ratified, but even not signed, the Law of the Sea Convention and had voted against its adoption in 1982 (Israel, Turkey, USA, Venezuela) were present. Developing countries were 38. 20 Intergovernmental Organizations had delegations, 5 UN Programmes, Offices and Bodies were represented as well as 8 major Non-Governmental Organisations (NGOs) the International Ocean Institute had three representatives and introduced 2 working papers. The Division of Ocean Affairs and the Law of the Sea (DOALOS) participated with a staff of 15, the Department of Economic and Social Affairs, with one representative. The meeting was chaired, as had been the first, by Ambassador Tuiloma Neroni Slade of Samoa and Mr. Alan Simcock of the UK.

Looking at the (provisional) list of these participants, as issued by the Secretariat, one gets the impression that, in practice, it does not make a great deal of difference whether these sessions are classified as "formal" or "informal." The lists look much the same. So does the conduct of the discussions. The IOI is nevertheless in favour of "upgrading" the Process, making it a "Committee of

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<sup>1</sup>United Nations Open-Ended Informal Consultative Process, established by the General Assembly in its Resolution 54/33, in order to facilitate the annual Review by the Assembly of developments in ocean affairs.

the Whole” of the General Assembly, as we had advocated from the beginning. This could be achieved in 2002, when the Consultative Process will be reviewed by the General Assembly. We also feel it would be useful to expand the duration of the sessions from one week to two, considering the growing importance and volume of ocean affairs. The meeting of States Parties to the LOS Convention (SPLOS) lasts 2 weeks, even though its agenda is very much more limited. Undoubtedly UNICPOLOS needs *at least* as much time as SPLOS.

Most of the concerns and uncertainties that still pervaded the atmosphere last year, seem to have dissipated. There is now a consensus that the “Process” is fulfilling an essential task and has tangibly contributed to improving the General Assembly’s output on ocean affairs and the law of the sea. This year’s contribution matches last year’s in importance. Just as last year, it is structured in a Report consisting of three parts:

- Part A -- Issues to be Suggested, and Elements to be Proposed, to the General Assembly -- this part having been adopted by a consensus of the meeting;
- Part B -- Co-Chairpersons Summary of Discussions -- this part being under the sole responsibility of the two Co-Chairpersons; and
- Part C -- Issues for Consideration for Possible Inclusion in the Agendas of Future Meetings.

The topics selected by the General Assembly for this session were marine science and technology, with a focus on how best to implement the many obligations of States and competent international organizations under Parts XIII and XIV of the UN Convention on the Law of the Sea, and, secondly, measures to prevent and combat incidents of piracy and armed robbery at sea, including through regional cooperation, and to investigate or cooperate in the investigation of such incidents wherever they occur, and bring the alleged perpetrators to justice in accordance with international law.

Both these issues are rich in interdisciplinary implications, involve a number of Convention

regimes and international organizations, and need to be discussed “with an emphasis on identifying areas where coordination and cooperation at the intergovernmental and interagency levels should be enhanced.”<sup>2</sup>

Without exception, stress was laid on the need for an *integrated, eco-system oriented approach* and on the fundamental importance of *regional cooperation and organization*. These were. So to speak, the *Leitmotifs* underpinning the entire session. Delegations

highlighted the value of an integrated approach to all matters concerning oceans and seas and of intergovernmental and inter-agency cooperation and coordination. It was pointed out that strengthening coordination at all levels in matters related to the oceans and seas was the overriding purpose of the Consultative Process.”<sup>3</sup>

The advantages of regional cooperation and organization are threefold, as pointed out in the IOI statement: First of all, the regional sea approximates most closely what is now called a “Large Marine Ecosystem” (LME), and this facilitates fisheries management as well as pollution control from most sources. Secondly, the regional level offers economies of scale, facilitating, among other things, the advancement of marine scientific research and the development and transfer of technologies. Thirdly, the States bordering regional seas often have developed common historical and cultural traits and share a commonality of interests. This may facilitate the advancement of regional security, through the kind of cooperation required for the suppression of piracy and other crimes at sea.<sup>4</sup>

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<sup>2</sup>General Assembly Resolution 54/33, establishing UNICPOLOS.

<sup>3</sup>Co-Chairpersons’ summary of discussions, para.8

<sup>4</sup>*Ibid.*, para.188.

There also were a number of practical proposals as to how to advance this development, especially at the regional level, e.g., through implementation of joint projects between regional organizations of UNEP Regional Seas Programme and other relevant international organizations. Closer cooperation between FAO and its regional fisheries commissions and the Regional Seas programme was urged. Cooperation between UNEP, IMO, IOC, and other competent organizations was emphasized. The kind of cooperative structure at the regional level envisaged by the Delegations was in fact converging with that proposed by UNEP for the implementation of the GPA. In the UNICPOLOS context this kind of cooperative structure would be multi-functional, enhancing integrated management

It was also pointed out that

IOC' regional bodies could have a central role in regional scientific cooperation and monitoring and that their cooperation with regional seas arrangements and regional fisheries organizations and arrangements should be strongly encouraged. Such regional cooperation could provide a means of fulfilling the obligation under UNCLOS regarding the establishment of regional centres for marine science and technology.<sup>5</sup>

By far the most concrete and important recommendation made this year was that

The regional centres foreseen by Part XIV of the UN Convention on the Law of the Sea (UNCLOS)(articles 276 and 277) should be established. With assistance from IOC, where needed, these might be developed as "virtual centers", based on the collaboration of regional fisheries, marine environmental and scientific bodies.<sup>6</sup>

This is all the more important since these Articles, mandating the establishment of these Centres

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<sup>5</sup>*Ibid.*, para.194.

<sup>6</sup>Draft Report on the Work of the Consultative Process at its Second Meeting. Part A, Issues to be suggested and Elements to be Proposed, to the General Assembly, para.9.

had been completely neglected by the international community ever since 1982, when the Convention was adopted. If UNICPOLOS II had done nothing else, besides resuscitating these two articles, which are so highly relevant especially for the developing countries, it would have made a significant contribution to the implementation of the UNCLOS/UNCED process.

There is, however, a *caveat*.

In dealing with its mandate of focussing on *science and technology*, the discussion leaned heavily towards *science*, being far less concrete on *technology*. This disequilibrium had two consequences. First, it biased the presentations and discussions in favour of the industrialized countries and their priorities; second, it somewhat distorted the purpose of the Regional Centres mandated by Articles 276 and 277 of the LOS Convention, making them *science centres* rather than *technology centres*. No attention was given to the fact that Articles 276 and 277 are placed in Part XIV of the Convention, entitled, "Development and Transfer of Marine Technology." not in Part XIII, entitled "Marine Scientific Research." The discussion linked the Centres exclusively to *scientific* Institutions, whether regional or global, stressing, above all, the role IOC should play in their establishment. Partners which would be important for *technology centres*, such as, on the one hand the United Nations Industrial Development Organization (UNIDO) and, on the other, the private sector industry, responsible for a large part of technology development and transfer, were left out completely. The technological needs of developing countries were discussed in the most general way, with no progress on the issue of how they were to be satisfied.

This is in no way intended as a criticism of the Co-chairmen, who did a first-rate job but had to faithfully reflect the course of the discussions -- and this is how the discussions went.

The Delegations themselves, however, showed awareness of the shortcomings of the discussion on development and transfer of technology; for many of them suggested that this subject should placed

again on the list of subjects for the third session of UNICPOLOS in 2002. It certainly would be included under the general subject for that session, on which there appeared to be a consensus, i.e., “capacity-building and regional approach in oceans management and development”<sup>7</sup> There certainly is a great deal of work to be done to define the structure and functions of the Regional Centres within the context of the Regional Seas Programme, considering the new aspects of high technology which affect also the ways in which this kind of technology can be “transferred” -- i.e. “learned” -- most effectively, and ensuring that these Centres -- or “virtual centres” or “systems” serve the technological needs arising from the implementation of *all* UNCLOS/UNCED Conventions, Agreements, Codes of Conduct, Protocols and Programmes which are all closely related. The Centres thus would also be instrumental in *integrating various convention regimes at the operational level in a regional context*. This need was clearly understood by the Delegation of Norway. The Norwegian statement pointed, first, to the interrelation between UNCLOS and Chapter 17 of Agenda 21 --

These links are based on two fundamental premises, namely that UNCLOS is the legal framework within which all activities related to oceans must be considered, and that Chapter 17 of Agenda 21 remains the fundamental programme of action for achieving sustainable development with respect to oceans and seas.

The Norwegian statement also stressed the importance of the impact of the Biodiversity and Climate Conventions on UNCLOS.

It is important that these international instruments are understood also in the context of UNCLOS.

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<sup>7</sup>Co-Chairmen’s Report, Part C, “Issues for Consideration for Possible Inclusion in the Agendas of Future Meetings,” Para. 1 and 2.



And it pointed out that there is still a considerable potential for the formulation of policies and the implementation of measures .

Regarding the regional centres mandated in Articles 276 and 277 of UNCLOS, It would indeed be useful if DOALOS could prepare a study on their practical implementation as a basis for discussion next year.<sup>8</sup>

This having been noted, it should immediately be underlined that the quality of the background papers, the presentations and discussions on *Science* was first rate. Two panels introduced the subject, divided into two parts: “Improving Structures and Effectiveness” and “Priorities in Marine Science and Technology.” IOC’s Executive Secretary, Dr. Patricio Bernal, contributed a great deal to both panels. In addition, he also spoke as the Coordinator of the Subcommittee on Oceans and Coastal Areas of the Administrative Committee on Coordination (SOCA/ACC). The day was a true Marathon for Dr. Bernal who provided a wealth of information and answered questions with remarkable frankness. The overview of the “state of the art” of the marine sciences revealed a shift of paradigm, from the study of the physics of the ocean to a more integrated approach, with emphasis on the chemical and biological parameters, and from certainty to uncertainty, considering that “only some 0.0001 % of the deep-sea floor has been subject to biological investigations.”<sup>9</sup> Climate change, ocean-atmosphere interaction, human dimension of global change, and ocean observation at the global level were considered issues of

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<sup>8</sup>The paper submitted by the IOI, *UNICPOLOS II, a Discussion Paper Compiled by the International Ocean Institute*, Halifax: International Ocean Institute Operational Centre, Dalhousie University, 2001, attempted to deal with these issues and proposed a “discussion model.” The paper is available on the IOI Web Site.

<sup>9</sup>World Wildlife Fund for Nature, *The Status of natural resources on the high seas*, Gland, Switzerland: WWF, 2001, IUCN, 2000. Background paper, distributed by WWF.

major interest to marine scientific research today Ocean eco-system science and marine science for integrated coastal area management were identified as other priorities.<sup>10</sup>

Outstanding contributions to the discussion of scientific research were made by the Delegations of the United States, China and Norway, among others.

The delegation of China gave a most encouraging description of the development of marine sciences in China in particular in coastal and ocean surveys, oceanographic research, research and development and the application of new and high ocean technologies.<sup>11</sup> It should be noted in this connection that quite interesting changes are taking place in the world's science population distribution. While we are still bemoaning the science- and technology gap between the industrialized and non-industrialized world, we seem to overlook the prodigious number of scientists, including marine scientists, being trained in China, India, Brazil, Mexico, Argentina, Cuba and a few others. It can in fact be taken for granted that in 10-20 years the *majority of marine scientists will come from developing countries*. This will undoubtedly affect the philosophy of science and the research agenda of the international community in the coming decades.

In the context of science for fisheries management, Mr. Neureiter of the United States noted that

The paradigm is now shifting from managing single species and maximizing yields of every species, to sustainably managing marine ecosystems. This requires integrating scientific information from many disciplines, ranging from species abundance to physical and biological oceanography to changes in habitat and introduction of land-based pollutants.

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<sup>10</sup>Para. 198

<sup>11</sup>Para. 215.

The importance of moving from a species oriented to an ecosystem-based approach to fisheries management was stressed also by Mr. Skjoldal of Norway who gave a brilliant presentation of marine ecosystems and an ecosystem approach to their management, including a plan of action, involving combined monitoring and research, transferable experience, and training and capacity building. I shall not attempt here a summary of his findings, since there is an excellent and very complete summary in the Co-Chairmen's Report<sup>12</sup> Instead I want to raise one point which did not come up in the discussion but might open new possibilities for the solution of one of the worst problems plaguing the world's fisheries, and that is the problem of by-catch. It seems incredible that almost one-third of the global fish-catch (270 million tons) is discarded, killed and thrown back into the sea, as "by-catch" -- and this at a time when fisheries are under such terrible pressure and unable to keep up with the growing needs for food. It seems to me that in the context of an "ecosystem-based fisheries management" there is no room for the concept of "by-catch" which is logically linked to "species-based fisheries management." An ecosystem based fisheries management system must find new approaches to the problem.

Certainly, technology can contribute to a solution. Turtle exclusion devices have been effective, and there are other selective gear improvements. But there is no technological fix so long as all the economic incentives are wrong. What can a shrimp fisher do when his catch consists of x tonnes shrimp and 12 times that amount of "by-catch"? If he kept the by-catch on his boat, there would be no room for the shrimp which fetches him a multiple of the revenue he could derive from the by-catch. He has no choice. He must dump the by-catch back into the ocean.

In an ecosystem based fishery "by-catch" becomes "additional catch" with an added value which must be fully utilized. While technological improvements of selective gear must continue, there

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<sup>12</sup>Paragraphs 206-211.

might be financial incentives for sea-food corporations to jointly, cooperatively, manage ships to circulate among the fishing boats and relieve them of their additional catches for a modest price and process them, at sea or on land, whether for human consumption, for aquaculture feed, or for the production of fertilizers, or other chemical or pharmaceutical use: all of this production has a commercial value and can be sold.

It is surprising to think that such a simple change would increase production by 30 percent! The paradigm shift from species-based to ecosystem-based fisheries management would now seem to command it.

Another interesting point that came up during the discussions, stimulated in particular by Australia, is the need for protecting biodiversity in international waters, including the deep sea-bed as well as seamounts where many species are yet to be discovered.. During an evening reception, the Delegation of Australia showed a film on the biota of the deep sea which was so powerful and beautiful that it was perhaps more convincing for many Delegates than the most elaborate oral presentations! A number of delegations stressed the potential of utilizing the non-living resources of the seabed and that there was a need for programmes geared to the integrated goals of sustainable use of the common heritage of mankind<sup>13</sup>

As already indicated, these pages are not intended as a summary of the discussions, which is available, in the best possible form, in the Co-Chairmen's report. Here I wanted merely to indicate some points on which the discussion has stimulated new thinking, where action is required and new approaches can be developed.

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<sup>13</sup>Para.s 247-248.

Let me now take up the second major Agenda item, that is, the suppression of piracy and armed robbery at sea.

Although this subject appears, at first sight, far remote from the marine sciences and technologies, there are in fact linkages and parallels.

The linkage is in the vandalism perpetrated by robbers, armed or unarmed, on the moored or unmoored buoys deployed at sea for scientific research. The discussion indicated that financial and scientific losses caused by this vandalism were quite considerable, heavier in areas where fishing activities, including UUIF, are concentrated.

The parallels are that *regional cooperation* is as essential for the suppression of piracy, as it is for marine scientific research and technology transfer. "Integrated management," however, is far more difficult to establish in the case of the suppression of piracy, as it involves the most sensitive aspects of national sovereignty.

Excellent introductory statements were heard, describing the alarming rise of piratical occurrences, especially in Southeast Asia, the South China Sea, the Caribbean, and West Africa. These occurrences have just about tripled during the past decade, causing most serious threats to human life, the safety of navigation and international trade as well as the environment. Cases were cited where victimized ships, carrying toxic substances, were drifting in traffic congested areas such as straits, without steering, the crew having been blindfolded and bound, or killed by the pirates: a recipe for environmental disaster. All the efforts of the International Maritime Organisation (IMO), the International Maritime Bureau of the International Bureau of Commerce and others had failed to halt the phenomenal rise of acts of piracy which frequently were linked to organized criminal syndicates and other crimes at sea, such the illegal transport of persons and goods, including drugs. No country could deal alone with these global problems. Among the measures that have been or should be adopted to

suppress piracy the following were mentioned:

- training in preventive measure to be taken by the crews;
- establishment of a piracy reporting centre in Kuala Lumpur financed by shipowners and the P&I Clubs;
- National legislation for the prosecution of apprehended pirates; a model law has been developed by the Comité Maritime International which may assist in this development;
- the use of technology such as tracking devices which can be hidden on board;
- a greater role for the flag state. Incidentally: It is not yet publicly acknowledged, or even noted, that flag state control is a dying concept. The globalization of the shipping industry and, in particular the phenomenal rise in shipping tonnage registered under flags of convenience with no control whatsoever over their registered ships have made the concept meaningless. What will take its place is a question to be faced during the coming years. Port State control certainly will become more important. Shifting of responsibility and liability from the State to the shipowner or operator may be another approach -- with its weaknesses.
- regional cooperation, including joint patrols;
- intergovernmental involvement, exemplified by IMO, but possibly to be complemented by some law enforcement involvement at the intergovernmental level.<sup>14</sup>

Outstanding, during the discussion, was the contribution of Japan. Japan had organized a regional conference on combatting piracy and armed robbery against ships, in which 17 countries participated. The Conference adopted three important documents, "The Tokyo Appeal," advocating cooperation among coastguards and navies; as well as a plan for strengthening of self-defence

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<sup>14</sup>Paragraph 276.

capability of ships; a “Model Action Plan,” with concrete measures to be implemented in the short term; and guidelines to facilitate regional cooperation on combatting piracy, entitled “Asia Anti-Piracy Challenges 2000. On the basis of this latter document, the Japanese Coast Guard conducted joint exercises with India and Malaysia. These exercises covered communication, search and rescue, interception and boarding.

At the Regional Experts Meeting on Combatting Piracy, held in Kuala Lumpur in November 2000, Japan offered to accept students from the Asian region at the Japan Coast Guard Academy. Students from Thailand, Vietnam, Malaysia, Indonesia and the Philippines have joined the school since April 2001.

The Delegation of Japan also gave an excellent overview of the causes of failure of anti-piracy action thus far:

- the lack of communication and cooperation among the various national agencies involved in a country;
- the response time after an incident has been reported to the coastal State concerned by affected ships;
- general problems of incident reporting;
- lack of legislation for the prosecution of pirates and armed robbers when apprehended;
- lack of regional cooperation .
- the continuing economic situation prevailing in certain parts of the region;
- the geographical configuration of certain countries;
- the resource constraints on law enforcement agencies.<sup>15</sup>

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<sup>15</sup>Paragraphs 277-288.

The paper submitted by the International Ocean Institute was in full accord with the trends of this discussion, but went one step further. Attempting to explore the institutional implications of Principle 5 of the Rio Declaration<sup>16</sup> stating that “Peace, development and environmental protection are interdependent and indivisible;” the IOI constructed a “discussion model” for the establishment of a “regional coastguard” to be integrated into the institutional framework of Regional Seas Programmes.. The IOI paper fully realized the political and ideological obstacles, but envisaged this step as the logical, if long-term, conclusion of the arguments brought forward and the development initiated by this second session of UNICPOLOS.

Part A of the Report, “Issues to be suggested and elements to be proposed, to the General Assembly, is a distillation of Part B, the summary of the discussions. The recommendations are clustered around 19 (A-S) “issues,” many of them overlapping. They are listed in the Annex to this brief report.

In accordance with the discussions, the recommendations are strong on enhancing regional cooperation and programmes, a wider scope for the UNEP’s Regional Seas Programme through systemic cooperation with other regional bodies, especially regional fisheries commissions. Most important and concrete is the recommendation to implement Articles 276 and 277 of the Law of the Sea Convention through the establishment of regional centres for the development and transfer of technologies. (Paragraph 9)

Recommendations for the suppression of piracy and armed robbery at sea include:

- improvements in the reporting system;
- training of ships’ masters and seamen in defensive measures;

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- training of coastal states' personnel involved in all aspects of the response, including apprehension, investigation, prosecution and exchange of evidence;
- establishment of up-to-date contingency plans;
- attention of flag states to avoid the registry of bogus ships;
- ratification of UNCLOS and the Rome Convention and protocols for the suppression of unlawful acts against the safety of maritime navigation; and, most important,
- regional cooperation arrangements, with the aim to create a network of contacts between the public authorities concerned, based on mutual trust and reciprocal help. Such regional cooperation arrangements may, in suitable cases, be strengthened by the conclusion of formal agreements.

On the final issue (S), Coordination and coordination within the United Nations system, there is one recommendation:

The General Assembly should invite the Secretary-General, in his review of the mechanism under the Administrative Committee on Coordination, to bear in mind the continuing need for a forum within the UN system, with a clear structure and adequate resources, which can bring together the many parts of that system concerned with the oceans and coastal areas, in order to promote coordination and cooperation across the UN system and thus ensure an integrated approach to ocean issues at the global level.

This forum is undoubtedly UNICPOLOS which should be further strengthened and developed through next year's review by the General Assembly.

Part C of the Report, "Issues for consideration for possible inclusion in the agendas of future meetings," is reproduced in Annex 2. Some of the issues listed, as, e.g., "marine debris," are perhaps a little too specific for UNICPOLOS and should be discussed in more specialized fora; others might be grouped together, e.g., the three subjects dealing with fisheries and mariculture, and the issue of by-

catch might be added. The issue of the International Sea-bed Authority is conceived far too narrowly. The discussion might include the structure and mandate of the Authority in the context of technological, scientific and economic change as well as the interaction between the Authority and other Convention regimes such as the Biodiversity and Climate Conventions, with overlapping responsibilities and mandates.

“Ocean stewardship,” finally is a pretty broad and philosophical concept. It might be made more concrete by having it integrated in the issue of “ocean economics: the value of the ocean in the world economy; the peculiarities of economics impacted by extra-territoriality, maximal risk and uncertainty, the need to cooperate rather than compete, and the concept of the Common Heritage of Mankind.”

Another issue might be the “twilight of flag-state control.”

Evidently there is no lack of subject matter on which UNICPOLOS can make essential and unique contributions to the evolution of an ocean and coastal area regime for many years to come.

*Annex 1*  
*Issues to be suggested, and elements to be proposed,*  
*to the General Assembly*

- Issue A:** Further progress on the prevention, deterrence and elimination of illegal, unreported and unregulated fishing;
- Issue B:** Protecting the marine environment from land-based activities;
- Issue C:** “Science for Development”: the importance of marine scientific research for a wide range of goals;
- Issue D:** Strengthening international cooperation at the regional level;
- Issue E:** Establishing better links between marine scientists and policy-makers and managers;
- Issue F:** Proper planning of marine science projects and better implementation of UNCLOS
- Issue G:** Exchange and flow of data;
- Issue H:** Capacity-building for marine science and technology;
- Issue I:** Strengthening global action to deliver effective marine science;
- Issue J:** General policy on marine science;
- Issue K:** Interactions between the atmosphere and the oceans;
- Issue L:** The needs for scientific understanding for the management of marine ecosystems;
- Issue M:** The needs for scientific research for integrated coastal management;
- Issue N:** The need for scientific research for maritime operations;
- Issue O:** General policy to promote cooperation and ensure coordination on piracy and armed robbery at sea;
- Issue-P:** Prevention of piracy and armed robbery at sea;

- Issue Q:*** The framework for responses to piracy and armed robbery at sea;
- Issue R:*** Response to incidents of piracy and armed robbery at sea;
- Issue S:*** Coordination and cooperation within the United Nations system

*Annex 2*

*Part C*

*Issues for Consideration for possible inclusion  
in the agendas of future meetings*

- 1, There was broad support for including capacity building and regional approach in oceans management and development as areas of focus for the third Meeting of the Consultative Process.
2. Other suggestions put forward include:
  - (a) marine protected areas;
  - (b) ecosystem based integrated management of the marine environment;
  - (c) potential and new uses of the oceans;
  - (d) review of the national, regional and global implementation of Part XII of UNCLOS;
  - (e) development and transfer of marine technology;
  - (f) oceans stewardship;
  - (g) food security and mariculture;
  - (h) cooperation and coordination between regional fisheries organizations and regional seas programmes of UNEP;
  - (I) impact of the activities in the international seabed Area as a source of contamination of the marine environment;
  - (j) fishery subsidies and their clear and negative effect on the conservation of marine living resources;
  - (k) marine debris;
  - (l) integration of the applicable legal provisions and programme issues;

3. There was support for evaluation of the progress achieved under the four areas of focus at the first and the second Meetings: “responsible fisheries and illegal, unreported and unregulated fisheries: moving from principles of implementation”; “economic and social impacts of marine pollution and degradation, especially in coastal areas”; “Marine science and the development and transfer of marine technology, as mutually agreed, including capacity-building”; and “coordination and cooperation in combatting piracy and armed robbery at sea.”