

The First Session

by 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 to June 2, 2000. The establishment of UNICPOLOS by the General Assembly must be considered a breakthrough in the process of building a global system of ocean governance. It is the only body in the United Nations System with a membership that comprises 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) and Mr Alan Simcock of the 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 coor-

dination and cooperation at the intergovernmental and inter-agency levels should be enhanced."¹

I.

The International Ocean Institute (IOI) 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,² 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;

* Prof., International Ocean Institute, Dalhousie University, Canada

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."

Third, 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 Nations³ 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 non-governmental 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 Report⁴ 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-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 endeavours 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 non-governmental 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 Commonwealth 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 (UN Conference on Environment and Development) 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 53rd 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.⁵

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 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 again.

The breakthrough came the following year, with the meeting of the 7th 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 CSD-7 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 CSD-7 to the Economic and Social Council⁶ 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)...

On the basis of this recommendation, the General Assembly adopted Resolution 54/33 which effectively established UNICPO,⁷ with the task of considering the an-

nual 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-chairs for UNICPO. This appointment 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 the 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 UNICPO-LOS, 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 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 the United Nations Environmental Programme (UNEP), FAO, the International Maritime Organization (IMO), the International Labour Organization (ILO), the United Nations Development Programme (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 to 2 June, 2000.

Even the general debate, on the first day, was carefully structured, requesting delegates to address specific ques-

tions, and not to waste time on generalities. Also the format of the final report and recommendations which were 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-à-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-à-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, the relationship to the States Parties also 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 – 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. Particular 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)).⁸

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 General Assembly. 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 recommendations "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 thirty hours on examining ocean issues in some depth.

III.

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

In dealing with the fisheries issues, which were the subject of Panel 1 of the UNICPO session ("Responsible fisheries and illegal, unregulated and unreported fisher-

ies. 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 and social costs of pollution. But somehow, these proposals were still fragmentary. They were lacking an overall integrating structure. And yet, that structure already exists even though it is not yet fully implemented.

The strategic document for the implementation of the Global Programme of Action (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 organizations

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-organizational steering group, which will be chaired by UNEP and will meet on a regular basis (this, perhaps, has been superseded by SOCA).

The proposal foresaw ten 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 States)
- (9) South Asian Seas (Colombo, October 1997, 5 States); and
- (10) Northwest Pacific (Beijing, November 1997, 5 States).

However, 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 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:

Emphasize 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 Small Island Developing States (SIDS) and Least Developed Countries (LDCs) and encourage bilateral and multilateral 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.

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



Courtesy: Musée océanographique, Monaco

In Article 7.5, the Straddling Stocks Agreement takes over textually Article 74 of the LOS Convention.⁹ 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 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 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,¹⁰ 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.

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 nautical miles (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 ten 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 ten or twenty 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 spend more funding on an obsolescent concept, it would seem more profitable for all parties con-

cerned 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 facilitate, *inter alia*, 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 organizations 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 organized in three major Parts. Part A lists "Issues to be suggested, and elements to be proposed to the General Assembly." There are thirteen issues listed:

- 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 inter-governmental 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 fish-

eries organizations 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 combating 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.

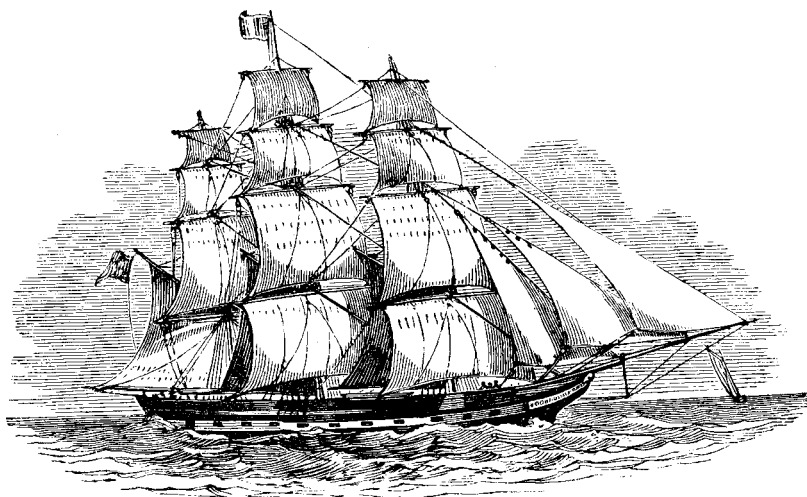
These sub-issues highlight another important aspect of UNICPOLOS: which not only has to play a unique and essential role at the global level of the General Assembly, but will also act as a stimulus for the creation of corresponding integrative processes at regional, national and local levels. The whole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

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 per cent of the overall pollution of the seas and oceans, and is given commensurate importance in the work of Panel 2. H, I and J are again 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



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 "official" meeting, but the two co-chairpersons were responsible for its contents. It is an extremely well organized 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 sub-regional 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. 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 very poor and often abusive conditions that fisherfolks are subjected to. ILO participation in combating 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

Courtesy: novum

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 "genuine link" was repeatedly stressed. One speaker on Panel 1 went so 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

somewhat timid, which is understandable, given the highly controversial nature of the issue. It would already seem 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

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 focused 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 Sea-bed Authority, on environmental standards for sea-bed mining and the adoption of the Mining Code" (Para. 118). This can be considered as at least 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. Seven 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 at Sea, Especially Piracy and Armed Robbery
 - (e) Marine Science
 - (f) Development and Transfer of Marine Technology
2. Not every regional workshop needs 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.* 

Notes

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

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

³ Doc.A/51/645

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

⁵ Saviour Borg, "The IOI Training Programme and Oceans Policy" in *The IOI Alumni Book*. Publication forthcoming.

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

⁷ 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.

⁸ Supplement No. 9 (E/1999/29)

⁹ 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 jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation."

¹⁰ 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."