

STATEMENT

by

Elisabeth Mann Borgese
International Ocean Institute

Before the

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

First Committee

Caracas, July 12, 1974.

Mr. Chairman:

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

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

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

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

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

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

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

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

Add to this that not more than half a dozen countries and not more than a dozen companies have the capability to engage in nodule mining and that the revenue to be obtained from nodule exploitation may be expected to vary between 50~~0~~ and 200 million dollars a year over the next ten years: a revenue not much larger than would be required to cover the operating costs of the future authority and certainly insufficient to effect any significant distribution of financial benefits.

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

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

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

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

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

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

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

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

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

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

STATEMENT

(second part)

by

Elisabeth Mann Borgese

International Ocean Institute

before the

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

First Committee

Caracas, August 6, 1974.

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

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

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

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

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

require continuous and substantial financial support from Member States.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Chairman:

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

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

APPENDIX
The Ocean Regime Proposal

(Pacem in Maribus. E.M. Borgese, ed. New York: Dodd, Mead and Co., 1972)

ARTICLE XII

THE MARITIME CORPORATIONS

1. The Maritime Commission, with the approval of the Maritime Assembly, may establish:
 - (a) an Ocean Science Corporation, responsible for conducting programs of research development of ocean science and technology; for coordinating national and private programs; for servicing an international ocean data center; and for acting as a repository and clearing house for information;
 - (b) an Ocean Weather Corporation, responsible for meteorological data gathering, weather forecasting, control and modification and providing services for a fee to nations and corporations;
 - (c) an Ocean Petroleum Corporation, responsible for prospecting, developing, and producing petroleum products from the deep oceans, by itself or in joint ventures with other national or private oil corporations;
 - (d) an Ocean Mining Corporation, responsible for prospecting for minerals, developing underwater recovery methods, and producing minerals from the seabeds, by itself or in joint venture with corporations;
 - (e) other operative corporations, in accordance with technological and economic requirements.
2. The Corporations are controlled subsidiaries of the Ocean Regime. The Ocean Regime shall advance at least one-half of their capital and elect at least one-half of the members of their boards of directors. The balance of their capitals and boards shall be supplied by those States or public or private corporations who choose to subscribe, subject to the reservation of adequate representation for the developing nations.
3. The Chairmen of the Boards and at least one-half of the Members of the Boards shall be elected by the competent chambers of the Maritime Assembly in accordance with Article VIII, E, 4.
4. The Corporations shall be entitled to representation in the competent functional chambers of the Maritime Assembly.
5. Profits on the Regime's investment in the Corporations' stocks will be returned to the Regime's assets.