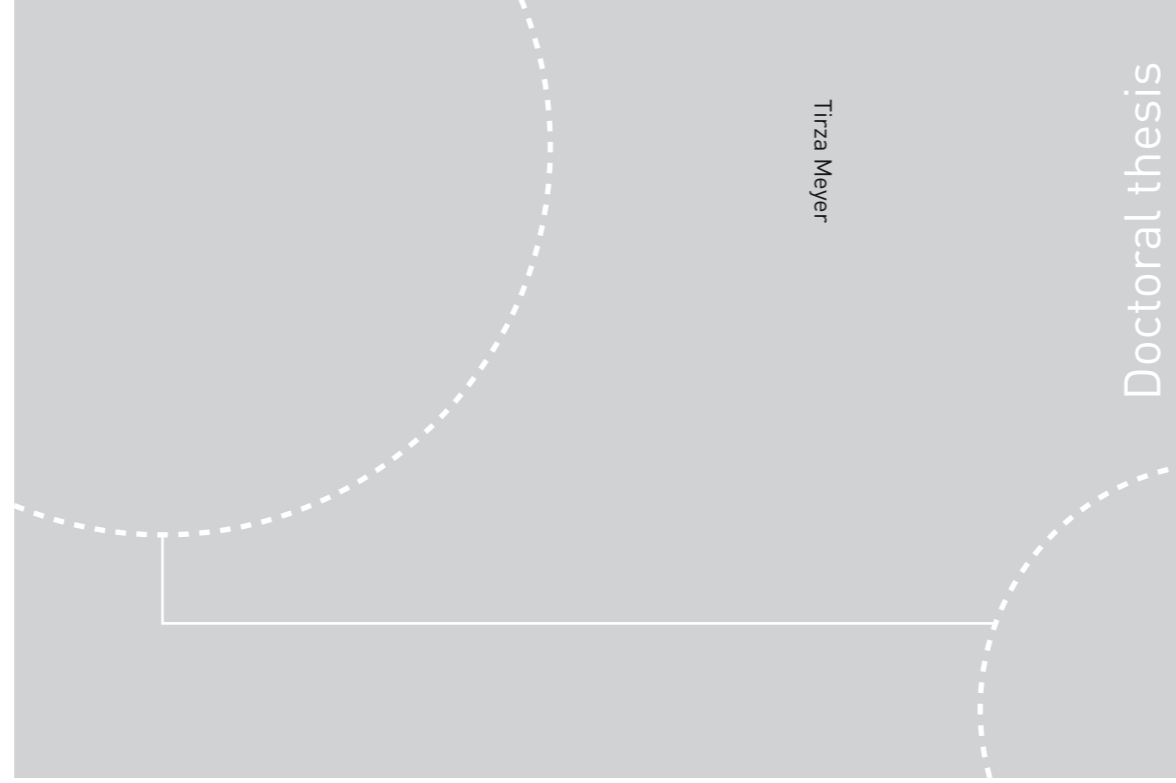


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ABSTRACT

The Third United Nations Law of the Sea Convention (UNCLOS III, 1973–1982) was a groundbreaking event that saw the evolution of new ways of negotiating international rules and regulations for ocean governance. This thesis illuminates the role of Elisabeth Mann Borgese before, during and after UNCLOS III. The study examines the origins of her ideal of internationalism, and her ideas for applying her ideal to the convention through the concept of the common heritage of mankind (CHM). She did this by putting forward concrete proposals during the negotiations, by building institutions, and by affiliating herself with key people like Maltese ambassador Arvid Pardo and key delegations and groups like the Austrian Delegation, The Group of Landlocked and Geographically Disadvantaged States and the Evensen Group. The study argues that her ideal of internationalism stemmed from her earlier work with the Committee to Frame a World Constitution in Chicago and the Center for the Study of Democratic Institution in Santa Barbara under Robert M Hutchins. It demonstrates how she utilised her experiences in Chicago and Santa Barbara to stage her own *Pacem in Maribus* conferences, and to design and found the International Ocean Institute. It also explores her proposal for an ocean regime, and its potential to expand into a world regime. The study of Elisabeth Mann Borgese shows her ability to adapt to changing situations, and her willingness to downsize her ideas to achieve even just a small part of her idealist ambitions in relation to ocean governance.

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I am particular thankful for the assistance given by the staff of the **International Ocean Institute** in **Halifax** and the **International Ocean Institute Headquarters** in **Malta** for connecting me with important interview partners, helping me to find research material and offering me to use their workspaces for interviews and reading during my visits in Malta and Halifax.

I would like to offer my special thanks to **Madeleine Coffen-Smout** from the IOI in Halifax for her speedy help and guidance. Thank you for sharing with me your profound knowledge about Elisabeth Mann Borgese's network and connecting me with important people.

I also wish to acknowledge the help provided by **Antonella Vassallo**, at the IOI in Malta, who has been likewise resourceful in finding the right people and providing me with valuable material from the IOI library.

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My special thanks are extended to the staff at **Dalhousie University Archives** in Halifax for their resourcefulness, helpful advice and for extending their opening hours in order for me to be able to view all the materials I had on my list. I would also like to thank Professor **David Attard** for making me aware of the **Pardo Room** at the University of Malta, where I could find some essential information about Arvid Pardo that was not available elsewhere. I would also like to thank the staff of the **United-Nations Archive**, in New York City, the staff of the **Literaturarchiv der Monacensia** in Munich and the **Thomas-Mann-Archive** in Zürich for providing me with speedy information, access and excellent help and guidance whenever I could not find a dearly needed document. My grateful thanks are extended to Professor **Nica Borgese**, who has been so kind to invite me into her home and provide me with documents of her mother that were not available elsewhere. My proofreader **Joly Braime** deserves my gratitude. All remaining errors are mine.

Finally, I want to thank my friends, family and partner, who have patiently accepted my absence and encouraged me whenever I needed support.

Preface – *Deep Ideology*

In 1973, the Norwegian philosopher and mountaineer Arne Næss published the book *Deep Ecology*. Næss set out and developed an environmental theory in which he promoted the idea that the environment can only be saved if human beings relinquish their superior position and start to accept the equal worth of all living things. Though Næss was the first to introduce this concept to environmental literature, a grassroots movement already existed along the same lines. Opponents of this movement have accused Næss and others of being misanthropic. To put the theory into practice, human actions should take into account the ecological consequences for other species, and critics would argue that in a completely literal reading, this would mean that in an encounter between a human and a polar bear, the human should let the polar bear eat them, since polar bears are endangered and humans are not. Clearly, it was not Næss's intention to advocate human mass sacrifice in order to rescue endangered species. However, the example demonstrates that an idea can be brilliant in theory but will ultimately fail in practice when it comes face-to-face with the realities of human life.

We do not know whether Elisabeth Mann Borgese knew Arne Næss in person. Considering her extensive network of contacts, she probably did. She must at least have met his brother, Erling Næss, who appears in the proceedings for one of her *Pacem in Maribus* conferences. The title of this thesis, *Elisabeth Mann Borgese – Deep Ideology*,¹ is a homage to Arne Næss's *Deep Ecology*. Not because Mann Borgese was an ivory tower ideologist, but because she, like Næss, attempted to provide theoretical solutions to world governance problems that were brilliant in theory, but not necessarily applicable in practice. We tend to underestimate visionaries like Næss and Mann Borgese, emphasising their impractical side through illustrations such as the polar bear example above. In fact, we will see that Mann Borgese would introduce a theoretical solution and then downsize it in practice until it became viable.

¹ I want to thank my colleague, Gard Paulsen, who made me aware of the connection between EMB and Næss and came up with the idea for the title.

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Introduction – Elisabeth Mann Borgese’s attempt to apply internationalism to ocean governance

The potential of uncharted territory in the ocean

When we think of the oceans, some of us will have visions of sandy beaches and blue waves. Others will recall recent news images. The picture of a whale found dead off the Norwegian coast with plastic in its stomach,¹ photographs of ragged boats in the Mediterranean Sea, packed with refugees from Syria and North Africa,² or the slimy remains of suffocating corals on the edges of the Great Barrier Reef.³

We might think of fishing vessels and fishermen. Perhaps we hear the melodious calls of whales communicating, or imagine high tech submarines diving down to the seafloor, illuminating peculiar deep-sea fish with their underwater cameras.

Others will envisage the sharp contours of a wealth-promising oilrig against an evening sky, or the bold passage of a tanker in the North Sea. They might think of the technological marvels that make it possible to pump oil up to an almost immovable structure amid raging seas. Some may recall images of the seafloor taken by high-resolution cameras – ridges as high as mountains, and valleys veiled in darkness and secrecy.

We all have an understanding of the ocean that reaches beyond what is visible and accessible from the coastline. Humanity has ventured deep into the seas, and therefore so have our minds.

¹ See Even Norheim Johansen, 'Fann 30 plastposar i magen på den skjeldne kvalen', *Norsk Riks Kringkastning*, February 2, 2017, <https://www.nrk.no/hordaland/fann-30-plastposar-i-magen-pa-den-sjeldne-kvalen-1.13355206>. See also, article on plastic waste issue in the oceans: Daniel Cressey, 'The Plastic Ocean', *Nature*, August 18, 2016, https://www.nature.com/polopoly_fs/1.204321/menu/main/topColumns/topLeftColumn/pdf/536263a.pdf?origin=ppub.

² See NHCR The UN Refugee Agency, *The sea route to Europe: The Mediterranean passage in the age of refugees* (The UN Refugee Agency, 2015), <http://www.unhcr.org/5592bd059.pdf>.

³ See Ben Smee, 'Great Barrier Reef: 30% of coral died in the 'catastrophic' 2016 heatwave', *The Guardian*, April 18, 2018, <https://www.theguardian.com/environment/2018/apr/19/great-barrier-reef-30-of-coral-died-in-catastrophic-2016-heatwave>. See also a forthcoming book on human visual representation of corals and coral bleaching by art historian Ann Elias, *Coral Empires: Underwater oceans, colonial tropics, visual modernity* (Durham: Duke University Press, publication date 15 March 2019).

This has not always been the case. For most of history, the oceans were simply used for transport, as trade routes, and for fishing. Anything too far beyond the coastline was dangerous and unknown. Though explorers occasionally ventured further afield, for the longest time, the ocean was an area on the map where cartographers wrote ‘hic sunt dracones’, or ‘here be dragons’.⁴

Sovereignty over coastal waters was as far as a cannon could shoot from shore,⁵ and beyond that, governance was unnecessary. The rise of technology, however, made it possible to penetrate far out into the oceans, and with each successive exploration, the dragons – and with them, the mystery – diminished bit by bit. Increased accessibility meant that humanity could now start laying claim to the oceans beyond the coastal waters. The ‘dragons’ of the unknown moved from the surface into the water column in the high seas, and from the deep onto the deep seabed.

One of the deepest parts of the ocean was reached by the submarine Trieste in 1960.⁶ Jacques Piccard and Don Walsh dived 10,910 metres down to the bottom of the Mariana Trench, and proved that humanity could now reach the deepest regions of the seafloor.

The Trieste venture was only one of many technological marvels that emerged in the 20th century, and these developments made it possible to penetrate the sea beyond the limitations of traditional surface seafaring. It was not just the human impulse to explore that advanced technological development – the two world wars accelerated innovation and opened up new possibilities but also new threats. Exploration and technological advances transformed the way humanity looked at the oceans, and also changed the way the oceans were treated. By the 1950s, technological progress meant the cannon shot rule had served its purpose. There were now vessels that could safely cross the Atlantic, military submarines

⁴ The concept is discussed in Chet Van Duzer, ‘Hic sunt dracones: the geography and cartography of monsters’, in *The Ashgate Research Companion to Monsters and the Monstrous*, ed. Asa Simon Mittman and Peter Dendle (Oxford: Routledge, 2012), 387-435.

⁵ On the origin of the cannon shot rule see ‘The Three-Mile Limit as a Rule of International Law’, *Columbia Law Review* 23, no. 5 (1923): 473, doi:10.2307/1112336.

⁶ The adventure of the Trieste has been discussed in numerous newspaper articles. See Richard A. Lutz and Paul G. Falkowski, ‘A Dive to the Challenger Deep’, *Science*, 336, no. 6079, April 20, 2012, 301-302. doi: 10.1126/science.1222641. Ambassador Arvid Pardo mentioned the Trieste and other technological underwater marvels in his 1967 speech: UN Doc. A/C.1/PV.1515, 41, 44.

that could sneak close to the coastline of an enemy, and plans afoot to harvest not only fish but also other natural resources under water.

To bring new order to the ocean, in 1958 the United Nations called for a Convention on the Law of the Sea (UNCLOS). The Convention would be one of the largest ever attempts to agree on an international treaty. It would take three decades and three attempts (UNCLOS I in 1958, UNCLOS II in 1960, and UNCLOS III in 1973–1982) to finalise the convention, plus numerous meetings at the United Nations. Each group or delegation involved had their own interests in the oceans, depending on their geographical location, state of industrial development, political ties, colonial past and military interests.

The Law of the Sea Convention was a mammoth endeavour, very much comparable to the complicated task of outer space missions. It was impossible to finalise without mutual agreement and the will to collaborate across national borders. The renegotiation of the Law of the Sea was also a very delicate issue due to the uncertain nature of the environment the delegates were working with. The delegates, much like space scientists, had to foresee future developments in technology and activity, set within an environment that was hostile to human life and therefore widely unknown.

There were numerous dilemmas tied into the renegotiation of the Law of the Sea. How far offshore could coastal states claim territory? What would happen to free passage on the high seas if territorial claims exceeded the cannon shot rule? What was there to do with the seafloor that was not yet under national jurisdiction? Should the oceans be claimed like territory on dry land? Or could there be another way?

The Maltese diplomat Arvid Pardo officially introduced an alternative approach to the governance of the seafloor outside national jurisdiction in 1967.⁷ He suggested applying the principle of ‘common heritage of mankind’⁸ to the seafloor outside national jurisdiction and its resources.

⁷ See Arvid Pardo’s speech in UN Doc. A/C.1/PV.1515; UN Doc. A/C.1/PV.1516

⁸ The concept of the ‘common heritage of mankind’ has been discussed in several publications. The term ‘mankind’ is used by Kemal Baslar in Kemal Baslar, *The Concept of the Common Heritage of Mankind in International Law* (Dordrecht, The Netherlands: Martinus Nijhoff, 1998). Peter Bautista Payoyo uses ‘common heritage of humanity’, In Peter Bautista Payoyo, *Cries of the Sea: World Inequality, Sustainable Development and the Common Heritage of Humanity* (Dordrecht, The Netherlands: Martinus Nijhoff, 1997).

This suggestion accelerated but also complicated the negotiations. The question of what to do with areas in the oceans that were not controlled by nation states caused serious disagreement among states at the United Nations during UNCLOS III. The international community was divided into several camps with differing interests.⁹

The industrialised states, predominantly in the geographical north, had been working on developing technologies that might make it possible to dive into deep sea areas and extract minerals, probably in the near future. Many of these states were mostly interested in bringing about arrangements that would make it easy for them to access the area outside national jurisdiction, and to utilise the resources they found there.

Developing states – often former colonies in the southern hemisphere – were very much in favour of a common heritage approach that would make it possible for them to partake in the ‘prospects of rich harvests and mineral wealth’¹⁰ of the sea without having reached the technological advancement of the industrialised states.

To complicate the issue further, the UNCLOS negotiations were held during the Cold War, in an environment that was sometimes hostile and prone to all kinds of diplomatic disagreements. Because discussions stretched out over a period of more than 30 years, the political backdrop and diplomatic climate would shift several times, making the negotiations even more difficult.

The biggest obstacle during UNCLOS III was the question of how to govern the seafloor outside national jurisdiction. This aspect of ocean governance – and world governance in general – was uncharted territory. No space on Earth was outside national jurisdiction in the same way the deep seafloor was, and it also held potential wealth in the form of deep-sea minerals that could be harvested in the future.

In the following, the concept will be referred to as ‘common heritage of mankind’. Since the aim of this thesis is not to discuss the philosophical and theoretical origin of the concept or to develop the principle further, the historically correct term will be used.

⁹ Cf. Payoyo, *Cries of the Sea*, 151.

¹⁰ Lyndon B. Johnson, ‘Remarks at the Commissioning of the Research Ship – Oceanographer’, (speech, Washington, DC, July 13, 1966), The American Presidency Project, <http://www.presidency.ucsb.edu/ws/index.php?pid=27711>.

The deep seafloor, therefore, held appealing possibilities for many participants at UNCLOS. Since the convention was the first one that actually allowed non-governmental organisations (NGOs) to contribute to the negotiations, the combination of NGOs and nation states made for an interesting mix of decision-makers, as the different stakeholders lobbied for a variety of aims.

One of the most influential activists to initiate and build institutions of lasting importance for the governance of the sea was Elisabeth Mann Borgese. Like other activists affiliated with non-governmental organisations, she was mostly interested in the seafloor outside national jurisdiction, and for one simple reason – it held the greatest potential for developing and introducing new principles and ways of governance into international law.

Elisabeth Mann Borgese was not a diplomat in the classical understanding of the term. She also did not act as a delegate for any one specific country throughout the negotiations. She was, in essence, an individual, who by founding an NGO and later joining a delegation, made her way into the convention through unusual channels. During UNCLOS III, she would influence the negotiation process and build lasting institutions.

This study will examine the origins of Elisabeth Mann Borgese's ideals of internationalism and world governance. It will ask how she envisioned reaching these ideals through the concept of the common heritage of mankind, and how she hoped to apply this to the seafloor. Finally, the study will examine how she tried to influence the negotiations with the aim of putting the principles of common heritage into action, and thereby came a step closer to her ideals of internationalism and world governance.

The study will attempt to examine Mann Borgese's ideals (internationalism and world governance), how she would put an idea (the common heritage) into action (during UNCLOS), and how she would build institutions to realise her ideals.

Elisabeth Mann Borgese's personal history will be essential to understanding her role at UNCLOS III. As an individual, she had goals that were informed by her previous life experiences. In order to understand the origins of Mann Borgese's ideal of internationalism, the context of her personal background, upbringing, youth and young adult life before she started working with the convention will be important.

To facilitate the difficult task of examining the ideals of an individual and the way in which that individual's ideas were applied to ocean governance through UNCLOS III, this study will be a combination of history of ideas, diplomatic history and legal history, with a biographical backdrop. The study does not include broader discussion of NGOs or other actors. It will not evaluate the process of shaping ocean governance beyond Elisabeth Mann Borgese's personal efforts, nor will it definitively assess the extent of her direct influence on the law-making process.

This study's aim is to examine Elisabeth Mann Borgese's vision for holistic ocean governance in light of the available archival material at Dalhousie University Archives and the most recent literature on the Law of the Sea Convention to have been published since the Law of the Sea Treaty came into force in 1994. The study aims to illuminate the origins of an ideal through the life and activism of Elisabeth Mann Borgese during UNCLOS – which has not been examined in a holistic way in existing literature on the Law of the Sea.

Historiography – The Law of the Sea Convention

In terms of international law-making processes, the Law of the Sea – especially UNCLOS III – has been perceived as 'the most important multilateral conference of the 1970s.'¹¹ The convention's symbolic and practical implications for future international law-making have been studied by political and social scientists alike. Akiho Shibata, for instance, examined the impact of UNCED (the United Nations Conference on Environment and Development) and UNCLOS on the international law-making process in his 1993 article, 'International Law-Making Process in the United Nations: Comparable Analysis of UNCED and UNCLOS III.'¹²

In the article, he argued that UNCLOS III set a precedent in terms of reaching legitimacy for future law-making at an international level, despite flaws in the decision-

¹¹ Gabriele Goettsche-Wanli, 'The United Nations Convention on the Law of the Sea: Multilateral Diplomacy at Work', *Conference Diplomacy 1815-2015, UN Chronicle*, 51, no. 3 (2014), <https://unchronicle.un.org/article/united-nations-convention-law-sea-multilateral-diplomacy-work>.

¹² Akiho Shibata, 'International Law-Making Process in the United Nations: Comparative Analysis of UNCED and UNCLOS III', *California Western International Law Journal*, 24, no.1 (1993), 17-38.

making process that prolonged the discussions. He argued further that the collective efforts to reach international agreement created an arena for both nation states (developed and developing) and also other actors like NGOs to inform and shape the law-making process, and that this would contribute ‘to the wider, hopefully universal, acceptance of international legal instruments which the present international community desperately needs.’¹³

Whether or not UNCLOS did indeed set such a precedent, and how far it succeeded in introducing new principles, have been subject to discussion among scholars. This interpretation of the success of UNCLOS and similar endeavours is partly contradicted by the findings of scholars studying the way developing countries engaged with the Law of the Sea. Peter Bautista Payoyo, for instance, argues in his 1997 book, *Cries of the Sea*, that not all states were equally served by the outcome. Landlocked developing states in particular were ‘effectively marginalized from the global sharing arrangements [...]’.¹⁴

Despite some shortcomings, in general Payoyo recognises that the convention successfully adapted ‘two models of governance’¹⁵ – by which he means the governance firstly of areas within the sovereignty of nation states, and secondly of those areas outside national jurisdiction – ‘[...] which could potentially be extended to, or developed for, other areas of global concern [...]’.¹⁶

In her article ‘The LOS Convention as a Constitutional Regime’,¹⁷ Shirley Scott argues that viewing the Law of the Sea Convention treaty as constitutional would strengthen its legitimacy and international recognition, despite the inherent disagreements around certain portions of the treaty that have kept the US from ratifying it. Scott argues that ‘[...] a constitution cannot help but play a symbolic role, representing respect for the rules of law within that society.’¹⁸ Scott also refers to the inability of UNCLOS to resolve North-South

¹³ Shibata, ‘International Law-Making’, 49.

¹⁴ Payoyo, *Cries of the Sea*, 151. See also Stephen Charles Vasciannie, *Land-Locked and Geographically Disadvantaged States in the International Law of the Sea* (Oxford: Clarendon Press, 1990), 221.

¹⁵ Payoyo, *Cries of the Sea*, 468.

¹⁶ Payoyo, *Cries of the Sea*, 468.

¹⁷ Shirley V. Scott, ‘The LOS Convention as a Constitutional Regime for the Oceans’, in *Stability and Change in the Law of the Sea: The role of the LOS Convention*, ed. Alex G. Oude Elferink (Leiden: Martinus Nijhoff Publishers, 2005), 9-38.

¹⁸ Scott, ‘The LOS Convention’, 38.

inequity, and in this matter she agrees with Payoyo that it might be too large a task for international law-making, since international law-making is: ‘truly incapable of removing old inequities, but it is eminently adaptable in generating new ones.’¹⁹

Concerning the more detailed development of the Law of the Sea, maritime and international lawyers have explored the origins and development of the law text within its broader historical context. Legal studies that were conducted between the 1980s and early 1990s – before the convention was finalised and broadly accepted with the 1994 Implementation Agreement – identified the deep seabed regime, along with the position of disadvantaged states and the question of equity, as the major concerns and stumbling blocks for UNCLOS.

In *Land-Locked States and the UNCLOS Regime*,²⁰ written by A Mpazi Sinjela in 1983, Sinjela argued that the success of the convention would depend on the degree to which the rights of landlocked states ended up being exercised, specifically concerning transit and passage to reach the ocean. He wrote that ‘the wider uses to which the ocean will become subjected to in the coming years by all States, both by large and small, rich and poor, will be required that all States be accorded the widest possible access to them.’²¹ Sinjela based his hypothesis on the premise that in the future the ocean would be humanity’s main source of natural resources.

Sinjela’s study underlines how important it is for nation states to have access to raw materials, and the need for this to be regulated through international agreements. Since the oceans are not directly accessible for all nations, international agreements are necessary to secure access. In Sinjela’s interpretation, landlocked states are the most vulnerable parties to the convention, since they are directly dependent on either the goodwill of coastal states or

¹⁹ Payoyo, *Cries of the Sea*, 462, quoted in Scott, ‘The LOS Convention’, 38.

²⁰ A. Mpazi Sinjela, *Land-Locked States and the UNCLOS Regime* (London: Oceana Publications, Inc., 1983).

For a comparable publication on specific parts of UNCLOS see also Francisco Orrego Vicuna, *The exclusive economic zone. Regime and legal nature under international law* (Cambridge: Cambridge University Press, 1989).

²¹ Erik Suy, foreword to *Land-Locked States and the UNCLOS Regime* (London: Oceana Publications, Inc., 1983), xi.

well-functioning international agreements.²² Sinjela's study also shows how the exploration of marine minerals and other natural resources in the oceans put pressure on the international community to negotiate a new Law of the Sea in the 1950s.

Some of the reasons for the difficulties in agreeing on a seabed regime are examined in Markus G Schmidt's 1989 work, *Common Heritage or Common Burden?*²³ Schmidt attempts to explain the United States' reservations about applying the common heritage principle to the seafloor, arguing that the hesitation was of a more 'ideological nature, directed against the creation of an "unaccountable and self-perpetuating world bureaucracy" [...].'²⁴

When Schmidt's study was published in 1989, the treaty was still open for ratification and none of the industrial states had yet done so. He attributes this not only to ideological motivations on the part of the United States, but also to the complicated design of the seabed regime, which favoured developing states through detailed provisions.²⁵

Schmidt identifies two major flaws or misconceptions with which the negotiations started out in the 70s. First, the impression that there was an abundance of seabed minerals on the seafloor that were relatively easily accessible and promised great wealth to developing countries and industry.²⁶ Second, the misconception that there would be a profusion of unilateral action – like races to the seafloor – unless international agreement was reached quickly.²⁷

*The Law of Deep Sea-Bed Mining*²⁸ by Said Mahmoudi examines whether the seabed regime succeeded in balancing the needs of both the industrialised states and the developing

²² Cf. Sinjela, *Land-Locked*, 11, 20, 27.

²³ Markus G. Schmidt, *Common Heritage or Common Burden? The United States position on the development of a regime for deep [sic: deep] sea-bed mining in the Law of the Sea Convention* (Oxford: Clarendon Press, 1989).

²⁴ Schmidt, *Common Heritage*, 307.

²⁵ Cf. Schmidt, *Common Heritage*, 307.

²⁶ Cf. Schmidt, *Common Heritage*, 308.

²⁷ Cf. Schmidt, *Common Heritage*, 309.

²⁸ Said Mahmoudi, *The Law of Deep Sea-Bed Mining. A Study of the Progressive Development of International Law Concerning the Management of the Polymetallic Nodules of the Deep Sea-Bed* (Stockholm: Almqvist & Wiksell International, 1987).

world.²⁹ The study was written in light of the absence of ratification by the US, Great Britain and the German Federal Republic in 1987, but Mahmoudi argues that ‘[...] even though the Convention has not yet achieved universality *stricto sensu*, it certainly has acquired something very close to that.’³⁰

Mahmoudi’s study, and the studies of many other legal experts who examined the Law of the Sea as it came together in the 1980s and 1990s, show that the object of their study was in a state of constant change, and that the outcome was still uncertain. Although Mahmoudi was analysing the deep-sea regime in 1987, before the Implementation Agreement changed many of the provisions, the exact applications of the rules that govern the seabed are still uncertain even in 2018, since deep seabed mining has not yet been conducted.³¹ Therefore, although most of the Law of the Sea is now set in legal terms, and the convention and the negotiation processes have been studied extensively,³² more recent legal studies still grapple with some uncertainties connected to the deep seabed outside national jurisdiction and related activity.

David Kenneth Leary’s 2007 book, *International Law and the Genetic Resources of the Deep Sea*,³³ introduces another set of problems. In this study, he examines the biodiversity

²⁹ Cf. Mahmoudi, *The Law of*, 19.

³⁰ Mahmoudi, *The Law of*, 341.

³¹ A first successful test was conducted in Japan in 2017. See METI Ministry of Economy, Trade and Industry, *World’s First Success in Continuous Ore Lifting test for Seafloor Polymetallic Sulphides, Pilot test of excavating and ore lifting conducted for seafloor polymetallic sulphides under the sea area near Okinawa Prefecture* (METI, 2017), http://www.meti.go.jp/english/press/2017/0926_004.html.

³² See generally for future perspectives David Anderson, ed., *Modern Law of the Sea. Selected Essays*, Publications on Ocean Development Volume 59 (Leiden/Boston: Martinus Nijhoff Publishers, 2008). Donald R. Rothwell et. al., *The Oxford Handbook of the Law of the Sea* (Oxford/New York: Oxford University Press, 2015). Seoung-Yong Hong and Jon M. Van Dyke, eds., *Maritime Boundary Disputes, Settlement Processes, and the Law of the Sea*, Publications on Ocean Development Volume 65 (Leiden/Boston: Martinus Nijhoff Publishers, 2009). James Harrison, *Making the Law of the Sea. A Study in the Development of International Law* (Cambridge: Cambridge University Press, 2011). Alex G. Oude Elferink, ed., *Stability and Change in the Law of the Sea: The role of the LOS Convention* (Leiden: Martinus Nijhoff Publishers, 2005). Davor Vidas, ed., *Law, Technology and Science for Oceans in Globalisation. Iuu Fishing, Oil Pollution, Bioprospecting, Outer Continental Shelf* (Leiden: Martinus Nijhoff Publishers, 2010).

³³ David Kenneth Leary, *International Law and the Genetic Resources of the Deep Sea*, Publications on Ocean Development Volume 56 (Leiden: Martinus Nijhoff Publishers, 2007).

of the deep sea in the context of the convention's provisions, and comes to the conclusion that genetic resources were not considered in the deep-sea regime.³⁴

Leary states that the provisions for the deep sea do not include genetic resources, because these rules and regulations were inspired by the promise of deposits of polymetallic nodules on the seafloor.³⁵ He advises that a protocol to Law of the Sea Convention should be made to 'integrate modern concepts and principles of international environmental law'.³⁶

Others, such as Robert Friedheim, who contributed to the 1999 collection of essays, *Order for the Oceans at the Turn of the Century*,³⁷ have pinpointed further outstanding issues. In the chapter 'A Proper Order for the Oceans: An Agenda for the New Century',³⁸ Friedheim argues that the Law of the Sea should be extended instead of amended,³⁹ meaning that the treaty in itself is flawed, but should be used as a starting point from which all subsequent issues should be tackled. He, like Payoyo, sees the general value of the convention as being in its near-universal acceptance through support from almost all nation states.⁴⁰

In order to keep up with accelerating developments in technology, along with political circumstances and legal context, Friedheim calls for a 'sort of universal ocean institution that can help bring ocean law continuously up to date'.⁴¹

David Freestone's article compilation, *The 1982 Law of the Sea Convention at 30: Successes, Challenges and New Agendas*,⁴² published in 2013, makes similar points about

³⁴ Cf. Leary, *International Law*, 1-2. See also Helmut Tuerk, 'The Thirtieth Anniversary of the United Nations Convention on the Law of the Sea and the Common Heritage of Mankind', in *Commemoration of the 30th Anniversary of the United Nations Convention on the Law of the Sea and the Common Heritage of Mankind*, 17-27 (Malta: Ministry of Foreign Affairs; IMO International Maritime Law Institute), 22. Tuerk about outstanding issues: 'The question remains unresolved whether besides minerals also genetic resources of the seabed in the 'Area', which are considered to be of future substantial economic importance, form part of the common heritage of mankind [...]'.
³⁵ Cf. Leary, *International Law*, 1-2.
³⁶ Cf. Leary, *International Law*, 230.

³⁷ Davor Vidas and Willy Østreng, eds., *Order for the Oceans at the Turn of the Century* (The Hague: Kluwer Law International, 1999).

³⁸ Robert L. Friedheim, 'A Proper Order for the Oceans: An Agenda for the New Century', in *Order for the Oceans at the Turn of the Century*, eds. Davor Vidas and Willy Østreng (The Hague: Kluwer Law International, 1999), 537-554.

³⁹ Cf. Friedheim, 'A Proper Order', 545.

⁴⁰ Cf. Friedheim, 'A Proper Order', 545.

⁴¹ Friedheim, 'A Proper Order', 555.

⁴² David Freestone, ed., *The 1982 Law of the Sea Convention at 30: Successes, Challenges and New Agendas* (Leiden/Boston: Martinus Nijhoff Publishers, 2013).

rethinking a functioning Law of the Sea. The work advocates considering the ramifications of the treaty in the light of today's challenges from climate change,⁴³ and addressing issues of environmental protection in areas outside national jurisdiction.⁴⁴

More modern legal studies of the Law of the Sea have shifted focus from analysis of an ongoing process to assessing outcomes, testing its provisions in practice, and examining outstanding issues. Legal studies of the Law of the Sea Convention – and also those approaching from the angle of social and political sciences – mainly focus on the general process and development, either from a legal perspective that questions how the law text was developed, or from a social sciences perspective that focuses more on political processes and institutions.

There are few studies concerned with groups of individuals operating during UNCLOS. One example is a book by Canadian journalist Clyde Sanger called *Ordering the Oceans*.⁴⁵ Sanger was present during the negotiations, and wrote an overview of the process, its challenges and the key actors involved. Another attempt to portray the negotiations from the point of view of a national delegation comes courtesy of *Malta and the Law of the Sea*,⁴⁶ in which delegates reflect on their achievements during UNCLOS.

Although the importance of the personal efforts of key actors is not entirely neglected, in general both legal and social science studies do not focus on individuals and their actions within the context of the Law of the Sea. This is interesting in that a considerable amount of influence is actually attributed to individuals in the general narrative of UNCLOS, especially since historical overviews usually begin with the story of the Maltese ambassador kick-starting the negotiations for UNCLOS III.⁴⁷ Clearly, although underrepresented in recent

⁴³ Alan Boyle, 'Law of the Sea Perspective on Climate Change', in *The 1982 Law of the Sea Convention at 30: Successes, Challenges and New Agendas*, ed., David Freestone (Leiden/Boston: Martinus Nijhoff Publishers, 2013), 157-164.

⁴⁴ Christina M. Gjerde, 'Challenges to Protecting the Marine Environment beyond National Jurisdiction', in *The 1982 Law of the Sea Convention at 30: Successes, Challenges and New Agendas*, ed., David Freestone (Leiden/Boston: Martinus Nijhoff Publishers, 2013), 165-173.

⁴⁵ Clyde Sanger, *Ordering the Oceans - The Making of the Law of the Sea* (London: Zed Books Ltd., 1986).

⁴⁶ Saviour F. Borg, ed., *Malta and the Law of the Sea. A Vision – An Initiative* (Malta: Ministry of Foreign Affairs, 1996).

⁴⁷ See, e.g., Arnd Bernaerts, *Bernaerts' Guide to the 1982 United Nations Convention on the Law of the Sea: Including the Text of the 1982 UN Convention & Agreement Concerning Part XI of 1994* (Oxford: Trafford Publishing, 2006), 6.

studies, knowledge of individual efforts could provide insight that goes beyond that of studies from legal and social sciences backgrounds.

Although legal and social sciences experts have not focused on individual efforts, there are, however, three separate studies and an article collection that touch upon the topic. The first study is *An Intellectual History of the Common Heritage of Mankind as Applied to the Oceans*⁴⁸ by Monica Allen; the second is *Citizen Action for Global Change: The Neptune Group and the Law of the Sea*⁴⁹ by Ralph B Levering and Miriam Lindsay Levering, and the third study is Betsy Baker's article, 'Uncommon Heritage: Elisabeth Mann Borgese, Pacem in Maribus, the International Ocean Institute and Preparations for UNCLOS III'.⁵⁰ Finally, there is an article collection on different aspects of Elisabeth Mann Borgese's life and work, *Elisabeth Mann Borgese und das Drama der Meere*,⁵¹ that accompanied an exhibition on Elisabeth Mann Borgese in 2012–13.

In 1992, Monica Allen published *An Intellectual History of the Common Heritage of Mankind as Applied to the Oceans*.⁵² In her study, she examines the idea of common heritage, and how states, groups and individuals tried to apply it to the ocean floor. She also includes the efforts of Arvid Pardo and Elisabeth Mann Borgese. Allen, like many others, focuses on Arvid Pardo and uses him as the main carrier of the idea. She argues that developing nations and other individual actors used the concept of common heritage as a vehicle for their own purposes, and that it became a 'rallying slogan for a diverse group of advocates and nations.'⁵³

Although Allen's study is informed by interviews with Elisabeth Mann Borgese and Arvid Pardo, Allen focuses on the developing countries' attempts to use the concept to bring

⁴⁸ Monica Allen, 'An Intellectual History of the Common Heritage of Mankind as Applied to the Oceans' (Master thesis, University of Rhode Island, 1992).

⁴⁹ Ralph B. Levering and Miriam L. Levering, *Citizen Action for Global Change. The Neptune Group and Law of the Sea* (New York: Syracuse University Press, 1999).

⁵⁰ Betsy Baker, 'Uncommon Heritage: Elisabeth Mann Borgese, Pacem in Maribus, the International Ocean Institute and Preparations for UNCLOS III', in *Ocean Yearbook*, Vol. 26, 11-34 (Vermont Law School, Research Paper No. 09-13, 2011), <https://ssrn.com/abstract=2183795>.

⁵¹ Holger Pils and Karolina Kühn, eds., *Elisabeth Mann Borgese und das Drama der Meere*, exhibition catalogue, (Hamburg: mareverlag, 2012).

⁵² Allen, 'An Intellectual History'.

⁵³ Allen, 'An Intellectual History', 104.

about a new international economic order.⁵⁴ Her study gives an overarching insight into the differing positions of groups that were in favour of applying the common heritage principle to the seafloor for the benefit of mankind, but does not delve further into the background of the concept itself. This might also be the reason why she treats Pardo and Borgese's efforts as equal forms of idealism.⁵⁵

At the time when Allen conducted her study, the Law of the Sea Treaty had not been ratified by the most important industrialised states, and the provisions about the seafloor had not been amended. Writing in the context of the convention's status in 1992, Allen concluded that 'The common heritage movement is also an example of how successful a small group of people can be in promoting an idealistic international legal concept.'⁵⁶

What is missing in her study is an understanding of not only the principle and how it entered the international arena, but also a more detailed study of how the individuals who utilised this principle for their goals did so, and how they wished to shape ocean governance in detail. For this purpose, one could pick from an abundance of individuals who participated in the negotiations. There are many who would make interesting study objects in respect to their ideals, ideas and possibly their effects.

In comparison to Allen's study, the diplomatic historian Ralph B Levering and his mother Miriam Lindsay Levering (a member of the Neptune Group NGO at UNCLOS) published a study that homed in on individual actors. The Leverings limited their focus to one group of activists: The Neptune Group. The book *Citizen Action for Global Change: The Neptune Group and Law of the Sea*⁵⁷ is especially interesting in regard to the method the Leverings applied.

The book was written as a combination of history and memoir, and it concerned the role and impact of the Neptune Group, which operated as an NGO during UNCLOS III. The study reveals some astonishing similarities between the activism of individuals like Mann Borgese and the Levering family. The Leverings had no legal training, but ended up trying

⁵⁴ Cf. Allen, 'An Intellectual History', 63.

⁵⁵ Cf. Allen, 'An Intellectual History', 118.

⁵⁶ Allen, 'An Intellectual History', 104.

⁵⁷ Levering and Levering, *Citizen Action*.

to shape and influence the Law of the Sea at a high level. They also allied themselves with developing countries, and saw the convention as an opportunity to influence discussions on world governance, although the exact impact of their activism and diplomatic skills is hard to quantify.

Interestingly, although the Neptune Group declared themselves to be ‘multilateral internationalists’,⁵⁸ the book reveals that they were critical towards other NGOs that were working for the same cause but with different strategies. Writing about Mann Borgese, Miriam Levering said that they wanted to ‘separate’ themselves ‘miles from her’.⁵⁹ Concerning her activities, they said she was ‘[...] an ivory tower idealist who tactlessly hectored delegates to UNCLOS III [...]’.⁶⁰

Betsy Baker from Vermont Law School rejects this notion.⁶¹ In 2012, Baker published the article ‘Uncommon Heritage: Elisabeth Mann Borgese, *Pacem in Maribus*, the International Ocean Institute and Preparations for UNCLOS III’.⁶² The article presents the findings of a limited archival case study on the possible impact or influence Elisabeth Mann Borgese and her peers could have had on negotiations at UNCLOS through their preparation conferences, *Pacem in Maribus*. In her study, Baker states that the efforts of the International Ocean Institute, which Mann Borgese founded in 1972, were think tank activity, but that a more detailed account of Elisabeth Mann Borgese’s influence would ‘require further study’.⁶³

The articles that were published in connection with the 2012–13 Elisabeth Mann Borgese exhibition, *Elisabeth Mann Borgese und das Drama der Meere*, shed light on some aspects of Mann Borgese’s activism. In ‘Elisabeth Mann Borgese’s humanist conception of

⁵⁸ Levering and Levering, *Citizen Action*, 131.

⁵⁹ Levering and Levering, *Citizen Action*, 33. In footnote 5: ‘Miriam Levering commented about Elisabeth Mann Borgese[...]’.

⁶⁰ John Hannigan, *The Geopolitics of Deep Oceans* (Cambridge: Polity Press, 2016), 62. Hannigan refers to Levering and Levering, *Citizen Action*, 33.

⁶¹ Cf. Hannigan, *The Geopolitics*, 62. Hannigan comments on Baker’s remark and quotes Baker, ‘Uncommon Heritage’, 26-27, 33. Both Hannigan and Baker refer to *Pacem in Maribus* as an NGO. There is no evidence for that. The International Ocean Institute was the only institution built by Mann Borgese that gained NGO status during UNCLOS. Compare Levering and Levering, *Citizen Action*, 33. And Hannigan, *The Geopolitics*, 62.

⁶² Baker, ‘Uncommon Heritage’.

⁶³ Baker, ‘Uncommon Heritage’, 33. Also pointed out by Hannigan, *The Geopolitics*, 62.

marine technology transfer',⁶⁴ Aldo Chircop discusses Mann Borgese's concept of ocean technology in connection with her work at UNCLOS. Chircop argues that progress in marine technology was the motivation behind Mann Borgese's interest in the Law of the Sea. He focuses especially on the aftermath of UNCLOS and Mann Borgese's efforts to realise the technology transfer provision of the treaty through the work of the International Ocean Institute.

The same publication contains another article by Betsy Baker, 'Elisabeth Mann Borgese: Making her way',⁶⁵ in which Baker attempts to follow the origin and evolution of Mann Borgese's ideas for ocean governance through her young adult life and early career with her husband. The article gives a factual overview of the important junctures of Mann Borgese's life in the run-up and aftermath of UNCLOS. However, it does not go into depth concerning Mann Borgese's concrete proposals and influence during the negotiations.

In general, the exhibition catalogue gives an overview of Mann Borgese's life and work, and the origins of her ideals. Interestingly, the articles in the catalogue range from personal memories⁶⁶ to the discussion of Mann Borgese's literary works,⁶⁷ and this spread reflects the general state of research about Mann Borgese and her work with the ocean, much of which is fragmented.

⁶⁴ Aldo Chircop, 'Elisabeth Mann Borgese's humanist conception of marine technology transfer', in *Elisabeth Mann Borgese und das Drama der Meere*, exhibition catalogue, eds. Holger Pils and Karolina Kühn (Hamburg: mareverlag, 2012), 121-221.

⁶⁵ Betsy Baker, 'Elisabeth Mann Borgese: Making her way', in *Elisabeth Mann Borgese und das Drama der Meere*, exhibition catalogue, eds. Holger Pils and Karolina Kühn (Hamburg: mareverlag, 2012), 88-97.

⁶⁶ The exhibition catalogue *Elisabeth Mann Borgese und das Drama der Meere* includes a section on Mann Borgese's personal life. An article by her daughter about their family life: Dominica Borgese, 'Reminiscences of my mother', in *Elisabeth Mann Borgese und das Drama der Meere*, exhibition catalogue, eds. Holger Pils and Karolina Kühn (Hamburg: mareverlag, 2012), 138-141. Their former dog-sitter, the current President of the *International Ocean Institute*, gives an insight into Mann Borgese's personality: Nikolaus Gelpke, 'Der Wille hinter dem Kichern', in *Elisabeth Mann Borgese und das Drama der Meere*, exhibition catalogue, eds. Holger Pils and Karolina Kühn (Hamburg: mareverlag, 2012), 176-179. Her biographer contributes a short piece in which she reminisces about their collaboration in writing her biography: Kerstin Holzer, "'Short-term pessimist, long-term optimist!'" Meere. Visionen, Scherze: eine Erinnerung an Elisabeth Mann Borgese', in *Elisabeth Mann Borgese und das Drama der Meere*, exhibition catalogue, eds. Holger Pils and Karolina Kühn (Hamburg: mareverlag, 2012), 180-185.

⁶⁷ See 'Zwischen utopischem Optimismus und futuristischem Pessimismus. Elisabeth Mann Borgese's politische und literarische Schriften', in *Elisabeth Mann Borgese und das Drama der Meere*, exhibition catalogue, eds. Holger Pils and Karolina Kühn (Hamburg: mareverlag, 2012), 72-85.

The legal studies cover the necessary factual background on how the Law of the Sea evolved, in order to place the actions of Mann Borgese and other actors in context. The social sciences largely deal with the ground-breaking importance of UNCLOS as the first successful international convention on ocean governance at United Nations level, and shed light on the complex situations that actors like Borgese can find themselves in when faced with international negotiations. However, the role of particular individuals has largely been neglected or reduced to a side note.⁶⁸ What seems missing in connection to Mann Borgese's role at UNCLOS – and this is something which Baker has also pointed out – is a deeper engagement with her actual proposals on ocean governance, together with an examination of the strategies she used to try and implement them.

This necessarily has to transcend Mann Borgese's own re-narration and re-assessment of her ocean involvement and her ideas in later years. She did this in numerous articles and publications, most prominently in the 1998 book *The Oceanic Circle*.⁶⁹ An examination of her life's work also has to overcome a deterministic rear-view perspective in order to give a more accurate, less 'cause and effect'-seeking study on the origin of an ideal and her strategies of implementing ideas in order to reach parts of her ideal.

The research that has been done so far in social sciences can be viewed as a sort of large-scale, bird's-eye view camera swooping over the convention and its significance for the international community. Continuing with the camera metaphor, we could say that legal studies of the development of UNCLOS have zoomed in on the process itself. Nevertheless, legal studies have largely stuck to examining the close detail of the law text, and although the importance of individuals has been recognised⁷⁰ in connection with turning points during

⁶⁸ In Mann Borgese's biography, her involvement with UNCLOS is dealt with in five pages. See Kerstin Holzer, *Elisabeth Mann Borgese. Ein Lebensporträt* (Frankfurt am Main: Fischer Verlag, 2003), 196-201. The same applies to other key actors at UNCLOS. The biography of the Norwegian delegate Jens Evensen deals with his role during UNCLOS, but could go much more in depth considering his importance for the negotiations. See Ingolf Vislie, *Jens Evensen. Havet, oljen og retten* (Stamsund: Orkana forlag as, 2017), 446-467.

⁶⁹ Elisabeth Mann Borgese, *The oceanic circle: Governing the seas as a global resource* (Tokyo/New York/Paris: United Nations University Press, 1998).

⁷⁰ In addition to Arvid Pardo, other key players have been recognised. See Michael W. Lodge and Myron H. Nordquist, eds., *Peaceful Order in the World's Oceans. Essays in Honor of Satya N. Nandan* (Leiden/Boston: Brill Nijhoff, 2014). See also James K. Sebenius and Laurence A. Green, *Tommy Koh: Background and*

the negotiations, detailed analysis of individual efforts has largely been set aside. Research on Elisabeth Mann Borgese as an individual actor has succeeded in explaining the origins of her ideas, and has illuminated her work in retrospect, providing a valuable but fragmented overview of Mann Borgese's work.

To complete the allegory of the camera view, the next step is to move in for a close-up of the process through the lens of one person. Such a detailed view of the ideas and intentions of individuals is largely lacking in the available literature. This study about Elisabeth Mann Borgese will attempt to contribute to filling those gaps by combining the development of the Law of the Sea negotiations and the ramifications of a ground-breaking new model of international cooperation with the actions of a single person operating within those processes.

Methodology – Life history

In 2004, Gerda Lerner published an article presenting her findings on a study of methods in women's history. In this study, she found that one in four publications about women worked with a biographical approach.⁷¹ Lois W Banner, who mentions Lerner's study in her article 'Biography as History',⁷² explains this through the fact that in the field of women's history, biography has been found to be an 'effective tool'⁷³ to understand gender.⁷⁴ The findings of Lerner's study are significant for this study about Elisabeth Mann Borgese, for two reasons. First, Lerner's findings underline the necessity of saying a few words about gender, and about how this study positions itself in respect to women's history. Second, we need to give further

Major Accomplishments of the "Great Negotiator, 2014", Working Paper 14-049 (Harvard Business School, 2014).

⁷¹ Gerda Lerner, 'U.S. Women's History: Past Present and Future', *Journal of womens history* (2004), quoted in Lois W. Banner, 'Biography as History', *The American Historical Review* 114, nr. 3 (June 2009): 580. <https://doi.org/10.1086/ahr.114.3.579>.

⁷² Lois W. Banner, 'Biography as History', *The American Historical Review* 114, nr. 3 (June 2009): 579–86. <https://doi.org/10.1086/ahr.114.3.579>.

⁷³ Banner, 'Biography as History', 579.

⁷⁴ Cf. Banner, 'Biography as History', 579. Banner refers to an article by Joan W. Scott from 1986 which was 'pathbreaking'. See Joan W. Scott, 'Gender: A Useful Category of Historical Analysis', *American Historical Review* 91, no.5 (December 1986): 1053-1075.

explanation of why a biographical approach has been chosen as a methodological tool to illuminate Mann Borgese's activism during UNCLOS.

Initially, the study was not primarily concerned with questions of classical women's history. However, one cannot ignore the society in which Mann Borgese lived, and the material viewed for this study shows that Mann Borgese was interested in the question of women's role in society. Not least, her own publication, *Ascent of Woman*,⁷⁵ bears witness to this. In *Ascent of Woman*, Mann Borgese examines her own take on the issue of gender roles and equality, and the publication will be discussed later in this study. Apart from that, gender issues will not be addressed, although the question of gender holds potential in connection to Mann Borgese's involvement with ocean governance, and would need further investigation. For this study, the interest is primarily in Mann Borgese's ideas for ocean governance and her strategies for implementing them. The gender question could be of increased importance when it comes to assessing her influence in the negotiations, the impact of her work, or the reception of her work in the aftermath of UNCLOS, and these issues remain to be studied more closely.⁷⁶

In order to explain the choice of a biographical approach, we have to understand what this entails. Traditionally, biography has been viewed as an inferior type of history that is limited by a one-person angle and a one-life perspective.⁷⁷ This was the case because biography was often written by non-scholars – perhaps hobby historians – and was feared to lack a scientific take on the research subject.⁷⁸ This changed in the 1990s with the appearance of what is called 'new biography',⁷⁹ in which the value of the individual viewpoint is elevated by pointing out that a life and a person are not one-dimensional and singular, but that a person has an ever-shifting personality that is shaped and changed by life events, society and culture.⁸⁰ Therefore, historians writing biographies can argue that 'studying the life story of

⁷⁵ Elisabeth Mann Borgese, *Ascent of Woman* (New York: George Braziller, 1963).

⁷⁶ See Wolfgang U. Eckart, 'Das "Utopia" der Meer-Frau. Elisabeth Mann Borgese und der "Aufstieg der Frau" (1963/1965)', in *Elisabeth Mann Borgese und das Drama der Meere*, exhibition catalogue, eds. Holger Pils and Karolina Kühn (Hamburg: mareverlag, 2012), 64-71.

⁷⁷ Cf. Banner, 'Biography as History', 580.

⁷⁸ Cf. Banner, 'Biography as History', 580.

⁷⁹ Banner, 'Biography as History', 580.

⁸⁰ Cf. Banner, 'Biography as History', 580.

an individual might be seen as akin to studying the history of a city, a region, or a state as a way of understanding broad social and cultural phenomena.⁸¹

Another argument that Banner presents for the rise of biography as historical method is the venture into new fields of history, such as colonial history, transnational and global history. Banner states that examining the lives of individuals or groups of individuals in the light of transnational history forces the biographer into physically following the person they study. According to Banner, ‘Biographers tracking the lives of such individuals may have to become transnational historians, themselves crossing oceans in pursuit of records about their subjects [...]’.⁸²

Although travelling in Mann Borgese’s pathway has been an integral part of this work in order to collect the necessary material and meet key people – and despite the fact that Mann Borgese’s personal life is of interest – this study does not claim to be a biography. Instead, elements of biographical writing are used to illuminate the origin of an ideal. The study does not follow Mann Borgese’s life from birth to death, and the biographical approach in this study might be closer to what Judith M Brown calls ‘life histories’.⁸³ Brown, who is known for having written Gandhi and Nehru’s biographies, rejects the title of ‘biographer’, explaining that she sees herself as ‘a historian of time and region [...] who uses the medium of “life histories,” of individuals and groups of individuals, to seek for evidence to probe many key historical issues.’⁸⁴ This notion of ‘life histories’ – rather than biography – should be kept in mind when reading this study on Elisabeth Mann Borgese and her involvement with the Law of the Sea Convention. Especially since place, location and movement play important roles in the history of Mann Borgese’s ideals.

Apart from the broader context of biographical writing as a methodology of history, the task of examining the role of one individual in a large, multifaceted, international context holds several challenges.

⁸¹ Banner, ‘Biography as History’, 582.

⁸² Banner, ‘Biography as History’, 583.

⁸³ Judith M. Brown, “‘Life Histories’ and the History of Modern South Asia, *The American Historical Review* 114, nr. 3 (June 2009): 587–95, <https://doi.org/10.1086/ahr.114.3.587>.

⁸⁴ Brown, “‘Life Histories’”, 587.

These challenges can be divided into three different categories of questions: those concerning individual motivation and ideological ‘heritage’; the specific proposals or ideas with which the individual hoped to shape the process; and the strategies used by that individual to reach their aim. All three thematic areas will have to be dealt with differently, and this is reflected in the methodological approach to those questions in this study.

First, we have to ask why the individual has an interest in engaging in the process. Otherwise it will be difficult to understand the person’s motivation. Is it ideological? Selfish? Accidental? This study has chosen to approach this question by delving into Mann Borgese’s personal life and intellectual heritage. Using a biographical approach, we will illuminate Mann Borgese’s specific personal motivation to engage in shaping the Law of the Sea. Methodologically, as discussed above, this approach can pose some challenges. On the one hand, the biographer’s task is to bring order to a chaotic chain of events. On the other hand, it is vital to avoid constructing a simple cause-and-effect narrative. This is further complicated in so far as this study has no ambition to present a biography of Mann Borgese, but attempts to facilitate a biographical approach in order to grasp the origin of her ideals.

To avoid simplifying Mann Borgese’s background as we attempt to examine the origins of her ideals, this study uses several sources to illuminate Mann Borgese’s past and personality. The material that tells us most about her personal life is her letters. With the help of her personal correspondence, the study will shed light on the private relationships, attitudes and ideas that Mann Borgese formed in the years prior to UNCLOS III. Additionally, the study will combine these personal insights gleaned from letters with a closer investigation into the specifics of the time period – historical and political – in which Mann Borgese’s ideologies were shaped, and the question of who and what shaped them.

Once we have discovered the origin or origins of an individual’s motivation to shape and influence a process, we next have to ask how the person wished to accomplish this. What was at the core of their ideals? And what ideas did the individual advocate to shape and influence the process?

In this part of the study, the specifics of Mann Borgese’s proposals to implement or further her ideals will be analysed. This will be done by discussing specific proposals from

Mann Borgese, such as reports, articles and other documents. The aim of reading the proposals is to grasp how the ideas were formed, but also how they evolved over time. The study has chosen to work very closely with this material, and the objective is to experience Mann Borgese's ideas in the context of the time in which the proposals were made, rather than to examine her proposals in the light of the outcomes of the convention.

The aim with this method is to avoid over-interpreting Mann Borgese's impact on decision-making during UNCLOS. Staying close to the specific suggestions will also prevent a deterministic reading of Mann Borgese's ideas in light of the results of her proposals. Thereby, the study hopes to underline the exercise of showing ideas in action – which is the aim of this study – rather than reviewing ideas in hindsight.

Finally, we will also have to examine how the individual tried to influence the process. Was there a specific strategy to implement the ideas? Were there allies and supporters? Did the individual use specific tools to achieve their goal of implementing ideas?

This last thematic section largely deals with the question of strategy – understood in a wider sense as being the various approaches by which one tries to reach one's aims – and how strategy is best examined. Here it is important to note that strategy, especially with individual actors like Mann Borgese, can evolve over the course of time. In order to grasp Mann Borgese's differing attempts to strategize, it will be important to analyse various episodes in which Mann Borgese intentionally tried to influence the negotiation process. These events will be examined through looking at direct actions – like letters specifically directed at mobilising allies, or reports, lectures and documents that harboured agendas or spoke openly about agendas. The study will also analyse personal decisions Mann Borgese made concerning her participation in different forums and the various channels she used, all of which can give us insights into her strategies for implementing her ideas.

This methodological overview across three thematic sections might give the false impression that the thematic areas are distinct from one another. This is not the case. The questions of biographical background, ideal, idea and strategy are closely intertwined. This is especially true for questions about strategies and ways of implementing ideas, since strategizing, in Mann Borgese's case, was an activity that coincided with putting the ideas

into action. The biographical approach will never entirely disappear in the study, despite the fact that the focus will shift from her personal background to the content of her work. This biographical strand is maintained through recurring commentary on Mann Borgese's ideas, actions or strategies, expressed through her correspondence with allies and partners. Together with reports, documents and articles written by or about Mann Borgese, her personal letters will form the material foundation of this study.

Archival material

The majority of the material that will be examined in this study stems from the Elisabeth Mann Borgese Fonds,⁸⁵ held by the Dalhousie University Archives in Halifax, Nova Scotia. Most of Mann Borgese's private and work-related correspondence can be found in the holdings of the archives, as well as academic articles, research documents, newspaper articles, and other hand-written and typed material.

The collection comprises an abundance of personal and professional correspondence, reports, drafts, and other documents that Mann Borgese worked with prior to, during and after UNCLOS III, and the full archive exceeds the material viewed for this study by far.

This study has focused on UNCLOS-related correspondence with key actors at the convention, and with a special focus on her allies and collaborators. Furthermore, the study has reviewed documents of an academic nature (lectures, reports, articles, memorandums and books), that were written by Mann Borgese. For an occasional outsider view of particular issues, the study has incorporated newspaper articles that inquired into relevant issues from a more overarching perspective.

The archive holds enough material for several subsequent studies on Mann Borgese and her ideas for ocean governance. Her role in the Club of Rome, the specific content and aims of the *Pacem in Maribus* conferences that she held in the early 1970s, and the non-ocean-related research she conducted in Santa Barbara are all largely untouched by this study. Additionally, the fund holds ocean-related material that could potentially be used in other

⁸⁵ Elisabeth Mann Borgese Fonds, MS-2-744, Dalhousie University Archives and Special Collections, Halifax, Canada.

studies – for instance, those dealing with other key players and individuals, either in relation to Mann Borgese or by themselves.

For biographical information about Mann Borgese in relation to her upbringing, her family and her young adult life, material from the Monacensia Archive⁸⁶ in Munich and the Thomas Mann Archive⁸⁷ in Zürich was viewed. A small proportion of the material on her personal life was retrieved from the house of her daughter, Nica Borgese,⁸⁸ in Milan. This mostly consisted of private and professional correspondence from the 1940s and 1950s.

For access to official records of UNCLOS III negotiations, the United Nations Archives⁸⁹ in New York were visited to supplement the extensive collection of official UN documents stored at the Dalhousie University archives.

Concerning Mann Borgese's relation to Arvid Pardo and the Maltese government, the Pardo Room⁹⁰ at the University of Malta was visited. Unfortunately, the material about Arvid Pardo is very limited, and much of it is fractured and difficult to obtain – especially in comparison with the abundance of material about Mann Borgese. The Pardo Room holds a small amount of personal correspondence and newspaper articles, plus a modest collection of Pardo's academic work in relation to UNCLOS. Most of the personal correspondence between Pardo and Mann Borgese is also available at the Dalhousie University Archives.

The United Nations Archive in New York holds one classified folder on Arvid Pardo,⁹¹ which might contain information on his work engagements with the United Nations. This could potentially hold material for an interesting future study on his work as an ambassador and in other positions at the United Nations. To date, the folder is still waiting for declassification.

⁸⁶ Nachl. Elisabeth Mann Borgese, EMB, Monacensia Literaturarchiv, München, Germany.

⁸⁷ Ergänztter Nachlass Thomas Mann, B-III Briefe von Familienmitgliedern (direkte Nachkommen Thomas und Katia Manns, deren Ehepartner sowie Katia Mann), Thomas-Mann- Archiv, Zürich, Switzerland.

⁸⁸ Nica Borgese, Private Collection, Milano, Italy.

⁸⁹ Office of the Secretary-General Law of the Sea Conference Records 1973-1983, United Nations Archives & Record Management Section, New York City, United States of America.

⁹⁰ Arvid Pardo Study Area, Pardo Room, University of Malta, Msida, Malta.

⁹¹ See S-0289-0009-36 Office of the Chef de Cabinet, Personnel case files, Arvid Pardo, 01.10. 1964-30.04.1972. (strictly confidential).

This study will keep its focus on Mann Borgese's ideals, ideas and strategy before, during and after UNCLOS. Despite the more limited material situation on Arvid Pardo, the study will look into Pardo's role in Mann Borgese's ideas, and will examine their collaboration in the 1970s. A detailed study of Arvid Pardo's perspective on the common heritage, and how or whether this changed during UNCLOS, is not carried out in this study. If one were attempting to do so, the material currently available is less exhaustive than Mann Borgese's holdings. However, it might be worthwhile to consider a similar future study of Arvid Pardo's contribution, which would either confirm or correct perceptions of his role during UNCLOS III.

Finally, for further insights into Elisabeth Mann Borgese's personality, and in order to strengthen the biographical aspect of the work, ten interviews were conducted with colleagues, friends, and a family member.⁹² The content from the interviews was mainly treated as background information, and provided clues that prompted further investigation into specific issues around Mann Borgese's processes of thinking, her way into the Law of the Sea, and her personal history.

⁹² Baillet, Francois. (Senior Legal Officer, United Nations DOALOS), telephone interview with Tirza Meyer, November 11, 2016. New York – Trondheim. USA/Norway.

Borgese, Nica. (Professor CNR Institute of Neuroscience, Milano), interview with Tirza Meyer, October 26, 2015. Milano, Italy.

Borg, H. E. Saviour F. (Ambassador of Malta to Switzerland, Ministry of Foreign Affairs), interview with Tirza Meyer, March 15, 2017. Valetta, Malta.

Chircop, Aldo. (Professor of Law, Canada Research Chair (Tier 1), in Maritime Law and Policy), interview with Tirza Meyer, March 6, 2016. Oslo, Norway.

Coady, Anita. (Member of the International Ocean Institute Governing Board), interview with Tirza Meyer, May 25, 2017. Halifax/NS, Canada.

Enright, Catherine. (Retired associate Professor, Nova Scotia Agricultural College), interview with Tirza Meyer, May 25, 2017. Sambro Head/NS, Canada.

Gelpke, Nikolaus. (Editor and head of Mareverlag publishing house; president of the International Ocean Institute), telephone interview with Tirza Meyer, September 12, 2016. Trondheim – Hamburg. Norway/Germany.

Koh, Tommy. (Ambassador-at-Large Singapore Ministry of Foreign Affairs; Professor and rector of Tembusu College, Faculty of Law), e-mail to Tirza Meyer, September 8, 2016.

McAllister, Ian. (Professor Emeritus, Department of Economics, Dalhousie University), May 26, 2017. Halifax/, Canada.

Williamson, Hugh. (Adjunct Professor: Marine Affairs Program, Dalhousie University), interview with Tirza Meyer, April 29, 2016. Halifax/NS, Canada.

Disposition

This study will be divided into four main parts. The first part deals with Elisabeth Mann Borgese's biography and her route into academia, during which her ideals were formed (1918–1967); the second part will deal with her work prior to UNCLOS III (1967–1973); the third part will enquire into Mann Borgese's ideas during UNCLOS III (1973–1982), and the final part will briefly examine the aftermath of UNCLOS III (1982–1994) in the light of Mann Borgese's ideals.

The four parts can be summarised under the following thematic headlines: 1. Formation – how the ideal evolves. 2. Preparation – how Mann Borgese develops ideas in preparation for applying the ideal. 3. Action – how attempts are made to apply the ideas during the hot negotiation phase. 4. Reparation – how Mann Borgese tries to rescue her ideas during the implementation period.

Part 1. Formation is comprised of two chapters. The first part will present the background of the two essential subjects in this study. First, Mann Borgese's personal background, and second, the origins of the discussions on the Law of the Sea. Chapter 1 starts with Mann Borgese's childhood and early years in time-lapse, from 1918 to 1939. We will look at her relationship with her husband, who would have an effect on the formation of her ideals of internationalism. We will then examine her introduction to the academic world in 1946 through the Committee to Frame a World Constitution in Chicago, where her internationalist ideals would develop alongside her ambitions to engage in academic work. Finally, the chapter will deal with the committee's fall during the McCarthy era in 1952, the Borgeses' retreat to Italy, and Mann Borgese's 1964 re-engagement with a new academic research institution engaged in questions of governance in the form of the Center for the Study of Democratic Institutions in Santa Barbara.

Having discussed the formation of Mann Borgese's intellectual ideals, chapter 2 will examine the development of ocean governance. This chapter will deal with the lead-up to UNCLOS I and UNCLOS II, and the chapter will start with a flashback to the fundamental principles of ocean governance that were developed in 1600 with *Mare Liberum* and *Mare Clausum*. The chapter will trace back the first attempts to codify the Law of the Sea at The

Hague, and will examine the effect the Truman Declaration had on ocean governance in 1945. Finally, the chapter will enquire into the outcomes of UNCLOS I and UNCLOS II, from the perspective that these conferences laid the groundwork for UNCLOS III.

Part 2. Preparation comprises four chapters, in which we will examine the various ways through which Elisabeth Mann Borgese attempted to influence the preparation period (1967–1973) prior to UNCLOS III. In chapter 3, we will return to Mann Borgese and her first contact with the Maltese ambassador, Arvid Pardo, in 1967. This chapter will focus on Arvid Pardo's vision and his past, in the light of the significance of Pardo's vision for Mann Borgese's own ideas about ocean governance.

In the next chapter, we will examine Mann Borgese and Pardo's collaboration during the first *Pacem in Maribus* conferences in 1970. Chapter 4 will illuminate how Mann Borgese and Pardo attempted to influence the Seabed Committee in various ways and through various channels prior to UNCLOS III, with the help of the *Pacem in Maribus* collaboration.

Having examined how the Maltese ambassador's ideas corresponded with Elisabeth Mann Borgese's ideals of world governance, in chapter 5, we will study Mann Borgese's concrete suggestions for ocean governance. The chapter will discuss her draft for an ocean treaty, 'The Ocean Regime', in the context of how she thought the common heritage principle could be applied to the seafloor. In comparison, Arvid Pardo's suggested 'Draft Ocean Space Treaty' will be analysed in order to distinguish Mann Borgese's vision – one that aimed at world governance – with Arvid Pardo's vision that was restricted to the area outside national jurisdiction.

Chapter 6 will deal with Mann Borgese's ultimately failed attempts to realise her ideas through headquarters in Malta and participation in the Maltese delegation, while Arvid Pardo's position as a diplomat declined due to changes in the Maltese government. The chapter will examine Mann Borgese's attempts to create the International Ocean Institute, which would allow her to participate in the forthcoming negotiations at UNCLOS III.

After examining the preparation period prior to UNCLOS III, the study will turn to the beginning of the negotiation phase in Part 3. Action. This part will deal with the hot negotiation phase during UNCLOS III from 1973 to 1978, when the seabed issue caused a

stalemate at the convention. We will then examine the last years of the negotiations, running up until 1982 when the treaty was voted for.

Chapter 7 will start with a historical overview of the situation at the United Nations that Mann Borgese would encounter when she entered the negotiations as a delegate for her own NGO, the International Ocean Institute. The chapter will examine the specific issue of the seabed outside national jurisdiction, and will explore Mann Borgese's various suggestions for solving the problems, as she attempted to apply them through *Pacem in Maribus* and in her position as a delegate for an NGO. The chapter will then follow the ultimate decline of Mann Borgese and Pardo's relationships with Malta, in light of their differing suggestions for ocean governance that parted at the radical proposals for holistic ocean governance.

The study will then venture into the core issues of UNCLOS concerning the seafloor and the international machinery that should govern it. In chapter 8, we will follow Mann Borgese in her transition from being an NGO representative to becoming a delegate for Austria in order to have the right to speak and affect the negotiations. The chapter will set out the opposing positions held by industrial and developing states concerning the governance of the seafloor. These challenges will be studied in the light of Mann Borgese's suggestions on how the seafloor could be governed in favour of developing states. The chapter will close with the stalemate at the convention caused by the Reagan administration, and will explore the Austrian delegation's pessimism concerning a fair solution to the Authority problem.

Chapter 9 will deal with the aftermath of the stalemate, and the final vote on the convention in 1982. The chapter will follow Borgese's last attempts to reach agreement for what she saw as the intact provision for the deep seafloor. The chapter will follow another of Mann Borgese's transitions, this time from Santa Barbara to Halifax in 1978, during the turbulent year of the stalemate and its aftermath.

The final part, Reparation, will comprise one chapter, and will be a summary of the outcome of the convention in the context of Mann Borgese's ideas. Chapter 10 will shed light

on the ultimate defeat of Mann Borgese's ideas when the 1994 Implementation Agreement was adopted.

PART I – FORMATION 1918–1967

Chapter 1. Elisabeth Mann Borgese's introduction to world governance

Elisabeth Mann Borgese's life in time-lapse

Elisabeth Mann Borgese spent much of her professional life between places. She was always on the move, travelling from one conference, session or gathering to another. Several times during her life she moved her home between countries and even continents. She changed citizenship on various occasions – depending on where she lived and worked – and seemingly without any great sentiment. Who was this woman, and how did she get into ocean governance?

Elisabeth Veronika Mann was born in Munich on 24 April 1918, into the intellectual Mann family.⁹³ She was the fifth child, and succeeded in making enough of an impression on the world to detach herself from the label of simply being 'Thomas Mann's daughter'. In academic and diplomatic circles, there was often little interest in her family background.⁹⁴

By the time she reached her teenage years, the travelling and movement that would characterise her life had already begun. Germany had become a hostile place for families with Jewish heritage, and Thomas Mann's wife, Katia, had Jewish ancestry, so the family left the country in 1933.⁹⁵

At first, they moved to Germany's neighbour, Switzerland. From 1933 onwards, Elisabeth Mann lived with her family in Zürich and attended the Freie Gymnasium Zürich, graduating

⁹³ Several CV versions exist. For detailed information from 1918-1982, see MS-2-744, Box 16, Folder 19. Shorter version see MS-2-744, Box 362, Folder 6.

⁹⁴ For more information on the Mann family: several studies are available. Memoirs of family members: Monika Mann, *Vergangenes und Gegewärtiges. Erinnerungen* (München: Kindle Verlag, 1956); Klaus Mann, *Der Wendepunkt. Ein Lebensbericht* (Reinbek: Rowohlt 2006, first edition 1952); Elisabeth Plessen and Michael Mann, eds., *Meine ungeschriebenen Memoiren* (Frankfurt am Main: Fischer Verlag, 1974). Biographies about family members: Inge Jens and Walter Jens, *Frau Thomas Mann: Das Leben der Katharina Pringsheim* (Reinbek: Rowohlt, 2004). Karin Andert, *Monika Mann. Eine Biographie* (Hamburg: mareverlag, 2010); Klaus Harpprecht, *Thomas Mann: Eine Biographie* (Reinbek: Rowohlt, 1995).

⁹⁵ Cf. Irmela von der Lühe, "'Ich gehöre doch zu den Kleinen'" Elisabeth Mann Borgese als Chronistin ihrer "amazing family"', in in *Elisabeth Mann Borgese und das Drama der Meere*, exhibition catalogue, eds. Holger Pils and Karolina Kühn (Hamburg: mareverlag, 2012), 20. See also Thomas Sprecher, 'Eine Jugend in Zürich. Elisabeth Mann in den Jahren 1933-1938', in *Elisabeth Mann Borgese und das Drama der Meere*, exhibition catalogue, eds. Holger Pils and Karolina Kühn (Hamburg: mareverlag, 2012), 34.

in 1935 at 17 years old. When she was 19, she finished her training as a concert pianist,⁹⁶ a career path she would not pursue further. In 1936, the family obtained Czech citizenship.⁹⁷

Together with their two youngest children, Elisabeth and Michael, the Manns moved to Italy for a short while. This may have been because they wanted to reassess the European political situation, or because Thomas Mann was reluctant to completely abandon his home country.⁹⁸ Finally, in 1938, like many other European intellectuals, the family turned away from Europe and made their way across the Atlantic to the United States.⁹⁹

The Manns found a new home in Princeton, where they were surrounded by other European intellectuals who had also felt compelled to emigrate. At one point during their time in Princeton, Albert Einstein lived in the neighbourhood.¹⁰⁰

In Princeton, Elisabeth Mann met her future husband, the famous writer and scholar Giuseppe Antonio Borgese, 36 years her senior. One year later, in 1939, the couple married. In 1940, when Elisabeth Mann was 22, her first daughter, Angelica, was born in Chicago. Four years after her arrival in Princeton, she obtained citizenship of the United States in 1941, and her second daughter, Nica, was born in Chicago in 1944.¹⁰¹

From 1946 to 1952, Elisabeth Mann Borgese and her husband worked on formulating a 'World Constitution' in Chicago.¹⁰² In September 1952, the couple returned to Europe and settled in Fiesole, outside Florence in Italy. Just two months later, on 4 December 1952, Giuseppe Antonio Borgese died in Fiesole.¹⁰³

From 1953 until 1964, Elisabeth Mann Borgese lived with her daughters in Italy and worked on several different projects. According to her Curriculum Vitae, she was employed

⁹⁶ Cf. MS-2-744, Box 362, Folder 6. See Sprecher, 'Eine Jugend in Zürich', 43.

⁹⁷ Sprecher, 'Eine Jugend in Zürich', 43. Sprecher refers to Thomas Mann Tagebücher: 1935-1936, 396 [10.03.1937].

⁹⁸ Cf. Holzer, *Elisabeth Mann Borgese*, 69-70.

⁹⁹ Cf. Sprecher, 'Eine Jugend in Zürich', 45.

¹⁰⁰ See Holzer referring to Einstein in: Holzer, *Elisabeth Mann Borgese*, 94. Elisabeth Mann Borgese wrote a letter to Albert Einstein in 1951. See B-III.17.EINS-1, 24.03.1951.

¹⁰¹ Cf. Giovanni di Stefano, 'Giuseppe Antonio Borgese. Porträt eines unruhigen Weltbürgers', in *Elisabeth Mann Borgese und das Drama der Meere*, exhibition catalogue, eds. Holger Pils and Karolina Kühn (Hamburg: mareverlag, 2012), 60.

¹⁰² Cf. MS-2-744, Box 362, Folder 6.

¹⁰³ Cf. Stefano, 'Giuseppe Antonio Borgese', 62.

as an editor for ‘international publications’¹⁰⁴ affiliated with the Ford Foundation. One was called *Perspectives*, and was a magazine about culture, while another was a UNESCO-funded magazine called *Diogenes*.¹⁰⁵ She also ‘wrote short stories, essays and plays’.¹⁰⁶ In 1964, she returned to the United States to take up a Senior Fellowship at the Center for the Study of Democratic Institutions in Santa Barbara.¹⁰⁷

We have fast-forwarded through 46 years of Elisabeth’s life. In that time, she had changed citizenship three times, and lived in four different countries – Germany, Switzerland, the United States and Italy. She had been married to a much older man, borne two children, been widowed at just 34 years old, and managed to earn enough money on her own to get the family through some rough years after Borgese’s death.

Before we continue with her life and start looking into how she got involved with the oceans, we should linger for a while over her relationship with Giuseppe Antonio Borgese and the work she did for The Committee to Frame a World Constitution. Did associating with the intellectuals in the Chicago circle influence her thoughts, and would this be reflected in her later career as she moved towards shaping the Law of the Sea?

Making connections – An intellectual love with Giuseppe Antonio Borgese

Whenever Elisabeth Mann Borgese was asked about her late husband, the anti-fascist novelist and academic Giuseppe Antonio Borgese, she always talked about him with respect and pride.¹⁰⁸ She often chose to emphasise the effect he had on her intellectual education.¹⁰⁹ He gave her books he wanted her to read, introduced her to people he thought would be interesting to her, and made her his close confidante, secretary and later research assistant.¹¹⁰

¹⁰⁴ MS-2-744, Box 16, Folder 19

¹⁰⁵ Cf. Holzer, *Elisabeth Mann Borgese*, 146-147.

¹⁰⁶ A first extensive collection of Mann Borgese’s publications can be found in: Pils and Kühn, eds., *Elisabeth Mann Borgese*, 246-255.

¹⁰⁷ NB-Folder 5, May 20, 1964.

¹⁰⁸ See Holzer, *Elisabeth Mann Borgese*, 129: “‘Er war ein Gentelman, ehrenhaft und hochanständig’, betont sie, “und ich habe ihn sehr verehrt. Aber er war eben unerträglich.”

¹⁰⁹ Holzer described this in: Holzer, *Elisabeth Mann Borgese*, 112-114. Mann Borgese refers to his influence on her in a letter to her daughters in 1982. Cf. EMB B4 Mann Borgese, 15.10.1982.

¹¹⁰ Cf. Baker, ‘Elisabeth Mann Borgese’, 91.

Elisabeth Mann Borgese was only 20 years old when she met Borgese for the first time at her parents' home in Princeton. Borgese was 56.¹¹¹ Throughout her life, she always told the same story about how they met and fell in love.¹¹² She had been reading his book, *Goliath – The March of Fascism*,¹¹³ which was published in 1937 and was the first of Borgese's literary works to be written and published in exile.¹¹⁴ He, like Thomas Mann, had left Europe because of the rising threat of fascism. In 1931, after several incidents where his lectures at the University of Milan were disrupted by fascists, he moved to the University of California.¹¹⁵ Initially, the visit was planned to last six months, but he decided to stay in the United States when he received a letter from the Italian government stating that all university lecturers were requested to take an oath of loyalty to the nationalist regime.¹¹⁶ By 1937, he had become a vocal advocate of anti-fascism in exile.¹¹⁷

Based on having read his book, Elisabeth Mann decided that she wanted to marry this man.¹¹⁸ She never said exactly what it was that fascinated her so much about his writing, but perhaps she thought it was obvious: Borgese's powerful call for anti-fascism, and his accurate assessment of the global political situation in the lead-up to World War II. *Goliath – The March of Fascism* was undoubtedly a precursor to Giuseppe Antonio Borgese's involvement with the world constitution from 1945 onwards. At the moral heart of his work was the conviction that nation states had served their purpose, and that a new era of international cooperation was to come.¹¹⁹

¹¹¹ For a more detailed account on their first meeting see Holzer, *Elisabeth Mann Borgese*, 96-110.

¹¹² For instance at the Nexus Lecture in 1999. See Elisabeth Mann Borgese, 'The Years of my Life. The Nexus Lecture' (1999), in *Elisabeth Mann Borgese und das Drama der Meere*, exhibition catalogue, eds. Holger Pils and Karolina Kühn (Hamburg: mareverlag, 2012), 211.

¹¹³ Giuseppe Antonio Borgese, *Goliath – The March of Fascism* (New York: Viking Press, 1937).

¹¹⁴ Cf. Stefano, 'Giuseppe Antonio Borgese', 55.

¹¹⁵ He held several chair positions from 1931-1936, also in New York. Cf. Hannibal S. Noce, 'Giuseppe Antonio Borgese', in *Modern Philology* 50, no. 4, (May, 1953): 218, <https://www.jstor.org/stable/pdf/434830.pdf?refreqid=excelsior%3A4c09664181508579e876d414c219c14f>.

¹¹⁶ Cf. Stefano, 'Giuseppe Antonio Borgese', 54-55.

¹¹⁷ Cf. Stefano, 'Giuseppe Antonio Borgese', 55.

¹¹⁸ Cf. EMB B4 Mann Borgese, 15.10.1982.

¹¹⁹ Cf. Stefano, 'Giuseppe Antonio Borgese', 56.

As luck would have it, Elisabeth Mann met the author of this prophetic book at her parents' house in Princeton in 1938, when he came to meet Thomas Mann.¹²⁰ In an interview about her life, she said that her older sister Erika had helped to arrange the meet-cute.¹²¹ Elisabeth Mann was instructed to pick Borgese up from the train station, and as she later told her biographer Kerstin Holzer, the reality of the man lived up to her image of him. Over the ensuing month, her sibling arranged further meetings, and the pair quickly became a couple.¹²²

This coincidence could have been more of a deliberate arrangement, and her own family may even have been hoping for it. Neither Elisabeth Mann Borgese herself nor any member of the Mann family ever contradicted this version of events, so we cannot know whether her fantastic love story was the absolute truth, or a romanticised version of it. Giovanni di Stefano, who mentioned Elisabeth Mann Borgese's story in an article about her husband, suggested that she might have perpetuated this version of their meeting to emphasise their intellectual connection.¹²³

Elisabeth Mann was fascinated by the older and more experienced man. Although she was far from aimless in this, as she confided to her biographer Kerstin Holzer, who reported that Elisabeth Mann '[...] wanted to learn, and she wanted to look up to someone. She was able to do that as a student of her husband.'¹²⁴ The urge to learn – and maybe even to admire – were traits that she would display throughout her life, and Borgese was not the last man she would look up to. He was the second – after her father¹²⁵ – in a series of important men in her life, all of whom she had an intellectual connection with, and in some cases potentially a romantic one too.

¹²⁰ Cf. Holzer, *Elisabeth Mann Borgese*, 101.

¹²¹ See Ingo Hermann, ed., *Elisabeth Mann Borgese. Die Meer Frau. Gespräch mit Amadou Seitz in der Reihe "Zeugen des Jahrhunderts"* (Göttigen: Lamuv Verlag GmbH, 1993), 27.

¹²² Cf. Holzer, *Elisabeth Mann Borgese*, 103.

¹²³ Stefano, 'Giuseppe Antonio Borgese', 46.

¹²⁴ Holzer, *Elisabeth Mann Borgese*, 112. 'Elisabeth wollte lernen, und sie wollte zu jemandem aufblicken. Als Schülerin ihres Mannes konnte sie das.'

¹²⁵ Cf. Peter Serracino Inglott, 'Elisabeth Mann Borgese: A Metaphysician by Birth.' *Ocean Yearbook* 18 (2004): 22-74, quoted in Wolfgang U. Eckert, 'Das "Utopia" der Meer-Frau. Elisabeth Mann Borgese und der "Aufstieg der Frau" (1963-1965)', in *Elisabeth Mann Borgese und das Drama der Meere*, exhibition catalogue, eds. Holger Pils and Karolina Kühn (Hamburg: mareverlag, 2012), 67.

That those people she admired were men was perhaps due to the fact that not many women in the 1950s could aspire to much beyond being a housewife. It might be more correct to suggest that Elisabeth Mann Borgese in general admired people who pursued their goals by using their wit and intellect, and that in 1950, those people were mostly men.¹²⁶

The question of the relationship between men and women interested Elisabeth Mann even before she met Borgese. For many years, she had worked on a little publication about her thoughts on the subject. It resulted in a book she titled *Ascent of Woman*.¹²⁷ The book was first published in 1963, but she had been working on it for years.¹²⁸ In a letter to her husband in 1951, she reported on her progress: 'I have worked myself again into the old Blaustrümpfli; now called "The Ascent of Woman" which would go so very well with "The Descent of Man." I like that title, although it might be to some extent misleading since, as you know, the book is not feminist at all.'¹²⁹

Indeed, the book is far from the feminist pamphlet its title suggests. Wolfgang U Eckert, who wrote an article about *Ascent of Woman*, supports this view.¹³⁰ While the book is not suited to a study of early feminism – since it is not feminist – it can, however, give us some insights into Mann Borgese's understanding of the male-dominated society she lived in.

In the book, Mann Borgese lays out a utopian theory in which women first rise through the ranks of society, but in the end are dominated by older, wiser patriarchs from whom they are supposed to learn. When the society of women has been perfected, families are built that are led by older, mature men 'between forty-five and seventy-five years, from

¹²⁶ Her daughter emphasised in an interview that Mann Borgese was not a feminist. Borgese, Nica. (Professor CNR Institute of Neuroscience, Milano), interview with Tirza Meyer, October 26, 2015. Milano, Italy.

¹²⁷ Elisabeth Mann Borgese, *Ascent of Woman* (New York: George Braziller, 1963).

¹²⁸ Cf. Hermann, ed., *Die Meer Frau*, 40. Mann Borgese said she started being interested in this topic when she was 14 or 15 years old.

¹²⁹ EMB B3 Mann Borgese, 26.09.1951.

¹³⁰ See Eckert, 'Das "Utopia"', 64-71.

whom the “young, beautiful, receptive, sacrificial, loyal, committed women” learn wisdom and virtue.¹³¹ Finally, women actually turn into men and reach a kind of higher wisdom.¹³² According to Wolfgang Eckert’s reading of the theory ‘[...] Elisabeth’s *Ascent of Woman* is not about this ascent, or even the “descent of the man”, but solely about the rise of Elisabeth Mann Borgese to male acceptance in a male-dominated family.’¹³³ A male-dominated society too, we might add.

Elisabeth Mann Borgese’s theory might also be an attempt to explore her own life choices in marrying Borgese and learning from him. Perhaps she felt this was her only chance to find a way into greater ‘wisdom’ or a deeper purpose in life than being a housewife. Decades later, she wrote a letter to her daughters saying that ‘He [sic: Borgese] taught me most of the things I know.’¹³⁴ She then explained what she had perhaps been attempting to articulate through *Ascent of Woman*:

You may be surprised that I mention all those “intellectual” things first, but when you are 20, and marry a man 56, and you fell in love with his intellectual work, that was all very important. We spent long, long evenings, over a bottle of wine, talking and talking and talking (he did most of the talking, but I did some too), and there were very happy evenings. In spite for [sic: in spite of] some storminess, it was, for many years, a very successful and happy marriage.¹³⁵

Maybe *Ascent of Woman* is a reflection on their early years of marriage, during which Elisabeth Mann Borgese learned from her husband and he influenced her intellectual development. We have to bear in mind that, although she had travelled and moved around a lot, she had lived with her parents for most of her life. Her marriage to Borgese was the first time she had moved outside her parents’ sphere of influence.¹³⁶ During their marriage,

¹³¹ Eckert, ‘Das “Utopia”’, 71. ‘[...] zwischen fünfundvierzig und fünfundsiebzig Jahren, von denen die jungen, schönen, aufnahmefähigen, opferwilligen, loyalen, dienstfertigen Frauen’ Weisheit und Tugend erlernen.’

¹³² Cf. Eckert, ‘Das “Utopia”’, 71.

¹³³ Eckert, ‘Das “Utopia”’, 71. ‘Letztlich geht es in EMBs Aufstieg der Frau gar nicht um eben diesen Aufstieg, oder gar um den ‘Abstieg des Mannes’, sondern alleine um den Aufstieg der Elisabeth Mann Borgese zur männlichen Akzeptanz in einer männlich dominierten Familie.’

¹³⁴ EMB B4 Mann Borgese, 15.10.1982.

¹³⁵ EMB B4 Mann Borgese, 15.10.1982.

¹³⁶ See Holzer, *Elisabeth Mann Borgese*, 110. She was the only one of the six children to live with her parents until her marriage.

Giuseppe Antonio Borgese enhanced Elisabeth Mann's interest in discussions on fascism, politics and world governance.

In an early letter to Borgese before their marriage, she wrote: 'Concerning Lehr- und Wanderjahre I am not yet content. My opinion is one has to lernen und zu wander all one's life.'¹³⁷ This was a reference to Goethe's 'Wilhelm Meister's Journeyman Years', and perhaps referred back to a previous intellectual discussion between them. The assertion that 'one has to lernen und zu wander all one's life' is something Elisabeth Mann Borgese truly put into action throughout her own life. Even at this early stage, the learning and wandering had already started, and through her marriage to Giuseppe Antonio Borgese she would be given a direction.

Elisabeth Mann went from being the youngest daughter in an expat-German intellectual household, safeguarded by the ties of her family and her status as the youngest female member, to being the spouse of a well-respected man who had built himself a reputation based on decades of publishing and teaching success. Elisabeth Mann had just finished her 'Matura' in Munich and completed her concert pianist training in Switzerland a year before they met. Now, instead of starting a career as a concert pianist, she began her new life as newlywed, taking care of the household, learning to cook and doing some typing work for her husband.¹³⁸

Starting out as a personal secretary – very much in the fashion that her mother, Katia Mann, carried out secretarial functions for Thomas Mann – Elisabeth Mann Borgese became familiar with the academic work of her husband. Unlike her mother, though, she soon had higher aspirations. She was eager to learn and to contribute to her husband's research for The Committee to Frame a World Constitution in Chicago.¹³⁹

¹³⁷ EMB B3 Mann Borgese, Tuesday [no date].

¹³⁸ Cf. Holzer, *Elisabeth Mann Borgese*, 110-114.

¹³⁹ Cf. Holzer, *Elisabeth Mann Borgese*, 121.

The Chicago Committee to Frame a World Constitution

When Elisabeth Mann Borgese came to Chicago with her husband in 1939, two people were going to be of great importance for her further career. Her husband, Giuseppe Antonio Borgese, who introduced her to the Chicago circle, and Robert Maynard Hutchins. Hutchins was the president and later chancellor of the University of Chicago between 1929 and 1951.¹⁴⁰ When he came to office in 1929 at just thirty years old,¹⁴¹ he was the youngest ever university president in the United States.

Under Hutchins's presidency, the University of Chicago took a central role in the administration and organisation of the Manhattan Project.¹⁴² That the Manhattan Project would lead to the discovery of nuclear energy and ring in the 'Atomic Age' was something Hutchins had failed to foresee. Asked later about his involvement in the whole enterprise, he said that he simply thought 'it couldn't be done.'¹⁴³ This was a misconception that, from his point of view, not only caused the sudden death of 100,000 civilians when 'Little Boy' and 'Fat Man' were dropped on Hiroshima and Nagasaki in August 1945, but also marked the end of World War II and the start of a new, conflict-ridden era: the Atomic Age.

Hutchins was conscience-stricken and very aware that he had participated in the operation and thereby contributed to the horror that the bomb inflicted not only on the Japanese, but also on the whole world.¹⁴⁴ In a radio programme called 'The University of Chicago Roundtable', broadcast on 12 August 1945, Hutchins argued that 'all the evidence points to the fact that the use of the bomb was unnecessary. [...] Therefore, the United States has lost its moral prestige!'¹⁴⁵

¹⁴⁰ See Mann Borgese, 'The Years of my Life', 212. See also Robert A. McCaughey, 'Shaking things up in Chicago', *The New York Times*, 1989. <https://www.nytimes.com/1989/09/03/books/shaking-things-up-at-chicago.html>.

¹⁴¹ Edward, Shils, 'Robert Maynard Hutchins', *The American Scholar* 59, no. 2 (1990), 218 <http://www.jstor.org/stable/41211779>.

¹⁴² Cf. Milton Mayer, *Robert Maynard Hutchins. A Memoir*, (Berkeley: University California Press, 1993), 275.

¹⁴³ Mayer, *Robert Maynard Hutchins*, 275.

¹⁴⁴ Cf. Mann Borgese, 'The Years of my Life', 214.

¹⁴⁵ 'The Chicago University Roundtable – 8/12/45 – Gordon Skene Sound Collection', crooksandliars, Weekend Talkshows Past – Atomic Force: It's Meaning For Mankind_ August 12, 1945, last modified 8 August, 2010, <https://crooksandliars.com/gordonskene/weekend-talkshows-past-atomic-force-it>.

Prior to the bombing of Hiroshima, Hutchins and physicists from Chicago had attempted to convince President Truman to drop the bomb on rural Japan, thus allowing the United States to demonstrate its power without actually harming civilians. Leo Szilard, a Jewish-Hungarian physicist who was part of the Manhattan Project and had conceived the nuclear chain reaction, drafted a petition against the use of the atomic bomb after the Trinity test in July 1945. The petition was supported by Hutchins and signed by some 65 of the engineers and physicists involved in the project, mainly those located in Chicago.¹⁴⁶ However, the scientists' petition was stopped by the Secretary of State, Jimmy Byrnes, and never reached Truman.¹⁴⁷ The first order to drop the bomb was issued on August 6.¹⁴⁸

No-one realised at the time that the enormously potent weapon the Truman government had launched would backfire spectacularly, ringing in an infinity echo of horror and paranoia – not just in the years following 1945 but right up to the present day. The US had sole possession of the weapon for just four short years. Apparently, President Truman's only strategy was to rely on that fact, believing that no other country could ever uncover the 'engineering secrets' of the weapon.¹⁴⁹ What a misconception. By 1949, the Soviet Union had managed to create her first nuclear bomb, the US responded by developing the super hydrogen bomb, and the Soviet hydrogen bomb followed shortly after. Only five years later, the bombs dropped on Hiroshima and Nagasaki had been superseded by much more destructive weapons.¹⁵⁰

With the University of Chicago at the forefront of atomic sciences, Hutchins decided to use his remaining years in office to educate Americans and scientists about nuclear energy. Perhaps as an act of reparation, he threw all his efforts into finding money to found three

¹⁴⁶ Cf. Mayer, *Robert Maynard Hutchins*, 264.

¹⁴⁷ Cf. Mayer, *Robert Maynard Hutchins*, 264.

¹⁴⁸ For the public announcement, see The White House, 'Immediate Release. Statement by the President of the United States', August 6, 1945. Ayers Papers, Subject File. Army U.S., Press releases, the atomic bomb and atomic energy, https://www.trumanlibrary.org/whistlestop/study_collections/bomb/large/documents/index.php?documentid=59&pagenumber=1.

¹⁴⁹ Cf. Mayer, *Robert Maynard Hutchins*, 376.

¹⁵⁰ Cf. Mayer, *Robert Maynard Hutchins*, 376.

institutes for the research of nuclear energy at the University of Chicago.¹⁵¹ At around the same time, the *Bulletin of the Atomic Scientists*¹⁵² started up.

The *Bulletin* was a non-technical journal that was founded in 1945 with the purpose of educating both the public but also scientists about the Atomic Age, the dangers of the atomic bomb, and the impact that scientific discoveries such as nuclear fission could have in political and social spheres.¹⁵³ The *Bulletin* was very much in line with what Hutchins had put together at the University of Chicago, and several pieces that appeared in the *Bulletin* were in fact by researchers involved in Hutchins's education efforts at the institutes.¹⁵⁴

The *Bulletin* still exists today, and 2017 marked the 70th anniversary of the Doomsday Clock. The clock was the first cover image of the *Bulletin* in 1947. It was supposed to illustrate the urgency of the approaching catastrophe that came with the Atomic Age, and it was set to seven minutes to midnight. Over the years, the hand of the clock has hopped back and forth, sometimes closer to 12, sometimes several minutes back, all depending on the current situation on the planet.

On 26 January 2017, the atomic clock was set to two and a half minutes to midnight. According to the executive director of the *Bulletin*, Rachel Bronson, this was due to the fact that 'world leaders made too little progress in the face of continuing turbulence. In addition to the existential threats posed by nuclear weapons and climate change, new global realities emerged, as trusted sources of information came under attack [...].'¹⁵⁵

¹⁵¹ Cf. Mayer, *Robert Maynard Hutchins*, 270.

¹⁵² See Bulletin of the Atomic Scientists, 'Background and Mission: 1945-2018', <https://thebulletin.org/background-and-mission-1945-2018>.

¹⁵³ Cf. Bulletin of the Atomic Scientists, 'Background and Mission: 1945-2018', <https://thebulletin.org/background-and-mission-1945-2018>.

¹⁵⁴ See for example Robert M. Hutchins et al., 'Preliminary Draft of a World Constitution', *Bulletin of the Atomic Scientists* 4, no. 5 (1948): 145-150. The other authors were the members of the Committee to Frame a World Constitutions: G. A. Borgese, Albert Guérard, Harold A. Innis, Erich Kahler, Wilber G. Katz, Charles H. McIlwain, Robert Redfield, Rexford G. Tugwell, Stringfellow Barr, Mortimer J. Adler.

¹⁵⁵ For the 2017 Clock Statement, Rachel Bronson, 'Statement from the President and CEO', in John Mecklin eds., 'It is two and a half minutes to midnight - 2017 Doomsday Clock Statement', *Bulletin of the Atomic Scientists* (2017): 1, <https://thebulletin.org/sites/default/files/Final%202017%20Clock%20Statement.pdf>. In 2018 the Science and Security Board has set the clock on two minutes to midnight. For the statement, see John Mecklin eds., 'It is 2 minutes to midnight - 2018 Doomsday Clock Statement', *Bulletin of the Atomic Scientists* (2018), <https://thebulletin.org/sites/default/files/2018%20Doomsday%20Clock%20Statement.pdf>.

The scientists, politicians and academics who allowed the Manhattan Project to come to fruition in 1945 undoubtedly wound up the Doomsday Clock, and it is still ticking away today. Hutchins was one of those who regretted his involvement deeply. One reparation act was the foundation of institutes researching nuclear energy, and another was that Hutchins supported the foundation of the Chicago Committee to Frame a World Constitution in 1945.¹⁵⁶

A new world constitution – The age of nations must end

While Hutchins was grappling with the organisation and later the outcomes of the Manhattan project, Giuseppe Antonio Borgese had been working as a professor of Romance literature and languages at the University of Chicago from 1936 to 1945.¹⁵⁷

In 1945, together with Richard P McKeon, Borgese suggested founding the Committee to Frame a World Constitution. Hutchins, who by then had become chancellor of the university, supported the suggestion. Other members of the Committee were Mortimer J Adler, Stringfellow Barr, Albert Guérard, Harold Innis, Erich Kahler, Wilbur O Katz, Charles H McIlwain, Robert Redfield, and Rexford G Tugwell.¹⁵⁸ All were well-educated academics, scientists and thinkers who were keen to make a difference and change the world. Many of them, like Borgese and Erich Kahler, were Europeans who had been directly impacted by the horrors of World War II, and who were now worried about the looming Cold War and the beginning of the Atomic Age.

In 1946 – the year in which the Manhattan project finished its work and its horrendous consequences became apparent – Elisabeth Mann Borgese started getting involved with her husband and Robert Maynard Hutchins's work on the Committee to Frame a World Constitution.¹⁵⁹

¹⁵⁶ See Mann Borgese, 'The Years of my Life', 240. See Mayer, *Robert Maynard Hutchins*, 327.

¹⁵⁷ Cf. Noce, 'Giuseppe Antonio Borgese', 218.

¹⁵⁸ Robert M. Hutchins et al., *Preliminary Draft of a World Constitution* (Chicago: The University of Chicago Press, 1947/1948), ii.

¹⁵⁹ Cf. MS-2-744, Box 362, Folder 6.

The goal of the enterprise was to write a ‘world constitution’ – a holistic ideal of governing the world as one federal system by abolishing nation states. The University of Chicago was not the only place where this endeavour was pursued.¹⁶⁰ In fact, at the time there was a wide movement for promoting world governance and world citizenship,¹⁶¹ including the World Federalist Movement and many other small and large attempts to unite the world’s citizens.¹⁶²

The outcome of the committee’s work, apart from a monthly journal called *Common Cause*¹⁶³ in which other world constitutions were presented and reviewed,¹⁶⁴ was a drafted world constitution that was published in the *Bulletin of the Atomic Scientists* in 1948, and was dedicated to Gandhi.¹⁶⁵

That the drafted world constitution was printed in the 5th issue of the *Bulletin of the Atomic Scientists* was hardly a coincidence. Hutchins was in contact with the *Bulletin* because part of its purpose was to educate Americans and scholars about the Atomic Age, which had been a matter close to Hutchins’s heart since 1945. Also, the drafted world constitution was a valuable contribution to addressing exactly those questions posed by the *Bulletin*: how to throw light on, live with and handle the nuclear threat paired with growing differences between nation states in the east and west. One sentence in the preamble of the constitution draft states that: ‘the age of nations must end, and the era of humanity begin.’¹⁶⁶

The committee had designed the constitution as follows: The world constitution should provide for a president who would be the ‘protector of peace’ in the Federal Republic

¹⁶⁰ Cf. Mann Borgese, ‘The Years of my Life’, 216.

¹⁶¹ Mann Borgese worked on a platform for world citizenship. See MS-2-744, Box 135, Folder 22.

¹⁶² Cf. Mann Borgese, ‘The Years of my Life’, 114-116.

¹⁶³ A complete collection of the publication *Common Cause* can be accessed at: University of Chicago Library, the Committee to Frame a World Constitution. Records, 1945-1951, (Special Collections Research Center University of Chicago Library 1100 East 57th Street Chicago, Illinois 60637 U.S.A.), in ‘Series III: Common Cause and the Preliminary Draft Files’, <https://www.lib.uchicago.edu/e/scrc/findingaids/view.php?eadid=ICU.SPCL.CFWC>. The collection has not been accessed for this thesis.

¹⁶⁴ Cf. Mann Borgese, ‘The Years of my Life’, 216.

¹⁶⁵ Cf. Hutchins et al., ‘Preliminary Draft’, 145-150. See the committee’s publication of the draft: Robert M. Hutchins et al., *Preliminary Draft of a World Constitution* (Chicago: The University of Chicago Press, 1947/1948).

¹⁶⁶ Hutchins et al., ‘Preliminary Draft’, 145.

of the World.¹⁶⁷ The president would be elected by delegates, each delegate representing ‘the people of all states,’¹⁶⁸ at a rate of one delegate per million people.¹⁶⁹ These delegates, together with the elected president, would constitute the world government.

Furthermore, the committee allocated several ‘grants of powers’ to the jurisdiction of the World Government. One which was especially important with regard to the Atomic Age was the ‘limitation of control of weapons and domestic militias [...]’.¹⁷⁰ Others included ‘the maintenance of peace’¹⁷¹ and the ‘judgment of conflict’¹⁷² – all-in-all, the kinds of tasks a democratic, constitutional government of a nation state would carry out.

However, in the section about ‘declaration of duties and rights’ there was a key passage which revealed a relatively new way of thinking. The committee announced that: ‘The four elements of life – earth, water, air, energy – are the common property of the human race.’¹⁷³ To dedicate elemental resources to the human race – instead of to nation states, stakeholders or other ‘owners’ – was not necessarily well-received by the (probably quite limited) audience who read and discussed the draft of the world constitution.

In a review published in 1949 by Ely Culbertson, a member of the Citizens Committee of the United Nations Reform,¹⁷⁴ the draft constitution was criticised harshly. That all resources could be shared without the supervision of nation states seemed unthinkable – Marxist, in fact – and inevitably destructive.¹⁷⁵ What unsettled the author of the review even more was the fact that if each delegate was to be elected by a million people, the world government would be ‘overrepresented’ by Asians and Africans. This, so the gloomy prediction went on, would lead to a so-called ‘rabbit system’.¹⁷⁶ Furthermore, he argued that:

¹⁶⁷ Cf. Hutchins et al., ‘Preliminary Draft’, 146, 149.

¹⁶⁸ Hutchins et al., ‘Preliminary Draft’, 146.

¹⁶⁹ Cf. Hutchins et al., ‘Preliminary Draft’, 146.

¹⁷⁰ Hutchins et al., ‘Preliminary Draft’, 146.

¹⁷¹ Hutchins et al., ‘Preliminary Draft’, 145.

¹⁷² Hutchins et al., ‘Preliminary Draft’, 145.

¹⁷³ Hutchins et al., ‘Preliminary Draft’, 145.

¹⁷⁴ For more information on the early UN reform attempts, see Joseph Preston Baratts, *The Politics of World Federation: United Nations, UN Reform, Atomic Control* (Westport, Conn.: Praeger Publishing, 2004).

¹⁷⁵ Cf. Ely Culbertson, ‘The preliminary Draft of a World Constitution, by the Committee to Frame A World Constitution’, *Indiana Law Journal* 24, no. 3, (1949): 477, <http://www.repository.law.indiana.edu/ilj/vol24/iss3/20>.

¹⁷⁶ Culbertson, ‘The preliminary Draft’, 481.

[...] it is true that the life and dignity of any human is a sacred trust of society. It is not true that China with its 400,000,000 is ten times more valuable than France with its 40,000,000. It is not true that 150,000,000 Americans who have created the greatest democracy of all times should sit humbly in the back rows of the world arena and surrender their sovereignties to a billion proliferating Asiatics.¹⁷⁷

Culbertson concluded with the diagnosis that the ‘disease of internationalism, such as the Communist internationalism, can be as monstrous as the disease of nationalism.’¹⁷⁸

Such attitudes among the opponents of world governance make it apparent that it was unlikely that the Chicago draft or any idealistic vision of a world constitution had any chance of being implemented in the 1940s. Elisabeth Mann Borgese talked about her involvement with the Chicago committee at the Nexus Lecture many decades later, where she said the committee had been aware of the fact that the constitution had not been ‘realistic’, but that they had meant it as a ‘blueprint pointing in the direction of a desirable or probably ineluctable future.’¹⁷⁹

This blueprint was, in fact, later used for the Law of the Sea. By the 1940s, earth had been nationalised and remained hotly contested; air had been largely nationalised; energy had been nationalised, but (sea) water had remained untouched beyond the coastlines of each nation state. Elisabeth Mann Borgese had worked with the Chicago committee, had reviewed several drafts of world constitutions, and had been present to discuss their own draft in Chicago. In the end, the committee’s work was neither finalised nor implemented, but Elisabeth Mann Borgese took part of it with her when she started working on the Law of the Sea Convention. If earth, air and energy were not going to be the common property of the human race, she made sure that water was going to be the common heritage of mankind – at least on paper.

It is difficult to gauge the extent of Elisabeth Mann Borgese’s involvement in designing this first draft constitution. One thing for certain is that during her years with the committee, her role in discussing a world constitution went far beyond that of a simple secretary. Her path into world governance through her participation in the committee might

¹⁷⁷ Culbertson, ‘The preliminary Draft’, 481.

¹⁷⁸ Culbertson, ‘The preliminary Draft’, 474.

¹⁷⁹ Mann Borgese ‘The Years of my Life’, 215.

shed light on the question of how she deepened her involvement with world governance issues.

From secretary to academic

How exactly Elisabeth Mann Borgese made her way into academia through the committee is somewhat blurry. Her Curriculum Vitae, dated December 1982, lists some of her activities from 1948 onwards. She is listed as having ‘helped Borgese and Hutchins (Chancellor of U. of Chicago) found “The Committee to Frame a World Constitution,” [...] Contributed research papers on Comparative Constitutional Law, some 12 of which were subsequently published in *The Bulletin of Atomic Scientists* and *Common Cause*. [...]’.¹⁸⁰ Furthermore, it mentions that she was the editor of *Common Cause*, a monthly journal published by the World Committee between 1948 and 1952.¹⁸¹

It is unclear whether she composed the CV herself or for what purpose it was written. The University of Chicago Library, where the records of the Committee to Frame a World Constitution are stored, lists her as ‘research assistant for the Committee and later editor of the journal *Common Cause*’,¹⁸² not as a founding member of the committee. It seems odd to believe that she would have been deeply involved in founding the committee, bearing in mind her young age and the fact that she had given birth to her second daughter the previous year.¹⁸³ It is also questionable whether her husband, Giuseppe Antonio Borgese, would have accepted this view. In Elisabeth Mann Borgese’s biography, Kerstin Holzer notes his struggle with her growing professional independence in 1949.¹⁸⁴

Another peculiar note is her involvement in the council of the World Federalist Movement. Kerstin Holzer claims in her biography that Elisabeth Mann Borgese was elected

¹⁸⁰ MS-2-744, Box 16, Folder 19.

¹⁸¹ Cf. MS 16-19

¹⁸² See The guide to the Committee to Frame a World Constitution. Records, 1945-1951, (Special Collections Research Center University of Chicago Library 1100 East 57th Street Chicago, Illinois 60637 U.S.A.), <https://www.lib.uchicago.edu/e/src/findingaids/view.php?eadid=ICU.SPCL.CFWC>. Compare MS 16-19.

¹⁸³ Nica Borgese was born in Chicago 1944. See Stefano, ‘Giuseppe Antonio Borgese’, 60.

¹⁸⁴ See Holzer, *Elisabeth Mann Borgese*, 129.

chairman in 1950,¹⁸⁵ but it is not listed in the two CVs from her archive in Halifax.¹⁸⁶ The records of the World Movement for World Federal Government suggest that her involvement stemmed from her affiliation with the Committee to Frame a World Constitution. These records reveal that the committee had joined the movement in 1947, and that she was listed as the chairman of the Executive Committee of the Council from 1948 until 1950 with her husband close by. He is listed as the co-chairman of a special 'group of scholars mandated by the Congress [of the WMWFG] with the task of preparing some research material for world congresses of the WMWFG in the future for their consideration'.¹⁸⁷

Although the exact circumstances are difficult to reconstruct, all evidence suggests that Elisabeth Mann Borgese made her way into academia without having a degree or an academic publishing record, mainly by taking on a growing role in the academic work of her husband. Borgese introduced her to Robert Maynard Hutchins, who in turn became an important partner for Mann Borgese in her further career. Her involvement with the Committee to Frame a World Constitution would lay the foundation for her later work with the oceans.¹⁸⁸

In a letter to George Kennan at the Institute for Advanced Studies at Princeton University, Elisabeth Mann Borgese described the nature of her work with the Chicago committee. She recounted that she had written 'about a dozen papers',¹⁸⁹ and that these largely examined constitutions, such as analyses of 'the Russian, the Chinese, Spanish,

¹⁸⁵ Cf. Holzer, *Elisabeth Mann Borgese*, 124-125.

¹⁸⁶ MS-2-744, Box 16, Folder 19. Also not mentioned in Mann Borgese, 'The Years of my Life', 214

¹⁸⁷ See 'Historical note', The guide to the Committee to Frame a World Constitution. Records, 1945-1951, (Special Collections Research Center University of Chicago Library 1100 East 57th Street Chicago, Illinois 60637 U.S.A.), <https://www.lib.uchicago.edu/e/scr/findingaids/view.php?eadid=ICU.SPCL.CFWC>. Read: "In 1947, the Committee to Frame a World Constitution became a member of the World Movement for World Federal Government (WMWFG); at this time Mrs. Borgese, a member of the CFWC secretariat, was elected one of the Committee's delegates to the WMWFG. From the fall of 1947 to the fall of 1948 she was a member of the WMWFG Council. From the fall of 1948 to the winter of 1950 she was the Chairman of the Executive Committee of the Council of the WMWFG. Until June 1951, Mr. G. A. Borgese was Co-Chairman of the Commission Constitutionelle Mondiale, "a group of scholars mandated by the Congress [of the WMWFG] with the task of preparing some research material" for world congresses of the WMWFG in the future for their consideration. [The papers come to an end on June 30, 1951 with the dissolution of the Committee to Frame a World Constitution and the cessation of its publication, *Common Cause*.]"

¹⁸⁸ Baker comes to a similar conclusion. See Baker, 'Uncommon Heritage', 14.

¹⁸⁹ B-III.17-KENN-1, 29.03.1951.

Swedish and Indian constitutions, insofar as their consideration was useful for the drafting of a constitution for the world.¹⁹⁰ In addition, she had written three papers that were concerned with history: one was about ‘the history of functional representation,’¹⁹¹ one about ‘the history of changing appearances of the Tribune of the People; and a brief paper on the problem of languages in plurilingual [sic: multilingual?] states.’¹⁹² She had also written ‘[...] the draft on which the present Statutes of the World Movement are based, as well as the Movement’s by-laws (rules of procedure) and most of its publicity and fund raising material.’¹⁹³ She claimed that her articles were ‘[...] mainly concerned with political action for world unity and European unity.’¹⁹⁴

Clearly, by 1951 her tasks in the committee had far exceeded the duties of a regular secretary. She must, however, have started her deeper academic involvement later than 1945, since she wrote: ‘during the two years of research for the Committee [...]’,¹⁹⁵ meaning that she had spent at least three years as a regular secretary at the committee. Though she probably spent only two years researching, she managed to write twelve articles, all of which were closely related to the core issue of the committee: the world constitution. She had become familiar with various drafts for a world constitution, she had written and discussed her own ideas around those drafts, and she had in general practised writing papers on ‘world unity’ and ‘European unity’.

Apart from telling us about Mann Borgese’s growing professional expertise, paired with her ability to work herself into institutional settings through informal or unconventional channels, the letter to Kennan also reveals that she was looking for a job in March 1951. She wrote to Kennan, ‘Mr. Hutchins tells me that you might have an opening for me to work on your staff in Princeton’.¹⁹⁶ Apparently things were not going well for the Chicago committee in 1951. That Hutchins was helping his colleagues to find new positions suggests that it was

¹⁹⁰ B-III.17-KENN-1, 29.03.1951.

¹⁹¹ B-III.17-KENN-1, 29.03.1951.

¹⁹² B-III.17-KENN-1, 29.03.1951.

¹⁹³ B-III.17-KENN-1, 29.03.1951.

¹⁹⁴ B-III.17-KENN-1, 29.03.1951.

¹⁹⁵ B-III.17-KENN-1, 29.03.1951.

¹⁹⁶ B-III.17-KENN-1, 29.03.1951.

not a lack of effort or expertise on the part of Mann Borgese or her husband that was making them look for new jobs. Rather it was external circumstances that threatened the existence of the committee.

The committee was negatively affected by the general atmosphere that came with the rise of the McCarthy era in the United States, when ‘Peace became a dirty word’¹⁹⁷ and a number of academics were fired from their positions when their research was perceived to be communist or in other ways hostile to the United States. Consequently, many ‘blacklisted’ exiles returned to their home countries – among them Mann Borgese’s own parents, Thomas Mann and his wife Katia.¹⁹⁸

The peculiar distaste for the ‘disease of Communist internationalism’¹⁹⁹ also affected the Committee to Frame a World Constitution at the University of Chicago. Though the committee was probably not seen as being directly communist or pursuing communist goals, there was little appetite for peace-seeking activities with the Eastern Bloc. Efforts to design a world constitution had gone out of fashion, lectures were forbidden, people were fired, and when Hutchins left the University of Chicago to take a job as director of the Ford Foundation,²⁰⁰ the whole enterprise was shut down in 1952.²⁰¹ The committee members, including the Mann Borgeses, had to find new occupations.

Retreat to Italy

In September 1952, Elisabeth Mann Borgese returned to Europe. Together with her two daughters, she followed her husband who had been offered a job at the University of Milan.²⁰² The couple agreed to find a house in San Domenico in Fiesole and, according to Katrin Holzer, Elisabeth Mann Borgese declined a job offer at an American cultural journal called

¹⁹⁷ Mann Borgese, ‘The Years of my Life’, 216.

¹⁹⁸ Cf. Mann Borgese, ‘The Years of my Life’, 216.

¹⁹⁹ Culbertson, ‘The preliminary Draft’, 474.

²⁰⁰ Cf. Shils, ‘Robert Maynard Hutchins’, 234.

²⁰¹ Cf. Mann Borgese, ‘The Years of my Life’, 216.

²⁰² Cf. Noce, ‘Giuseppe Antonio Borgese’, 218.

Perspectives to settle into life as a mother to her daughters and a caring wife for her husband.²⁰³

Only two months later, she would have to rethink this decision. Giuseppe Antonio died unexpectedly at the age of 70 on 4 December 1952,²⁰⁴ leaving Elisabeth Mann Borgese and her two daughters alone in Italy. The family had not even been able to take up residence in their newly purchased house. Instead, Elisabeth Mann Borgese moved in as a widow, and would live there with Nica and Angelica for 14 turbulent years.²⁰⁵

Her time in Italy could be described as a period of varied jobs, interesting involvements, writing and experimental living.²⁰⁶ She would do everything from teaching German to political science students at the University of Florence²⁰⁷ to more adventurous occupations like travelling to India to interview Nehru and conduct behavioural experiments on elephants.²⁰⁸

First of all, she reconsidered the employment offer she had so recently declined, taking up a job as editor of *Perspectives*.²⁰⁹ Another journal job she took to make a living was at a UNESCO-financed magazine called *Diogenes*, where she also got to know her second life partner, Corrado Tumiatì.²¹⁰ Tumiatì was a former psychologist who had written a book about his work in a closed institution, and who was supposed to help Mann Borgese with her editing jobs. At the time, he worked at a magazine called *Il Ponte*.²¹¹ Once again,

²⁰³ Cf. Holzer, *Elisabeth Mann Borgese*, 142.

²⁰⁴ Cf. Holzer, *Elisabeth Mann Borgese*, 145. See also Stefano, 'Giuseppe Antonio Borgese', 62.

²⁰⁵ Cf. Holzer, *Elisabeth Mann Borgese*, 146.

²⁰⁶ For more info on Mann Borgese's years in Italy, see Baker, 'Uncommon Heritage', 14-15.

²⁰⁷ Cf. Holzer, *Elisabeth Mann Borgese*, 146.

²⁰⁸ For letters in which Mann Borgese reports about her travels, see B-III.17-MANN-106, B-III.17-MANN-106, B-III.17-MANN-107, B-III.17-MANN-108, B-III.17-MANN-109, B-III.17-MANN-110. See also Holzer, *Elisabeth Mann Borgese*, 167-168. Her 1964 trip to India has been described by Peter K. Wehrli, "'Überall ist alles anders!'" Mit Elisabeth auf dem Landweg nach Indien', in *Elisabeth Mann Borgese und das Drama der Meere*, exhibition catalogue, eds. Holger Pils and Karolina Kühn (Hamburg: mareverlag, 2012), 142-175.

²⁰⁹ Cf. Holzer, *Elisabeth Mann Borgese*, 146-147.

²¹⁰ Cf. Holzer, *Elisabeth Mann Borgese*, 147.

²¹¹ Cf. Holzer, *Elisabeth Mann Borgese*, 147.

Elisabeth Mann Borgese picked a man much older than herself, and Tumiatì would live in the villa in Fiesole until his death in 1967.²¹²

During the years in Italy, Mann Borgese also published several smaller tales and novels, one of which was *To Whom It May Concern*²¹³ – a collection of peculiar stories about futuristic freak scenarios gone bad, published in 1960.

There seems to be a kind of veil draped over Elisabeth Mann Borgese's years in Italy.²¹⁴ Although she was occupied with a variety of different smaller jobs, she always kept in contact with Hutchins – who now worked at the Ford Foundation – and with the American circle she had been part of in Chicago. She also started to develop an increasing interest in behavioural studies of animals, starting with her famous typewriting dogs.²¹⁵

She could not resist entertaining her associates with her animal stunts, and in a letter dated September 1963, Hutchins wrote: 'In the meantime, we thank you for the pictures. We are both perfectly positive that you have faked the one with the dog doing the typewriting.'²¹⁶

By 1964, Hutchins had started a new project in the United States, and having maintained contact with Mann Borgese throughout her years in Italy, he now asked her to join him. At this point, the pieces of her unusual career path started to fall into place.

The Center for the Study of Democratic Institutions in Santa Barbara – A late academic career takes off

Elisabeth Mann Borgese had been sending Hutchins more than just funny pictures of typewriting dogs. Their correspondence had revolved around the Encyclopaedia

²¹² Katrin Holzer has discussed Mann Borgese's relations with older men. See Holzer, *Elisabeth Mann Borgese*, 158. Mann Borgese's relation to men or her feminist theories in *Ascent of Woman* will not be discussed any further in this study.

²¹³ Elisabeth Mann Borgese, *To Whom it May Concern* (New York: George Braziller, 1960).

²¹⁴ Katrin Holzer deals with the years in Italy under the title 'Krisenjahre' (years of crises) in Holzer, *Elisabeth Mann Borgese*, 125.

²¹⁵ In her new job in Santa Barbara she would eventually keep a monkey for a couple of years. See Holzer, *Elisabeth Mann Borgese* 169-170.

²¹⁶ NB-Folder 5, September 30, 1963.

Britannica,²¹⁷ – a reference work that had been donated to the University of Chicago – and other projects, including at least one conference that Mann Borgese apparently took a role in organising, although it is not quite clear for whom or what it was about.²¹⁸ From some of their correspondence in January 1964 we can glean that ‘the conference should deal with nothing less than the future of man’.²¹⁹ In the same letter, Mann Borgese also asks Hutchins about a possible merging of two conferences – the one she was helping to plan, and one he had mentioned in a Christmas letter.

Robert Hutchins had been working as the head of the Ford Foundation, after leaving the University of Chicago due to political upheavals and the animosities brought about by McCarthyism.²²⁰ In 1959, he had been able to establish the Center for the Study of Democratic Institutions in Santa Barbara with money from ‘The Fund for the Republic’ – a fund that was established by the Ford Foundation while Hutchins was at its head.²²¹ Having returned to academia, Hutchins now reached out to former colleagues from Chicago to see if they would contribute to this newly founded centre.

We can derive from Mann Borgese’s correspondence that she must already have been working for Robert Hutchins before she was invited to join the centre in Santa Barbara.²²² In May 1964, she wrote to Mortimer J Adler – a former colleague from Chicago who had been contributing to the Encyclopaedia Britannica project at the University of Chicago – asking for advice about whether she should consider a job offer ‘Bob’²²³ had made her. She wrote: ‘[...] I am doing a whole lot of work for Bob [...],’²²⁴ and further that he had ‘sent my [sic:

²¹⁷ The Britannica was donated to the University of Chicago in 1943. William Benton, then vice President, became the Chairman of the Board. He and Hutchins were friends. *See* Mayer, *Robert Maynard Hutchins*, 197.

²¹⁸ NB Folder 5, January 16, 1964.

²¹⁹ NB Folder 5, January 16, 1964.

²²⁰ *See* Mayer, *Robert Maynard Hutchins*, 396-397, 400.

²²¹ *Cf.* Mayer, *Robert Maynard Hutchins*, 470-471. About foundation of the centre, *see* Baker, ‘Elisabeth Mann Borgese’, 93.

²²² Betsy Baker writes that she was in touch with her colleagues from Chicago. *See* Baker, ‘Uncommon Heritage’, 15.

²²³ NB Folder 5, May 17, 1964.

²²⁴ NB Folder 5, May 17, 1964.

her] head spinning'²²⁵ with a 'wonderful'²²⁶ job offer at the Center for the Study of Democratic Institutions in Santa Barbara. Mann Borgese found this 'terribly attractive',²²⁷ though she had some concerns since she felt he could find other people better suited for the position, while she thought she could be 'more useful to the Britannica in its foreign designs and relations than at home.'²²⁸

It seems that Hutchins had been looking for people for some time. Adler replied to Mann Borgese some days later:

Bob has asked me to come to Santa Barbara a good many times and every time I have thought about it, I have had a deep revulsion against doing so. I like Bob, as you know, and I like being with him; but my habits of work are so different from the way things are done in Santa Barbara that I know that I would be miserable in that environment. My hunch is that your habits of work are very much like mine and that you would be equally out of place there.²²⁹

Elisabeth Mann Borgese did not take Adler's advice. Instead, she took the job offer. In a letter Hutchins wrote to her in May after she had accepted, he informed her about her tasks and how she could split her life between Santa Barbara and Florence.²³⁰ Elisabeth Mann Borgese was about to embark on a new adventure in Santa Barbara where, according to Hutchins, '[...] we need you in our discussions. We are beginning to think, once more, about a world constitution.'²³¹

Hutchins meant the sentence 'we need you in our discussions' literally. He had built the centre around the principle of discourse, and had been quite ambitious in trying to recruit star researchers, but had not managed to attract the right kind of scholars to commit to a permanent fellowship.²³² Milton Meyers describes the centre's procedures in *Robert Maynard Hutchins: A Memoir*. According to Meyers, the work day would unfold as follows:

²²⁵ NB Folder 5, May 17, 1964.

²²⁶ NB Folder 5, May 17, 1964.

²²⁷ NB Folder 5, May 17, 1964.

²²⁸ NB Folder 5, May 17, 1964.

²²⁹ NB Folder 5, May 20, 1964.

²³⁰ Cf. NB Folder 5, May 26, 1964.

²³¹ NB Folder 5, May 26, 1964.

²³² See Mayer, *Robert Maynard Hutchins*, 472. Mayer about the fellows: 'Over the next ten years there were a few academics who became attached as Fellows: Wheeler, a political scientist; Rexford Guy Tugwell, the one-time Chicago economist and Roosevelt Brain Trustee; John Wilkinson and William Gorman, young philosophers; Stanley Sheinbaum, a young economist; sociologist John Seeley; none of them, however, of the caliber that Hutchins had originally tried to get. An ailing Scott Buchanan—who was of that caliber—came out for a few years preceding his death, as did his St. John's associate, historian Stringfellow Barr. Another of the

Hutchins called the Fellows to the conference table by ringing an old school bell three or four mornings a week—occasionally five—at 11 A.M. The twenty to twenty-five persons assembled as often as not included whoever happened to be on the premises, invited or uninvited.²³³

Before the meeting started, the paper that was on the agenda that day had to be handed out to the participants. They were expected to study it before the ringing bell called them to the discussion room.²³⁴ According to Meyers, the discourse was often unfocused and fluid, and the effect and importance of the centre's activity was questionable. While world politics was going up in flames, Kennedy was getting shot and the Vietnam war was raging, the fellows were often looking into abstract futuristic questions on governance or world order, many of which were detached from reality and inaccessible to a broader audience.²³⁵

The centre's largest efforts, Meyers writes, were four conferences organised between 1965 and 1975 called *Pacem in Terris*.²³⁶ The first conference in 1965 in New York was concerned with questions of world peace, and according to the hosts themselves it was 'an attempt to see whether the understanding and interchange advocated by Pope John XXIII is possible.'²³⁷

What had the Pope meant by understanding and interchange? The encyclical in question had addressed the challenges facing society due to changes in living standards, rights and regulations, and technology that could seriously interfere with the natural order on Earth. The Pope had gone on to describe the equality of all human beings – not just Catholics – as a natural order that should be promoted by states and governments without using the power of weaponry.²³⁸ With the *Pacem in Terris* conferences, the Center for the Study of Democratic Institutions attempted to take the Pope's suggestions seriously.

Fellows was Elizabeth Mann Borgese, nonacademic daughter of Thomas Mann and widow of Hutchins's old associate, G.A. Borgese. Nobel Prize-winning chemist and peace activist Linus Pauling and the controversial Episcopal bishop James A. Pike accepted fellowships but were more often than not away.'

²³³ Mayer, *Robert Maynard Hutchins*, 474.

²³⁴ Cf. Mayer, *Robert Maynard Hutchins*, 474.

²³⁵ Cf. Mayer, *Robert Maynard Hutchins*, 480.

²³⁶ Cf. Mayer, *Robert Maynard Hutchins*, 481.

²³⁷ Mayer, *Robert Maynard Hutchins*, 481. For the encyclical, see Pope John XXIII, 'Pacem in Terris – Peace on Earth', (1963), Papal Encyclicals online, last modified February 20, 2017, <http://www.papalencyclicals.net/john23/j23pacem.htm>.

²³⁸ Pope John XXIII, 'Pacem in Terris'.

The four conferences differed in terms of size and importance. The second conference in Geneva in 1967 was distinctly smaller than the first huge gathering, which saw more than a thousand participants attend. The last two conferences, which took place in Washington in 1973 and 1975 were even larger than the first, with two and three thousand participants respectively.²³⁹

When Elisabeth Mann Borgese joined the centre in 1964, preparations for the first mammoth conference were likely ongoing. How much she was involved in organising the first two conferences is hard to determine. In her holdings at the Dalhousie University Archives there is at least one folder containing a report on the *Pacem in Terris* II Convocation.²⁴⁰

The centre's interest in organising conferences would come in handy for Mann Borgese's later work. Documents from her first year in Santa Barbara show that she was involved in world constitution discussions once again.²⁴¹ Thematically, the *Pacem in Terris* conferences were of interest to her.

Her involvement with the world constitution in Chicago in the early years of her marriage with Borgese meant she slipped back into to the circle of academics and intellectuals that were now gathered once again in Santa Barbara. Here she would be able to rethink and refine her understanding of world governance, after the small matter of a 12-year detour in Italy.

The centre's activities certainly made a good training ground for learning about organisational skills, networking and founding. Organising large-scale international conferences was not always simple. Over the years, conflict arose at the centre, often in connection with the *Pacem in Terris* conferences, but also around other issues. The fellows were critical towards spending money on certain causes, and Hutchins was constantly looking for more funds.²⁴²

²³⁹ Cf. Mayer, *Robert Maynard Hutchins*, 482.

²⁴⁰ See MS-2-744, Box 145, Folder 11.

²⁴¹ See MS-2-744, Box 43, Folder 54. Mann Borgese also worked on 'World Communities'. See MS-2-744, Box 147, Folder 1.

²⁴² Mayer, *Robert Maynard Hutchins*, 484.

When Adler told Mann Borgese that he was unsure whether she was suited to a position at the centre, maybe he was referring to the specific model of working through discourse. But despite Adler's grave predictions, Elisabeth Mann Borgese was not 'miserable'²⁴³ during her first years at the centre, and she thrived on the opportunity to work on world governance once more. Meanwhile, over at the United Nations in New York, discussions on ocean governance were already on the agenda and were about to accelerate.

²⁴³ NB Folder 5, May 20, 1964.

Chapter 2. Reordering the oceans

How free are the oceans?

In the 1940s and 50s, while the BORGESSES were busy working on world governance with the Committee to Frame a World Constitution, the international community was already beginning to explore questions of international cooperation and negotiation in relation to the deeper parts of the world. As Elisabeth Mann Borgese and her colleagues in Chicago and Santa Barbara investigated new principles of world governance, others were looking into governance that extended beyond the boundaries of dry land and into the oceans.

Interestingly, the idea of governing ‘water’ was not an alien concept to the Chicago committee. Mann Borgese and her colleagues had already touched upon the issue of ocean governance in the 1948 draft world constitution, where water had been declared one of four elements that were the common property of the human race.²⁴⁴ During the 1950s, the wider world community was about to discover that the potential of the ocean exceeded the traditional rules that governed it. These regulations dated back to two rival principles that had existed since the 15th century.

The principles were ‘*Mare Clausum vs Mare Liberum*’.²⁴⁵ Directly translated, *mare clausum* means ‘closed sea’ and *mare liberum* means ‘free sea’, so it is easy to see why these principles contradicted each other. One principle promoted freedom, while the other promoted restriction. Ocean governance before the 20th century was mostly a matter for seafaring powers or nations that possessed a coastline. Which principle one favoured depended largely on what one wanted with the ocean.²⁴⁶

The *Mare Liberum* principle dates back to a 15th-century quarrel between Spain and Portugal over who had the right to rule the oceans between their respective colonies in

²⁴⁴ See Hutchins et al., *Preliminary Draft*, 6.

²⁴⁵ Cf. Leary, *International Law*, 80.

²⁴⁶ For the original publication (English translation): see Hugo Grotius, *The Free Sea*, trans. Richard Hakluyt, with William Welwod’s *Critique and Grotius’s Reply*, ed. David Armitage (Indianapolis: Liberty Fund, 2004), <http://oll.libertyfund.org/titles/859>.

America and the East Indies.²⁴⁷ At that time, trade and transport were extremely important for the two naval powers to maintain control over their colonies, and these factors could also be a source of conflict when it came to who controlled which passage. In 1494, the conflict was settled by the Treaty of Tordesillas,²⁴⁸ in which each naval power was given one section of the ocean to rule over.²⁴⁹ The Dutch and the English were not very happy about this division, and in 1609 a Dutch jurist called Hugo Grotius published a pamphlet called *Mare Liberum*,²⁵⁰ in which he argued that the sea should be ‘public gifts’²⁵¹ not ‘private property’²⁵². Grotius asserted that all passage and trade should be free, and that no nation or naval power should be able to control or restrict it.²⁵³

His pamphlet did not pass unnoticed. In 1635, the British scholar and diplomat John Seldon²⁵⁴ published a rival pamphlet called *Mare Clausum*, in which he argued that states should be able to claim control over parts of the sea if they were able to dominate it with their military power.²⁵⁵ While Grotius’s principle of *Mare Liberum* was applied to the high seas, Seldon’s *Mare Clausum* was adapted to the territorial waters of coastal states. The international rule of thumb up until the early 20th century was that territorial waters reached

²⁴⁷ Cf. Leary, *International Law*, 80. Leary points out in a footnote that the division of the sea between the Spanish and Portuguese was not the first in history. See Leary, *International Law*, 81: ‘For detailed account of these claims see T.W. Fulton; *The Sovereignty of the Sea. An historical Account of the Claims of England to the Dominion of the British Seas, and of the Evolution of the Territorial Waters: with special reference to the Rights of Fishing and the Naval Saltue* (1911).’

²⁴⁸ Cf. Leary, *International Law*, 80. For information on the original treaty, see Duve, Thomas, ‘Treaty of Tordesillas’, *Max Planck Encyclopedia of Public International Law*, January 2013, accessed 18 June 2018, <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e2088#>.

²⁴⁹ See R.P. Anand, *Origin and Development of the Law of the Sea*. (1983), 42, quoted in Leary, *International Law*, 80. ‘On May 4, 1493 Pope Alexander VI divided the world between Spain and Portugal and “defined a line of demarcation running 100 leagues west of the Azores and Cape Verde Islands and granted Spain all lands west of it, and to Portugal all lands of its east”’.

²⁵⁰ See Grotius, *The Free Sea*.

²⁵¹ Anand, *Origin and Development*, 82, quoted in Leary *International Law*, 81.

²⁵² Grotius, *The Free Sea*, 108.

²⁵³ See Leary, *International Law*, 81.

²⁵⁴ For a discussion of the *mare clausum* principle see Randall Leaffer, ‘Mare clausum (The Closure of the Sea or The Ownership of the Sea) 1635 John Selden (1584-1654)’, in *The Formation and Transmission of Western Legal Culture. 150 Books that Made the Law in the Age of Printing* (Studies in the History of Law and Justice 7), eds. Serge Dauchy, Georges Martyn, Anthony Musson, Heikki Pihlajamäki and Alain Wijffels (Cham: Springer Verlag, 2016), 190-194.

²⁵⁵ Cf. Leary, *International Law*, 81.

‘as far as a cannon could shoot’ from the shore,²⁵⁶ while the rest of the sea was free for transport and passage.

In terms of the uses of the sea, these two contradictory principles demonstrate the tension between sovereign claims and communal freedom.²⁵⁷ As technology evolved – including even the simple fact that cannon range increased – the necessity to establish exactly how far territorial waters reached had become a pressing legal issue by the early 20th century.²⁵⁸

Moving towards a new Law of the Sea

Back in 1907, the international community had taken the first steps to review some of the issues concerning the use of the oceans. At that time, attempting to identify international problems and solve them through universal agreements developed by an international community was all very new.²⁵⁹

The first attempts to identify these kinds of international community issues were made at The Hague Peace Conference in 1907,²⁶⁰ which was followed by the Hague Codification Conference of 1930.²⁶¹ Both conferences were not principally concerned with

²⁵⁶ Michael P. Scharf, ‘Seizing the Grotian Moment: Accelerated Formation of Customary International Law During Times of Fundamental Change’, *Faculty Publications*, 18 (2010), 108, http://scholarlycommons.law.case.edu/faculty_publications/18.

²⁵⁷ See Leary, *International Law*, 79.

²⁵⁸ Cf. Anderson, *Modern Law*, 6. Anderson writes: ‘During the early decades of the twentieth century, maritime law was stable and could be summarized as follows. Coastal states had territorial waters extending to three nautical miles (nm), subject to insignificant exceptions, and measured in a belt around the coast. Beyond that limit, the seas and oceans had the status of high seas. Maritime law was based upon relatively simple foundations: international custom derived from the practice of States, among which maritime powers loomed large; a few conventions on technical matters; the writing of professors; and a few arbitral decisions. No inter-governmental organizations with maritime mandates existed and there was no forum for discussing maritime questions. Maritime disputes were justiciable only with the consent of the States concerned.’

²⁵⁹ Edward L Miles discusses the question on why codification was pressing at the time in Edward L. Miles, ‘Preparations for UNCLOS IV?’, *Ocean Development and International Law* 19, no. 5 (1988): 422-423, <https://doi.org/10.1080/00908328809545870>.

²⁶⁰ Cf. Harrison, *Making the Law*, 28.

²⁶¹ Cf. Sanger, *Ordering the Oceans*, 13.

ocean governance, but aimed to explore general practices with which the international community could develop treaties and law-making that transcended state borders.²⁶²

The main point of ocean governance to come out of the 1907 and 1930 conferences was that three nautical miles defined a kind of ‘territorial zone’. Beyond that zone, the waters had the status of the high seas, while any conflict that arose within the territorial zones was handled between the states concerned.²⁶³ According to David Anderson in his 2007 essay collection, *Modern Law of the Sea*, ‘Maritime Law was based upon relatively simple foundations: international custom derived from the practice of States [...], a few conventions on technical matters; the writings of professors; and a few arbitral decisions.’²⁶⁴

Beginning in the aftermath of World War I, serious efforts were made to identify or codify issues that needed international regulation. In this context, codification meant not only recording and collecting existing agreements, but also ‘clarifying state practice and [...] making suggestions about how ambiguities or disagreement could be overcome.’²⁶⁵

This burgeoning interest in inscribing state practice into transnational treaties was not just because the ocean was becoming more accessible. It was also the first time in history that there was an international organisation that could ask such questions: The League of Nations. Therefore, ‘In 1924 the Council of League of Nations [...] established a Committee of Experts for the Progressive Codification of International Law [...]’²⁶⁶ This committee was to identify international state practices that needed clarification, and to present them at the Hague Codification Conference in 1930.²⁶⁷ The Law of the Sea was one of the issues that the committee identified right from the start of its work in 1924.²⁶⁸

²⁶² For a contemporary witness recount of the conference, see Hunter Miller, ‘The Hague Codification Conference’, *The American Journal of International Law* 24, no. 4 (October 1930): 674-693, <http://www.jstor.org/stable/2190056>.

²⁶³ Cf. Anderson, *Modern Law*, 6.

²⁶⁴ Anderson, *Modern Law*, 6.

²⁶⁵ Harrison, *Making the Law*, 29.

²⁶⁶ Harrison, *Making the Law*, 29.

²⁶⁷ See: First Report Submitted to the Council by the Preparatory Committee for the Codification Conference, *The American Journal of International Law* 24, no. 1, Supplement: Official Documents (January 1930): 1-3 <http://www.jstor.org/stable/2213295>.

²⁶⁸ Cf. Harrison, *Making the Law*, 29-30. Read page 29: ‘The initial list of subjects identified by the Committee of Experts for potential codification included the status of territorial waters, the status of government ships engaged in commerce, the suppression of piracy and the exploitation of the products of the

It was apparent that the enterprise of renegotiating a new Law of the Sea beyond the simple *Mare Clausum/Mare Liberum* principles was going to be a very complicated task. This became evident as early as 1924, when despite the efforts of the Committee of Experts for the Progressive Codification of International Law, the issue of how to handle territorial waters was perceived as too difficult and overarching. The Hague Codification Conference came to no conclusions in this matter, though several draft articles were presented.²⁶⁹

Although the conference was inconclusive, the committee's efforts were not entirely in vain. According to James Harrison in *Making the Law of the Sea*, fragments of these early draft articles can be found in today's Law of the Sea. With this in mind, he asserts that the articles presented at the Hague Codification Conference laid the foundations for the further development of the Law of the Sea, even though no concrete conclusions were reached in 1930.²⁷⁰ Shortly afterwards, the escalating international conflict that peaked with World War II would put the codification efforts on hold.

Nation states reach out for the territory in the oceans

Shortly after World War II, unilateral action by the United States catapulted the question of maritime boundaries to the top of the agenda of outstanding international issues. On 28 September 1945, the president of the United States, Harry S Truman, made a presidential proclamation that would trigger a chain reaction of unexpected dimensions. President Truman made it clear that the United States was ready to claim territory beyond its coastal waters, stating that:

sea.' Harrison refers to: Rosenne, *Committee of Experts for the Progressive Codification of International Law* (1925-1928), at lxi.

²⁶⁹ Cf. Harrison, *Making the Law*, 30-31.

²⁷⁰ Cf. *Making the Law*, 30-31. See also Sanger Sanger, *Ordering the Oceans*, 13: 'A main purpose of the conference was to reach agreement on some standard limits to territorial water. The 'cannon-shot' rule was always a vague measure. The United States and Britain had settled on a three-mile limit, but this was by no means universally adopted. Scandinavian countries had a four-mile limit, France claimed six and Czarist Russia had proclaimed a 12-mile territorial sea.'

[...] the Government of the United States regards the natural resources of the subsoil and sea bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control [...]²⁷¹

Truman also announced that the US would seek agreements with other coastal states if the continental shelf touched their coastlines. He made assurances that the principle of free navigation and passage – the underlying concept of the high seas – would not be affected by US claims on the seabed.²⁷²

Truman's proclamation had serious consequences for maritime law and the way it had been practised before 1945. Other coastal states, starting with the Latin American nations, formulated their own proclamations and responded with similar claims.²⁷³ By the end of this chain reaction, the US found itself in conflict with 'every Pacific coast state of southern and central America and with most of the then independent states of the Caribbean.'²⁷⁴ The list also included its neighbour, Canada, plus several European states, the USSR, coastal states in the east Mediterranean region, and some coastal and archipelagic states in the Asia-Pacific region.²⁷⁵

This huge reaction left no doubt that maritime boundaries had to be defined and renegotiated. It has been a common consensus in research that the Truman proclamation kick-started international efforts to settle agreements on new ocean borders.²⁷⁶ Ultimately, these

²⁷¹ The White House, 'Immediate Release. Statement by the President of the United States', August 6, 1945. Ayers Papers, Subject File. Army U.S., Press releases, the atomic bomb and atomic energy, https://www.trumanlibrary.org/whistlestop/study_collections/bomb/large/documents/index.php?documentid=59&pagenumber=1.

²⁷² Cf. Truman Proclamation, 28. Sept 1945.

²⁷³ The chain reaction started in Mexico. Cf. Watt, 'First steps', 221.

²⁷⁴ Watt, 'First steps', 222.

²⁷⁵ Cf. Watt, 'First steps', 222. The states involved were: Argentine, Chile, Peru, Ecuador, Columbia, Panama, Costa Rica, Nicaragua, Honduras, El Salvador, Mexico, Cuba, Canada, Iceland, Norway, Denmark, Portugal, USSR, Saudi Arabia, Philippines, Korea, China.

²⁷⁶ See Helmut Tuerk, *Reflections on the Contemporary Law of the Sea* (Boston: Martinus Nijhoff Publishers, 2012), 9: 'Ironically, the first major challenge to the freedom-of-the-seas doctrine came from the power that has the utmost interest in maintaining it-The United States of America.' See also Scharf, 'Seizing the Grotian Moment', 109: 'Although the Truman Proclamation is widely viewed as a singular turning point, long before 1945 coastal states had made legal claims to the resources of the seabed and subsoil beyond the territorial sea.'

efforts resulted in the three United Nations Law of the Sea Conventions that lasted from 1958 until 1982.²⁷⁷

Although a lot of research has examined the aftermath of the Truman proclamation, its origins were not explored until Donald Cameron Watt investigated them in an article in 1979.²⁷⁸ Watt wrote that: ‘Until recently, it was difficult to say anything about the origins of the proclamation. It was obviously not considered of any great importance by those who were involved in this issue.’²⁷⁹ In the article, he describes the developments that lead up to the proclamation.

During World War II, the United States was worried about its future supply of raw materials – especially oil.²⁸⁰ Therefore, in 1943 a state committee was set up to study the fish stocks and resources in the sea adjacent to the US coast, because they foresaw that this would be a matter for negotiation after the war.²⁸¹ Also, ‘the US was concerned to enjoy the exclusive access to the oil and gas in the seabed situated just beyond its three mile limit in the Gulf of Mexico and off California.’²⁸²

The state secretary of the interior, Harold Ickes, sent a letter to Roosevelt – Truman’s predecessor as president – expressing his concerns about the US’s future supply of raw materials unless alternative sources could be explored. In this letter, he referred to the continental shelf as a ‘storehouse of natural resources’,²⁸³ and recommended that they ‘evolve new concepts of maritime territorial limits beyond three miles [...]’.²⁸⁴

²⁷⁷ Cf. Watt, ‘First steps’, 211. ‘Commonly agreed’.

²⁷⁸ Watt, ‘First steps’.

²⁷⁹ Watt, ‘First steps’, 211: ‘President Truman does not mention it in his memoirs. It does not rate a mention in the memoirs of his Secretary of State, James Byrnes, or those of his predecessors, Edward R. Stettinius, or Cordell Hull, who clearly had something to do with its formulation.’

²⁸⁰ Cf. Anderson, *Modern Law*, 8: ‘During the Second World War, demand for oil increased and the industry developed technology so that it was able to work in shallow waters just off the coast.’

²⁸¹ Cf. Watt ‘First steps’, 212.

²⁸² Anderson, *Modern Law*, 8. For more information on the various proclamations Anderson refers to Ann Hollick, *U.S. Foreign Policy and the Law of the Sea* (Princeton: Princeton University Press, 1981). See also Scharf, ‘Seizing the Grotian Moment’, 110-111.

²⁸³ Watt, ‘First steps’, 212.

²⁸⁴ Watt, ‘First steps’, 212.

Roosevelt acknowledged Ickes's concerns, and replied with a letter encouraging him to investigate the matter further.²⁸⁵ This resulted in several proposed unilateral proclamations devised by state officials over the following two years. Finally, under-secretary of state Joseph C Grew and Ickes sent two memorandums to Roosevelt, proposing regulations to deal with areas of the high seas and the continental shelf. Their aim was to:

[...] assert jurisdiction and control over the natural resources under the seabed and the continental shelf and to assert a policy of establishing conservation zones for the protection of coastal fishery resources.²⁸⁶

As a precaution, Ickes and Grew also advised distributing the memorandums beforehand to the representatives of states that would be affected by the proclamation. In fact, only Canada, Mexico, the United Kingdom and the Soviet Union were handed the memorandums.²⁸⁷ Modern-day legal analyst Michael P Scharf argues that 'the communications were more in the nature of advanced notification than actual consultations.'²⁸⁸ Additionally, Watt notes that nowhere was it stated that any negative or hostile reactions from these nations should be taken into account.²⁸⁹

In fact, criticism from those state officials who were handed the preliminary memorandums – of whom only the UK expressed reservations²⁹⁰ – was met by the US with arguments based on national interest, like the need to feed the nation and secure supplies of raw materials.²⁹¹ According to Watt, this paid 'lip-service'²⁹² to all other nation states, encouraging them to follow the US's example and base their claims on their own national interests.

Michael P Scharf shares this view, and concludes that: 'the legal rationale was based on geological reality, technological development, national security, economic necessity, conservation, and the efficacy of coastal state regulation.' He adds that this justification for

²⁸⁵ Cf. Watt, 'First steps', 212.

²⁸⁶ Watt, 'First steps', 215.

²⁸⁷ Cf. Scharf, 'Seizing the Grotian Moment', 115.

²⁸⁸ Scharf, 'Seizing the Grotian Moment', 115.

²⁸⁹ Cf. Watt, 'First steps', 215.

²⁹⁰ Cf. Scharf, 'Seizing the Grotian Moment', 155. For the UK's reaction, see Hollick, *U.S. Foreign Policy*.

²⁹¹ Cf. Scharf, 'Seizing the Grotian Moment', 218, 220.

²⁹² Watt, 'First steps', 219.

US claims on ocean resources would ‘render the action easier to accept and replicate by other states.’²⁹³

President Roosevelt approved the 2267th proclamation on 31 March 1945, but died shortly afterwards on 12 April. The former vice-president, Harry S Truman, came into office immediately, and his new cabinet continued where Roosevelt and his state officials had left off.²⁹⁴ Bilateral agreements – which had been suggested by the UK – were briefly considered as an alternative to a unilateral proclamation, but were rejected by the new secretary of state, James Byrnes, in summer 1945.²⁹⁵

Shortly after this, on 28 September 1945, President Truman made the two proclamations, ‘and the first long step towards fencing-in of the common land of the oceans had begun’.²⁹⁶ A month later, the first reaction came from Mexico, which was something of a surprise. According to Watt, the US had been confident of Mexico’s support, and was puzzled when its neighbour to the south answered with a similar claim, followed closely by other South Pacific coastal states.²⁹⁷ Claims and counterclaims continued to trickle in until the US found itself in conflict²⁹⁸ with a large number of coastal states from all around the world.

Some of the claims made by other states far exceeded those of the Truman proclamation. There were states in Latin America that ‘claimed a zone of 200 miles for both seabed and living resources.’²⁹⁹ Two years later, in 1947, Iceland put forward a ‘long-term national policy aim to equate fisheries jurisdiction with the outer limits of the continental shelf.’³⁰⁰ And in 1952, Chile, Ecuador and Peru went even further, demanding a ‘200 mile

²⁹³ Scharf, ‘Seizing the Grotian Moment’, 114.

²⁹⁴ Cf. Scharf, ‘Seizing the Grotian Moment’, 112-113.

²⁹⁵ Cf. Watt, ‘First steps’, 221.

²⁹⁶ Watt, ‘First steps’, 221.

²⁹⁷ Cf. Watt, ‘First steps’, 222: ‘The Mexican example, in extending its jurisdiction over the continental shelf was outdone by other Caribbean and Latin American states, the Argentine (11 October 1946), Chile (23 June 1947), Peru (1 August 1947) and Costa Rica (July 1948) all claiming to extend their sovereignty up to two hundred miles from low-water mark.’

²⁹⁸ There was actually a ‘lack of protest’ instead of counter claims. Cf. Scharf, ‘Seizing the Grotian Moment’, 116.

²⁹⁹ Anderson, *Modern Law*, 8.

³⁰⁰ Anderson, *Modern Law*, 8.

zone of sovereignty and jurisdiction³⁰¹ – a claim that endangered free passage on the high seas because it implied the expansion of territorial waters from 3 to 200 miles.³⁰²

Faced with these developments, by 1950 the US had already begun to back-pedal, stating that ‘the presidential proclamation of September 1945 did not represent a new concept in international law nor alter the pre-existing regime of the high seas.’³⁰³ According to Watt, the US finally arrived at a point where they were open to the proposals the UK had made in 1943 and again in 1945 – to seek international agreement instead of making unilateral proclamations.³⁰⁴

In the following years, the US managed to arrive at international agreements with states that had been affected by their earlier claims. There was a treaty with Canada concerning salmon and halibut conservation, a convention with Mexico and Costa Rica about tuna, and finally the North West Atlantic Fisheries Convention (NWAFC).³⁰⁵

An immediate crisis was averted, but the incident had made it very apparent that the international community needed to seek agreement and negotiation.

Access to resources makes ocean governance a pressing issue after World War II

While Truman had made a big splash with his 1945 proclamation, diplomats had in fact been trying to solve the very same issue for decades. However, the chain reaction caused by Truman’s proclamation, and the subsequent wrangling by different states over the issues of maritime boundaries, indicated that it was time to seek more ambitious international agreements.

Analysing the reasons for the US’s reluctance to seek international agreements in the 1940s, Watt sees ‘one of those periodic failures of nerve, lapses into panic and evocations of exhaustion of US national resources [...]’.³⁰⁶ Watt’s interpretation that the US government

³⁰¹ Anderson, *Modern Law*, 8-9.

³⁰² Cf. Anderson, *Modern Law*, 9.

³⁰³ Watt, ‘First steps’, 223.

³⁰⁴ Cf. Watt, ‘First steps’, 224.

³⁰⁵ Cf. Watt, ‘First steps’, 223. Today the NAFO. The organization was called ICNAF in 1950. More about the organization see Hollick, *U.S. Foreign Policy*, 64- 65.

³⁰⁶ Watt, ‘First steps’, 224.

had lapsed into an episode of hysteria over their maritime boundaries seems plausible, especially when we consider the political, historical and technological context in which the issue unfolded.

A great deal of literature concerned with the Law of the Sea Convention attributes this international movement towards a new ocean order to a combination of technological progress and political circumstance.³⁰⁷

One factor involved was the experience nations had gained from World War II. More than ever before, states had become aware of the severe consequences that shortages of raw materials could have. Watt mentions US fears of a potential oil shortage in 1943, when they were worried that Saudi Arabia would be persuaded by the UK to cut US concessions in favour of the UK oil supply.³⁰⁸ In terms of technology, technological progress heralded the feasibility of offshore mining, starting with the continental shelf in the 1950s.³⁰⁹

It is difficult to pinpoint which cause was uppermost – progress in technological and scientific knowledge, or the need for solutions spurred by political circumstances. Most likely, both factors fed off each other.

The fact that Harold Ickes called the continental shelf off the American coast a ‘storehouse of natural resources’³¹⁰ suggests that the US was not necessarily looking to exploit them in the immediate future.³¹¹ If he had wanted to imply that the resources were to

³⁰⁷ Anderson, *Modern Law*, 7: ‘The state of law, including the question of national limits, remained largely unchanged until 1945 when the first major changes (not directly connected with the end of the Second World War) were witnessed. Pressure for the acceptance of wider limits so as to meet the growing need for resources was ever-increasing. Further significant changes followed throughout the second half of the century as mankind’s involvement with the seas intensified.’ See also before technology development kicked off Vidas, *Law, Technology*, 27: ‘Due to the technology available, human impacts on the sea and its resources were limited; and humans were also limited in number, since the global population in the early 17th century was around 500 million – some 14 times less than today.’

³⁰⁸ Cf. Watt, ‘First steps’, 213.

³⁰⁹ Cf. Schmidt, *Common Heritage*, 18’. See also Bernaerts, *Bernaerts’ Guide*, 3.

³¹⁰ Watt, ‘First steps’, 212. Watt cites from a letter from Ickes to Roosevelt, 5 June 1943.

³¹¹ We know today that this would in fact not be a possibility until recently. Cf. Japan’s first successful attempt to extract minerals: METI Ministry of Economy, Trade and Industry, *World’s First Success in Continuous Ore Lifting test for Seafloor Polymetallic Sulphides, Pilot test of excavating and ore lifting conducted for seafloor polymetallic sulphides under the sea area near Okinawa Prefecture* (METI, 2017), http://www.meti.go.jp/english/press/2017/0926_004.html.

be used there and then, he might have used words like ‘source’ or ‘pit’. The term ‘storehouse’ evokes images of a dusty stockroom, filled with goods that are reserved for hard times.

One reason for Ickes’s use of the word ‘storehouse’ over a term implying immediate accessibility could have been the fact that technology – although it was advancing – was far from being able to exploit the ‘hidden goods’ scientists had found on the seafloor. Another reason might have been the looming Cold War, and the still-fresh memories of the First and Second World Wars³¹² that kept America in a state of constant worry over how to provide for its own needs if yet another catastrophe struck. Securing future stores of natural resources was an insurance policy for lean times – not just in terms of raw materials from the seafloor, but also in the form of nutrition from fish stocks in the coastal waters.³¹³

The chain reaction caused by Truman’s proclamation in 1945 proves that the US was far from being alone in these worries. They were not the only state to have experienced shortages of natural resources during the war, nor were they the only ones to observe the increasing tensions between East and West with a great deal of concern. One solution was to invest in finding and securing alternative deposits of natural resources, and especially in terms of raw materials, the seabed was a prime source.

Preparing for the first convention on ocean governance

In the aftermath of World War II, the founding of the United Nations was central to the further development of international agreements and law,³¹⁴ and the Law of the Sea was no

³¹² See Watt, ‘First steps’, 224. Watt traces this even further back, writing: ‘This psychology, rooted in images of the dust-bowl and the ghost-town, made the USA one of the earliest pioneers in the movement for conservation by government, a movement whose origins lie within a decade of the announcement by the Superintendent of the Census in 1890 that there was no longer a US frontier. But the traumas of the boom and bust years of the last three decades of the nineteenth century, reinforced as they were by the experiences of 1929-1936, the years between the crash of the Big Bull market and the agricultural depression so vividly depicted in Steinbeck’s *Grapes of Wrath*, have driven this recurrent fear deep into the psyche of a nation which by 1945 was so powerful and dominant that its action echoed throughout world politics.’

³¹³ The conservation zone was one of the US’s worries to secure food for the population. Cf. Watt, ‘First steps’, 216.

³¹⁴ Cf. Harrison, *Making the Law*, 31. See also Anderson, *Modern Law*, 7: ‘From the standpoint of 2006, the Law of the Sea can now be seen to have been first codified and developed and later substantially reformed during the period between 1945 and the end of the century, a period that also saw many diplomatic controversies and disputes over maritime limits, mainly about fishing.’

exception. A new committee was set up to study international issues – this time under the auspices of the United Nations General Assembly. In 1947, the International Law Commission (ILC) was founded, replacing the committee of experts that had been set up for the Hague Codification Conference in 1930.³¹⁵

Once again, the Law of the Sea was pinpointed as one of the issues to be addressed, and this time the territorial waters and high seas were ‘identified as key issues’.³¹⁶ Finally, the General Assembly decided that a large convention should examine the Law of the Sea at some point in the upcoming years, and that the ILC should lay the groundwork for this conference by scoping out the various issues that needed to be addressed.³¹⁷

The ILC’s preparatory work took six years. During that time, the committee worked on identifying the issues to be addressed at the forthcoming Convention on the Law of the Sea. Part of this preparation was to incorporate the work of other international conferences on related issues. These included the Food and Agriculture Organization (FAO) International Technical Conference on the Conservation of the Living Resources of the Sea (Rome, 1955), and the Conference of Marine Resources (Ciudad Trujillo, 1956), sponsored by the Organization of American States (OAS).³¹⁸

The ILC drafted articles about issues concerning the continental shelf and fisheries, and presented these to the General Assembly in 1953. However, the General Assembly refused to handle the issues addressed in the articles, stating that ‘it would not deal with any aspects of the regime of the high seas or of the regime of territorial waters until all problems involved have been studied by the Commission and reported by it to the General Assembly’.³¹⁹

³¹⁵ Cf. Harrison, *Making the Law*, 29.

³¹⁶ Harrison, *Making the Law*, 32.

³¹⁷ Cf. Anderson, *Modern Law*, 9.

³¹⁸ Cf. Hollick, *U.S. Foreign Policy*, 128.

³¹⁹ Regime of the High Seas, UNGA Resolution 798(VIII), December 7, 1953, quoted in Harrison, *Making the Law*, 33.

In 1956, the ILC handed in a ‘single set of draft articles’ to the General Assembly that would become the ‘basis for discussions at the First Law of the Sea Conference.’³²⁰ In February 1957, the General Assembly released a resolution stating that:

[...] an international conference of plenipotentiaries should be convoked to examine the law of the sea, taking account not only of the legal but also of the technical, biological, economic and political aspects of the problem, and to embody the results of its work in one or more international conventions or such other instruments as it might seem appropriate [...].³²¹

The resolution showed that there had been a change in the strategies used to negotiate international law between the first codification attempts in 1907 and the presentation of the ILC’s draft articles in 1956. With this resolution, the General Assembly recognised that negotiation processes had to look beyond the purely legal aspects of an issue. Therefore, the resolution included the requirement for a broader examination of relevant issues like politics, biology and technology during the international conference that was to come.

UNCLOS I – Defining legal concepts, 1958

To renegotiate ocean governance, the world community would find itself entangled in discussion for most of the second half of the 20th century. The Law of the Sea was a gargantuan task, and even just to identify some of the core issues had already taken almost half a decade. In 1958, the international community was finally ready to delve into the material that the International Law Commission had provided. The first major task would be to agree on defining terms and concepts of maritime boundaries. This was done during the two first Conventions on the Law of the Sea.

The first conference was held in Geneva in from 24 February to 27 April 1958.³²² 86 countries were party to it, and 75 articles drafted by the International Law Commission over

³²⁰ Harrison, *Making the Law*, 33-34.

³²¹ UN General Assembly, International conference of plenipotentiaries to examine the law of the sea, 21 February 1957, A/RES/1105, available at: <http://www.refworld.org/docid/3b00f06d4.html> [accessed 18 June 2018].

³²² For an overview over the history, procedure and documents, see Tullio Treves, ‘1958 Geneva Conventions on the Law of the Sea’, United Nations Audiovisual Library of International Law, (2008), <http://legal.un.org/avl/ha/gclos/gclos.html>.

the course of six years³²³ were discussed.³²⁴ Five main committees were set up to handle the different topics that the ILC had collected and submitted as drafts.³²⁵ These committees succeeded in adopting four respective conventions over the course of the negotiation period: The Convention on the High Seas,³²⁶ The Conventions on Fishing and Conservation of the Living Resources of the High Seas,³²⁷ The Convention on the Territorial Sea³²⁸ and The Convention on the Continental Shelf.³²⁹

In addition to the committees, a plenary was set up, and the conventions adopted by the committees had to pass this as well. This proved to be a challenge for two of the conventions – those dealing with fishing limits in the territorial sea, and the outer limits of the continental shelf.³³⁰ These conventions failed to pass at the plenary because it had different rules of procedure. Instead of the simple majority rule of the committees, conventions could only be passed in the plenary by a two-thirds majority.³³¹

³²³ Cf. Hollick, *U.S. Foreign Policy*, 128. The ILC was set up to the task to prepare document for the first convention.

³²⁴ Cf. Sanger, *Ordering the Oceans*, 15.

³²⁵ Treves, '1958 Geneva Conventions', 1.

³²⁶ 1958 Convention on the High Seas, opened for signature 29 April 1958. 450 UNTS 11 (entered into force 30 September 1962).

³²⁷ 1958 Conventions on Fishing and Conservation of the Living Resources of the High Seas, opened for signature 29 April 1958. 559 UNTS 285, (entered into force 20 March 1966).

³²⁸ 1958 Convention on the Territorial Sea and the Contiguous Zone, opened for signature 29 April 1958. 516 UNTS 205, (entered into force 10 September 1964).

³²⁹ 1958 Convention on the Continental Shelf, Geneva, 29 April 1958. 499 UNTS 311, (entered into force 10 June 1964), Cf. Sanger, *Ordering the Oceans*, 14-15. See also United Nations, The Work of the International Law Commission, at 42, quoted in Harrison, *Making the Law*, 35: 'The Continental Shelf Convention was adopted by 57 votes to 3, with 8 abstentions. The Fisheries Conventions was adopted by 45 votes to 1, with 18 abstentions. THE High Seas Conventions was adopted by 65 votes to none, with 2 abstentions. The Territorial Sea Convention was adopted by 61 votes to none, with 2 abstentions.'

³³⁰ See Anderson, *Modern Law*, 9-10: '[...] the success was, however, qualified by the failure to reach agreement on the maximum breadth of the territorial sea and the question of introducing an exclusive fishery zone. Another qualification should be registered over limits: the outer limits of the continental shelf were defined in terms of depth and exploitability, two criteria that proved in practice to be unsatisfactory as a result of technological advances. The rapid movement of the offshore oil and gas industry into deeper and remoter waters was not anticipated in 1958.'

³³¹ Cf. Treves, '1958 Geneva Conventions', 2. The voting issue is also discussed in Anderson, *Modern Law*, 9: 'A simple majority sufficed in Committee and a two-thirds majority in Plenary. This was not an entirely satisfactory method of working on this particular topic, mainly because some significant minorities were left empty handed: a rule requiring the seeking of consensus would have required, of course, a far longer conference.'

The first committee worked on a list of the four freedoms of the high seas,³³² which was relatively straightforward to agree on. The committee defined the ‘high seas’ as: ‘[...] all parts of the sea that are not included in the territorial sea or in the internal waters of a State’.³³³ Article 2 of the convention states:

The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty. Freedom of the high seas is exercised under the conditions laid down by these articles and by the other rules of international law. It comprises, inter alia, both for coastal and non-coastal States:

- (1) Freedom of navigation;
- (2) Freedom of fishing;
- (3) Freedom to lay submarine cables and pipelines;
- (4) Freedom to fly over the high seas.

These freedoms, and others which are recognized by the general principles of international law, shall be exercised by all States with reasonable regard to the interests of other States in their exercise of the freedom of the high seas.³³⁴

The second committee worked on fishing and conservation of the living resources of the high seas, and they managed to agree on some rules of cooperative conservation.³³⁵ The committee states in their preamble that:

Considering that the development of modern techniques for the exploitation of the living resources of the sea, increasing man’s ability to meet the need of the world’s expanding population for food, has exposed some of these resources to the danger of being over-exploited, Considering also that the nature of the problems involved in the conservation of the living resources of the high seas is such that there is a clear necessity that they be solved, whenever possible, on the basis of international co-operation through the concerted action of all the States concerned.³³⁶

³³² Cf. Sanger, *Ordering the Oceans*, 16.

³³³ *1958 Convention on the High Seas*, Geneva, 29 April 1958. 450 UNTS 11 (entered into force 30 September 1962). United Nations, *Treaty Series*, vol. 450, p. 11, article 1. available at: https://treaties.un.org/doc/Treaties/1964/06/19640610%2002-10%20AM/Ch_XXI_01_2_3_4_5p.pdf.

³³⁴ *1958 Convention on the High Seas*, article 2.

³³⁵ Cf. Sanger, *Ordering the Oceans*, 16.

³³⁶ *1958 Conventions on Fishing and Conservation of the Living Resources of the High Seas*, Geneva, 29 April 1958. 559 UNTS 285, (entered into force 20 March 1966). United Nations, *Treaty Series*, vol. 559, p. 285, available at: https://treaties.un.org/doc/Treaties/1964/06/19640610%2002-10%20AM/Ch_XXI_01_2_3_4_5p.pdf.

Another reason this committee met with success was because it left the really tricky question of the contiguous zone to the third committee, which was concerned with the limits of the territorial sea.³³⁷ This was indicated in article 6.3 (and following) of the convention, which states that:

A State whose nationals are engaged in fishing in any area of the high seas adjacent to the territorial sea of a State shall, at the request of that coastal State, enter into negotiations with a view to prescribing by agreement the measures necessary for the conservation of the living resources of the high seas in that area.³³⁸

How to agree on fishing rules for ‘the area adjacent to the high seas’ – meaning the contiguous zone – was left to the third committee. This committee had to deal with one of the most complicated questions concerning the limits of the territorial sea, and they ultimately failed to solve it. However, they did manage to agree on straight baselines for the territorial sea, as set out in section II article 3: ‘the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State.’³³⁹ Another point they succeeded in settling was the ‘innocent passage’ of ships through international straits.³⁴⁰

The fourth committee was concerned with the continental shelf, and managed to settle two legal points of issue concerning the continental shelf: the rights of coastal states and the delimitation of the shelf.³⁴¹ The committee succeeded in defining the concept of the continental shelf as

[...] referring (a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the

³³⁷ Cf. Sanger, *Ordering the Oceans*, 16. See also Treves, ‘1958 Geneva Conventions’, 2.

³³⁸ 1958 Conventions on Fishing and Conservation of the Living Resources of the High Seas, Article 6.3.

³³⁹ *1958 Convention on the Territorial Sea and the Contiguous Zone*, Geneva, 29 April 1958. 516 UNTS 205, (entered into force 10 September 1964). United Nations, *Treaty Series*, vol. 516, p. 205, section II article 3, available at: https://treaties.un.org/doc/Treaties/1964/06/19640610%202-10%20AM/Ch_XXI_01_2_3_4_5p.pdf.

³⁴⁰ Cf. Clyde Sanger p. 16

³⁴¹ Cf. Clyde Sanger p. 16

said areas; (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.³⁴²

In article 6.1, the convention states that coastal states whose continental shelves are adjacent to one another are encouraged to agree on the respective limits of their continental shelves,³⁴³ and the rights of each nation state to utilise the resources of the continental shelf are listed in several articles.³⁴⁴

In *Modern Law of the Sea*, David Anderson writes that the success of UNCLOS I was ‘[...] qualified by the failure to reach agreement on the maximum breadth of the territorial sea and the question of introducing an exclusive fishery zone.’³⁴⁵ He also notes other shortcomings, pointing out that agreements concerning the continental shelf were expressed

[...] in terms of depth and exploitability, two criteria that proved in practice to be unsatisfactory as a result of technological advances. The rapid movement of the offshore oil and gas industry into deeper and remoter waters was not anticipated in 1958.³⁴⁶

UNCLOS II – Failing to fill out legal concepts, 1960

During the first convention, it became apparent that outstanding issues concerning the limits of the territorial sea and fisheries would not be agreed upon. Therefore, the Australian delegation proposed a second convention in Geneva. The Australians had chaired the third committee on the territorial sea, and were well aware of the issues that had still to be resolved.³⁴⁷

As a result, the General Assembly released a resolution on convening the conference, stating: ‘[...] that a second international conference of plenipotentiaries on the law of the sea

³⁴² 1958 *Convention on the Continental Shelf*, Geneva, 29 April 1958. 499 UNTS 311, (entered into force 10 June 1964). United Nations, *Treaty Series*, vol. 499, p. 311, article 1, available at:

https://treaties.un.org/doc/Treaties/1964/06/19640610%2020AM/Ch_XXI_01_2_3_4_5p.pdf.

³⁴³ Cf. 1958 *Convention on the Continental Shelf*, article 6. 1,2.

³⁴⁴ Too many to mention here. See 1958 *Convention on the Continental Shelf*. There is an ongoing discussion on what kind of resources were meant by ‘natural resources’. More about the discussion in Leary, *International Law*, 88.

³⁴⁵ Anderson, *Modern Law*, 9-10.

³⁴⁶ Anderson, *Modern Law*, 9-10.

³⁴⁷ Cf. Sanger, *Ordering the Oceans* Clyde sanger p. 17

should be called for the purpose of considering further the questions of the breadth of the territorial sea and fishery limits [...].³⁴⁸

The second Conference on the Law of The Sea convened in 1960, and was held in Geneva from 16 March to 26 April.³⁴⁹ This time, 88 states were involved in the discussions. Three committees were set up: the ‘General Committee’, the ‘Committee of the Whole’ and the ‘Credentials Committee’.³⁵⁰ Although the conference had identified two specific issues that needed resolving, no agreement was reached this time round either. The United States and Canada presented a proposal of a six-mile fishing zone and six-mile territorial zone,³⁵¹ but it failed by one vote.³⁵²

Ultimately, the conference adopted two resolutions. One was concerned with making the discussions among the participants and the records public.³⁵³ The second was to recognise ‘that the development of international law affecting fishing may lead to changes in the practices and requirements of many States, [...]’.³⁵⁴ This was followed by a list of information and action initiatives to aid states who wanted to follow up the development. In other words, there was no significant agreement other than that the discussions on the Law of the Sea were still ongoing and that the questions around fisheries and the limits of the territorial sea remained to be resolved.

Tullio Treves, who was a legal expert during UNCLOS III, wrote of UNCLOS I and II that since no final agreements were reached concerning the most pressing questions, their importance was ‘mostly historical’.³⁵⁵ He added that though the conferences failed to find any answers to the major issues, they did lay the groundwork on which UNCLOS III would be built.³⁵⁶

³⁴⁸ General Assembly resolution 1307 (XIII), *Convening of a second conference on the Law of the Sea*, (10 December 1958). (To see the resolution of the Conference concerning the issue: Official Records of the United Nations Conference on the Law of the Sea, vol. II, annexes, document A/CONF.13/L.56, resolution VIII).

³⁴⁹ Cf. Treves, ‘1958 Geneva Conventions’, 2.

³⁵⁰ A/CONF.19/L.15.

³⁵¹ A/CONF.19/C.1/L.4.

³⁵² Cf. Anderson, *Modern Law*, 10, and Sanger, *Ordering the Oceans*, 17.

³⁵³ A/CONF.19/L.15 annex I.

³⁵⁴ A/CONF.19/L.15 annex II.

³⁵⁵ Treves, ‘1958 Geneva Conventions’, 3.

³⁵⁶ Cf. Treves, ‘1958 Geneva Conventions’, 3.

Obviously, the outcomes of the first two conventions were not very satisfactory. However, UNCLOS I and II had succeeded in defining legal concepts for negotiating the Law of the Sea. Another conference would be needed to fill out those concepts with specific definitions, from the limits of territorial seas to the exact measurements of the continental shelves. In hindsight, the Canadian journalist Clyde Sanger wrote about the fragmented aftermath of UNCLOS I and II that '[...] it required a person of rare vision to raise the possibility of pulling the fragments together and making a thorough attempt to create a framework for the management of the world's oceans.'³⁵⁷

³⁵⁷ Sanger, *Ordering the Oceans*, 1.

PART II – PREPARATION 1967–1973

Chapter 3. The Maltese initiative changes ocean governance

Dipping into the oceans – A letter to Santa Barbara

In the first week of October 1967, a handwritten letter appeared in the in-tray at the Center for the Study of Democratic Institutions. The letter was formally addressed to ‘Dr Hutchins’, and was from a Mr Aubrey H Whitelaw of North Stonington, Connecticut.³⁵⁸

Rather than Hutchins, it was Elisabeth Mann Borgese who replied to the letter. Perhaps the letter arrived on Hutchins’s desk at a busy time; he may have had a quick look at it and passed it on to her. We will never know the full story, but the follow-up letter from Whitelaw was addressed directly to Elisabeth Mann Borgese, thanking her for her reply in October.³⁵⁹

This correspondence is significant because there has been some uncertainty about where, when and how Elisabeth Mann Borgese was introduced to the discussions about ocean governance that had been going on at the United Nations since the ILC had identified questions around the Law of the Sea as ‘key issues’³⁶⁰ in 1947.³⁶¹ Did the first two Conventions on the Law of the Sea – UNCLOS I in 1958 and UNCLOS II in 1960 – pass unnoticed by Mann Borgese and her colleagues in Chicago and Santa Barbara? And what was it about the preparations for UNCLOS III that made it so appealing for an ‘internationalist’ who had been working on world governance and the *Pacem in Terris* conferences to engage with the discussions in the late 60s?

The correspondence with Whitelaw might give us a hint. In the letter that appeared on Mann Borgese’s desk in early October 1967, Whitelaw wrote that he had ‘[...] recently become intrigued by the proposal that the U.N. might gain financial independence of its sovereign national members.’³⁶² He added that he believed, ‘[...] the U.N. must very soon

³⁵⁸ MS-2-744, Box 43, Folder 17, 28. September 1967.

³⁵⁹ MS-2-744, Box 43, Folder 17, 02. November 1967.

³⁶⁰ Cf. Harrison, *Making the Law*, 32.

³⁶¹ See MS-2-744, Box 43, Folder 17. See Baker, ‘Uncommon Heritage’, 16. I found out later that Baker had already discussed the letter in her 2011 article.

³⁶² MS-2-744, Box 43, Folder 17, 28. September 1967: ‘Resolution 15 adopted July 13. 1967, by Geneva World Peace Through Law Conference [...] is to me a tremendous significance – for reasons as yet, apparently, not publicized.’

play a much more effective peace-keeping role in world affairs than the major national sovereign members are likely to permit or encourage.³⁶³

Whitelaw reported that he had been looking into the field of ‘oceanography’, and had started to become aware of ‘[...] the many promising aspects of exploiting the ocean depths (70% of the Earth’s surface which belong to no nation) [...]’.³⁶⁴ He could not help ‘relating the significance of these new sources of wealth to a possible solution to some of the world’s most pressing problems, such as: famine conditions, industrial resources for undersupplied and underdeveloped nations [...]’.³⁶⁵

Whitelaw’s proposal was mostly about financing the United Nations with revenues from seabed exploitation, and possibly extending this source of funding to other ‘pressing problems’ that the international community would face during the 20th century and in the more distant future. What must have made his suggestions particularly interesting for Mann Borgese was that he believed problem-solving needed to be internationalised, and asserted that nation states were less suited to the challenges that lay ahead. These two claims must have resonated with Mann Borgese’s own ideas of world governance.

In his letter, Whitelaw pointed out that potential sources of wealth existed in the oceans, and that these had not been appropriated by any nation state, meaning they could be utilised to solve world problems. He had made a connection between what Elisabeth Mann Borgese’s work at the Center for the Study of Democratic Institutions stood for – experimenting with internationalism and world governance – and possible future developments in the form of peace-keeping through international organisations and economic equity through utilising marine resources.³⁶⁶ The only missing link, assuming that the centre

³⁶³ MS-2-744, Box 43, Folder 17, 28. September 1967.

³⁶⁴ MS-2-744, Box 43, Folder 17, 28. September 1967.

³⁶⁵ MS-2-744, Box 43, Folder 17, 28. September 1967.

³⁶⁶ See Richard Samuel Deese, ‘From World War to World Law: Elisabeth Mann Borgese and the Law of the Sea’, *World History Bulletin* 32, no. 2, (2016): 5-8, https://www.researchgate.net/publication/311707074_From_World_War_to_World_Law_Elisabeth_Mann_Borgese_and_the_Law_of_the_Sea. Deese argues that the world committee had already sown the seeds of Mann Borgese’s engagement with UNCLOS.

was not yet aware of it, was his remark about the ‘promising aspects of exploiting the ocean depths’.³⁶⁷

What fuelled the discussions that preceded UNCLOS III was the widely recognised existence of marine minerals and other resources that could be utilised in the near future. Even in 1945, President Truman had already understood that the continental shelf might harbour resources that were worth claiming, and it was with this in mind that Ickes had called the US continental shelf a ‘storehouse of resources’.³⁶⁸ What had changed between 1945 and 1967 was the state of technological development, and the possibilities that came with this. In 1945, the resources on and underneath the seafloor had been largely out of reach, hence Ickes’s storehouse metaphor. In 1967, on the other hand, there was an optimistic view that technological development would make these resources accessible in the near future. This meant the seafloor had shifted from being a ‘storehouse’ to an actual deposit.

In 1999, Mann Borgese said of Whitelaw (who she called an ‘unknown gentleman from Connecticut’)³⁶⁹ that his letter had drawn her attention to ‘[...] the growing importance of the issues involved in the Law of the Sea, including various proposals to declare the oceans to be Common Heritage of Mankind.’³⁷⁰ According to Mann Borgese, his suggestions reminded her of the proposal in the draft world constitution to apply the concept of common property to the world. Therefore, she immediately set to work convincing Hutchins to sanction a three-year project examining the Law of the Sea. For Mann Borgese, ‘[...] the prospect of seeing at least one of the “four elements of life” declared to be the common heritage of mankind was indeed exciting [...]’,³⁷¹ and she believed that the project would be a ‘[...] worthwhile undertaking, enabling us to bring the utopian ideals of the World Constitutions into the arena of real politics.’³⁷²

³⁶⁷ MS-2-744, Box 43, Folder 17, 28. September 1967.

³⁶⁸ Watt, ‘First steps’, 212.

³⁶⁹ MS-2-744, Box 345, Folder 4, Arvid Pardo, Retrospect and Prospects, 1999.

³⁷⁰ MS-2-744, Box 345, Folder 4, Arvid Pardo, Retrospect and Prospects, 1999. Obituary written 1999 after Arvid Pardo’s passing.

³⁷¹ MS-2-744, Box 345, Folder 4, Arvid Pardo, Retrospect and Prospects, 1999.

³⁷² MS-2-744, Box 345, Folder 4, Arvid Pardo, Retrospect and Prospects, 1999.

Having convinced Hutchins to engage the centre in the project, Mann Borgese started to work on a project proposal with international law expert, Wolfgang Friedmann.³⁷³ Shortly after this, a speech at the First Committee of the United Nations General Assembly addressed exactly the same issue, and ‘struck like lightning’.³⁷⁴

A person of rare vision?

On 1 November 1967, a tall, middle-aged man with a vanishing hairline and a slight belly took his place behind the speaker’s desk at the First Committee of the United Nations General Assembly. Maybe he had a bundle of papers in his hands that he carefully placed upon the little desk. He might have adjusted his thick black glasses before taking a deep breath and starting to speak.³⁷⁵

It was an ordinary Wednesday in November, and the meeting room of the General Assembly was far from crowded. It was reported that there were surprisingly few people present to witness what was about to happen.³⁷⁶ The man who had ascended to the speaker’s desk would talk for about two hours, and he would make a speech that those present would continue to talk about for decades. It was a ‘you should have been there’ kind of moment.³⁷⁷

The man at the speaker’s desk was Arvid Pardo. In 1964, he had been appointed Malta’s first ambassador to the United Nations.³⁷⁸ The tiny archipelagic state had recently gained independence from Great Britain, and was eager to make a show of its existence in the only arena available to small states: the United Nations.

³⁷³ Cf. MS-2-744, Box 345, Folder 4, Arvid Pardo, *Retrospect and Prospects*, 1999. Friedmann published ‘The Changing Structure of International Law’.

³⁷⁴ MS-2-744, Box 345, Folder 4, Arvid Pardo, *Retrospect and Prospects*, 1999.

³⁷⁵ Picture in: *Commemoration of the 30th Anniversary of the United Nations Convention on the Law of the Sea and the Common Heritage of Mankind* (Malta: Ministry of Foreign Affairs; IMO International Maritime Law Institute), 11.

³⁷⁶ In conversation with: Williamson, Hugh. (Adjunct Professor: Marine Affairs Program, Dalhousie University), interview with Tirza Meyer, April 29, 2016. Halifax/NS, Canada. Hugh Williamson

³⁷⁷ In conversation with: Williamson, Hugh. (Adjunct Professor: Marine Affairs Program, Dalhousie University), interview with Tirza Meyer, April 29, 2016. Halifax/NS, Canada. Hugh Williamson

³⁷⁸ See the letter of appointing Pardo in: *Commemoration of the 30th Anniversary*, 9.

The speech was about humanity's ventures into the deep oceans, and the possibilities that lay ahead.³⁷⁹ Arvid Pardo compared the air on Earth to the water in the sea. The air, he said, was the 'atmosphere of land',³⁸⁰ while the water was the 'atmosphere of submerged land'.³⁸¹ He made a connection between the space inhabited by humanity – namely the Earth and the airspace above it – and the underwater space that humanity was about to infiltrate.

Pardo went on to talk about the origins of humanity's interest in the deep sea, which was an area that had been inaccessible for most of history. The first attempts to utilise the seafloor, he said, were the efforts to lay the first transatlantic cable.³⁸² He continued by outlining various existing possibilities for extracting resources from the oceans, such as the attempts to extract gold and silver from seawater. According to Pardo, the German government had already experimented with this in the interwar period, but had found it too expensive.³⁸³

Apart from the possibilities of utilising traces of gold and silver in seawater, Pardo also mentioned humanity's long-standing interest in the hunt for 'sunken treasures',³⁸⁴ and 'archeological treasures'.³⁸⁵ He went on to cover the penetration of the seafloor through 'sub-bottom mining',³⁸⁶ and noted the existence and extraction of oil³⁸⁷ and gas.³⁸⁸ All these resources were already known, and attempts had been made to exploit them.

Having established the current state of humanity's knowledge and capabilities, Pardo moved on to what he thought lay ahead: the extraction of polymetallic nodules from the seafloor.³⁸⁹ He described the nodules as 'irregularly spherical in shape, like potatoes, ranging

³⁷⁹ For the entire speech *see*: Statement of Arvid Pardo, 1 November 1967, First Committee 1515th & 1516th Meeting, UN Doc. A/C.1/PV.1515/; UN Doc. A/C.1/PV.1516.

³⁸⁰ UN Doc. A/C.1/PV.1515, 8.

³⁸¹ UN Doc. A/C.1/PV.1515, 8.

³⁸² UN Doc. A/C.1/PV.1515, 8.

³⁸³ *Cf.* UN Doc. A/C.1/PV.1515, 16.

³⁸⁴ *Cf.* UN Doc. A/C.1/PV.1515, 19.

³⁸⁵ UN Doc. A/C.1/PV.1515, 19.

³⁸⁶ UN Doc. A/C.1/PV.1515, 21.

³⁸⁷ UN Doc. A/C.1/PV.1515, 22.

³⁸⁸ UN Doc. A/C.1/PV.1515, 23.

³⁸⁹ *Cf.* UN Doc. A/C.1/PV.1515, 26.

from 0.5 to 25 cm in diameter.³⁹⁰ Pardo asserted that there was an ‘abundance’³⁹¹ of these resources, and that in some places they were found in a ‘concentration of 50 kg. per square metre.’³⁹²

According to Pardo, the estimated figures he referred to were taken from John Mero’s book, *The Mineral Resources of the Sea*,³⁹³ in which Mero had attempted to estimate the deposits of nodules on the seafloor.

That the seabed held potential as a new source for securing supplies of raw materials was not breaking news. To understand Pardo’s enthusiasm for these potato-shaped stones on the seafloor, we need to go back to their initial discovery. The first attempt to research marine manganese nodules was the HMS *Challenger* expedition from 1872–1876.³⁹⁴ GP Glasby, a geologist from New Zealand, mentioned this expedition in the historical preface of a book he edited in the 1970s that was concerned with marine manganese deposits in the world’s oceans.³⁹⁵

‘The results of this cruise’, Glasby stated, ‘were unique in as much as they were to dominate thinking on manganese nodules for over 80 years’.³⁹⁶ This takes us up to the 1950s, when new studies were conducted, most likely prompted by increasing demand for new raw material sources caused by a period of instability and international conflict. It was this same climate that would dominate and influence international relations and policy-making during UNCLOS.

According to Glasby, there were ‘sporadic’ follow-ups to the *Challenger* expedition’s research. Expeditions were conducted by the *Albatross* between 1899–1900 and 1904–1905 in the North Pacific, while other research trips included the *Carnegie* expedition in 1928–

³⁹⁰ UN Doc. A/C.1/PV.1515, 26.

³⁹¹ UN Doc. A/C.1/PV.1515, 26.

³⁹² UN Doc. A/C.1/PV.1515, 26.

³⁹³ John L. Mero, *The Mineral Resources of the Sea*, (New York: New York: Elsevier Oceanography Scientific Publishing Company, 1964), quoted in UN Doc. A/C.1/PV.1515, 26.

³⁹⁴ G.P. Glasby, ‘Historical Introduction’, in *Marine Manganese Deposits*, (New York: Elsevier Oceanography Scientific Publishing Company, 1977), 1.

³⁹⁵ See Glasby, ‘Historical Introduction’. Note: typical for this time to publish those kinds of studies.

³⁹⁶ Glasby, ‘Historical Introduction’, 1.

1929 and the *John Murray* expedition between 1933–1934 where nodules were collected. Apart from these, little was done to investigate deep-sea nodules until after World War II.³⁹⁷

A Swedish expedition in 1947–1948 carried out pioneering research assembling an extensive collection of ‘deep sea sediment cores’,³⁹⁸ but it was only in 1965 that John Mero first managed to collect ‘data on the regional variation of nodule composition throughout the Pacific [...]’.³⁹⁹

In terms of the economic value of deep-sea nodules, Mero had already published a relevant study in 1958.⁴⁰⁰ It was the same year UNCLOS I took place in Geneva, but at that time deep-sea minerals were not specifically on the agenda. Arvid Pardo had to introduce them officially to the question of ocean governance in his 1967 speech.

Despite the existence of other resources, polymetallic nodules would become the resource that was most discussed in connection with UNCLOS III in the following years. It is difficult to work out exactly why the nodules remained so persistently on the agenda for the delegates at the United Nations. One explanation could be that Mero’s study meant there was a very optimistic (and incorrect)⁴⁰¹ estimate of their potential commercial value. Another could be that they were the resources that had been explored and studied most extensively by 1967, since the first *Challenger* expedition had taken place way back in 1872–1876.

Polymetallic nodules, however, were not the only minerals known to scientists in 1967, and Arvid Pardo’s speech ranged much more widely. He was clearly interested in a

³⁹⁷ Cf. Glasby, ‘Historical Introduction’, 7

³⁹⁸ Glasby, ‘Historical Introduction’, 8.

³⁹⁹ Glasby, ‘Historical Introduction’, 8.

⁴⁰⁰ See John L. Mero, ‘Economic Aspect of Nodule Mining’, in G.P. Glasby ed., *Marine Manganese Deposits* (New York: Elsevier Oceanography Scientific Publishing Company, 1977), 372: ‘[...] a study was initiated by the Institute of Marine Resources of the University of California to determine if it might be economic to mine and process their nodules for their cobalt, nickel and copper contents. The economic factors involved in mining and processing nodules. All the research and development in this matter dates from the release of the report describing the result of that study (Mero, 1958).’

⁴⁰¹ Mero’s study was too optimistic at the time. See Sanger, *Ordering the Oceans*, 17. Lately this issue has been referred to by Secretary-General of the ISA, Michael Lodge. See Michael Lodge, ‘The International Seabed Authority and Deep Seabed Mining’, *UN Chronicle* 54, no.1&2 (2017), <https://unchronicle.un.org/article/international-seabed-authority-and-deep-seabed-mining>. See also Payoyo, *Cries of the Sea*, 220.

variety of marine resources, such as ‘phosphorite nodules’,⁴⁰² ‘calcareous ooze’⁴⁰³ in sediments and ‘pelagic clays’.⁴⁰⁴ And having listed the potential mineral resources available, Pardo went even further, extending his scope to what today we would call ‘genetic resources’⁴⁰⁵ – a general term for all potential resources in the oceans that could be farmed or utilised in other ways for food supply or biotechnological purposes.⁴⁰⁶ He even suggested that dolphins might be used as sheepdogs⁴⁰⁷ in futuristic fish farms.⁴⁰⁸

Pardo continued by making predictions about when each method of utilising these marine resources might be possible, with reference to the existing state of technological development. He drew a distinction between farming – as a way to utilise the genetic resources – and the exploitation of mineral resources. The latter, according to Pardo, was ‘imminent’,⁴⁰⁹ while farming and other forms of utilisation were ‘in the future’.⁴¹⁰

Although Arvid Pardo recognised that high operational costs could apply to the vehicles used to extract nodules, he expressed enthusiasm for the imminent exploitation of marine minerals, due to the development of technology that would make this exploitation less costly.⁴¹¹

Pardo’s speech reveals that he was well-informed about the technology that was already on the market or in development. He seemed positive that effective mining equipment was right around the corner. For instance, he reported that ‘A prototype submersible for

⁴⁰² UN Doc. A/C.1/PV.1515, 30.

⁴⁰³ UN Doc. A/C.1/PV.1515, 31.

⁴⁰⁴ UN Doc. A/C.1/PV.1515, 32.

⁴⁰⁵ Discussed recently in Leary, *International Law*.

⁴⁰⁶ Cf. UN Doc. A/C.1/PV.1515, 37. In hindsight, Pardo has been accused of having exaggerated the abundance of mineral resources on the seafloor. Mann Borgese defends his vision claiming that Pardo was interested in more than just the polymetallic nodules. See MS-2-744, Box 345, Folder 4, Arvid Pardo, *Retrospect and Prospects*, 1999.

⁴⁰⁷ UN Doc. A/C.1/PV.1515, 33.

⁴⁰⁸ Although this sounds peculiar, it is not that far-fetched if we consider the US navy using dolphins and other marine mammals as minesweepers starting in the 1960s. See A Brief History of the Navy’s Marine Mammal Program, *Annotated Bibliography of Publications from the U.S. Navy’s Marine Mammal Program*, February 1992, <https://web.archive.org/web/20051201140140/http://www.spawar.navy.mil:80/sti/publications/pubs/td/627/index.html>.

⁴⁰⁹ UN Doc. A/C.1/PV.1515, 34.

⁴¹⁰ UN Doc. A/C.1/PV.1515, 34.

⁴¹¹ Cf. UN Doc. A/C.1/PV.1515, 42.

commercial mining of the rich manganese-nodule deposits [...] is under construction now, and others are planned.⁴¹² As for the extraction technology, he informed his listeners that: ‘The nodules will be raked from the ocean floor and pumped into the vessel [...]’⁴¹³ and that from there they would be ‘transferred easily to an accompanying cargo-ship by means of a floating conduit.’⁴¹⁴

This must have been exciting news for the delegates listening to the speech. Pardo made it seem like the exploitation of marine minerals was within reach. Therefore, it was only reasonable that he should warn of an unfair race to the seafloor in the near future.⁴¹⁵ To prevent this from happening, Pardo addressed the problem of the lack of a worldwide overarching ‘institutional framework’⁴¹⁶ that could grapple with ocean issues. He argued that many United Nations agencies were involved with the oceans in one way or another,⁴¹⁷ and that this made dealing with the ocean on an international basis into a difficult and compromised affair.

Another of Pardo’s worries was that the seafloor could be used for warfare. He warned that sovereign states might start installing weaponry stations on the seafloor, as soon as the technology to do so was in place.⁴¹⁸ To prevent this, he suggested making the seafloor outside national jurisdiction into a zone in which warfare was off-limits. He also warned of the hazards of dumping atomic waste, and in general of what he called ‘the wider problem of marine pollution’.⁴¹⁹

In engaging with the question of pollution, Pardo was picking up a thread that had been touched on briefly by only one of the four conventions that had been negotiated during UNCLOS I and II – the Convention on the High Seas. Articles 24 and 25 are concerned with

⁴¹² UN Doc. A/C.1/PV.1515, 34.

⁴¹³ UN Doc. A/C.1/PV.1515, 34.

⁴¹⁴ UN Doc. A/C.1/PV.1515, 34.

⁴¹⁵ UN Doc. A/C.1/PV.1515, 91.

⁴¹⁶ UN Doc. A/C.1/PV.1515, 103.

⁴¹⁷ Some of Pardo’s examples: UN Doc. A/C.1/PV.1515, 94: International Labour Organisation (ILO), FAO, IMCO and UNCTAD.

⁴¹⁸ UN Doc. A/C.1/PV.1515, 45.

⁴¹⁹ UN Doc. A/C.1/PV.1515, 87.

the pollution of the high seas through dumping of atomic waste or – and this is interesting – pollution through exploration for exploitation of the seabed.⁴²⁰

By this point, Arvid Pardo had spoken for such a long time that he had to resume his talk in the afternoon session.⁴²¹ Back at the speaker's desk, he made some final remarks in summary. He called for an 'effective international régime',⁴²² which would be accepted by 'rich and poor countries, strong and weak, coastal and landlocked states'.⁴²³

Up until this point, Pardo had mainly been giving voice to the various possibilities of the deep seas in relation to existing and future technologies. He had warned of the hazards that were intrinsic to humanity's ventures into the deep sea, and now he would come up with a suggestion of how to manage both the possibilities and the dangers. To this end, Arvid Pardo suggested applying the concept of common heritage of mankind to the ocean floor outside national jurisdiction, stating that '[...] the seabed and the ocean floor are a common heritage of mankind and should be used and exploited for peaceful purposes and for the exclusive benefit for mankind as a whole.'⁴²⁴

Otherwise, Pardo warned, technologically superior nation states would soon quarrel as they attempted to dominate the resources of the world's oceans, and this would:

[...] lead to a competitive scramble for sovereign rights over the land underlying the world's seas and oceans, surpassing in magnitude and in its implication last century's colonial scramble for territory in Asia and Africa.⁴²⁵

To achieve a sense of order in the oceans that would avoid such a chaotic race, he asked the international community to establish a kind of 'trustee'⁴²⁶ of the ocean floor. An agency that would have everyone's approval. Pardo was very clear that this could not be achieved by giving all countries the same vote,⁴²⁷ and to some extent this was quite prophetic, since the

⁴²⁰ See 1958 Convention on the High Seas. See also Tuerk, 'The Thirtieth Anniversary', 22: 'It should be recalled that already the 1958 Geneva Convention on the High Seas prohibits any occupation of the high seas, including the respective seabed.'

⁴²¹ UN Doc. A/C.1/PV.1516.

⁴²² UN Doc. A/C.1/PV.1516, 3.

⁴²³ UN Doc. A/C.1/PV.1516, 4.

⁴²⁴ UN Doc. A/C.1/PV.1516, 13.

⁴²⁵ UN Doc. A/C.1/PV.1516, 91.

⁴²⁶ UN Doc. A/C.1/PV.1516, 8.

⁴²⁷ Cf. UN Doc. A/C.1/PV.1516, 8. This would later ring through also in his suggestion for an ocean space treaty.

question of how to reach agreement during UNCLOS III would be the first of many stumbling blocks. In order to establish such a ‘trustee’ or ‘agency’ for a new Law of the Sea, Pardo suggested putting together a collection of representatives who would start working on the question of ocean governance.⁴²⁸

Pardo’s speech shows clearly what was the driving force behind the urge to renegotiate ocean governance after UNCLOS I and UNCLOS II had failed to close the deal. Together with the exact definition of maritime boundaries, two other issues had surfaced: the exploitation of natural resources, and the potential to place weaponry stations on the seafloor outside national jurisdiction.

Pardo had tried to address both these issues. He suggested an overarching agency for the ocean floor, to govern the resources in a way that would ensure access and benefit to all mankind. And he wanted to reserve this same space for peaceful purposes only, thereby preventing anyone from installing weaponry on the seafloor.

The need to renegotiate ocean governance had been foreshadowed both by the Truman proclamation and its ensuing chain reaction of ocean territory claims, and also by the first two UNCLOS conferences, in which the possibilities and shape of maritime boundaries had been discussed for the first time. Arvid Pardo compounded these developments with another one – the exploration of marine mineral resources – and united them all under a new concept: the common heritage of mankind.

Arvid Pardo’s speech has been celebrated as a starting point – as the initial idea that would spark decades of diplomatic uproar at the United Nations and revolutionise the Law of the Sea. The story usually goes on to celebrate Arvid Pardo as the ‘father of the Law of the Sea’.⁴²⁹ But who was the Maltese Ambassador? Where did he come from? How did he end up behind the speaker’s desk? And why did his speech have such dramatic consequences?

⁴²⁸ *Cf.* UN Doc. A/C.1/PV.1516, 15.

⁴²⁹ *Cf.* MS-2-744, Box 345, Folder 4, Arvid Pardo, Retrospect and Prospects, 1999.

Arvid Pardo – From political prisoner to diplomat

Arvid Pardo did not appear from nowhere when he took the podium at the United Nations. Nor did his suggestions of ocean governance. There is a back-story to how Arvid Pardo came to the United Nations, and to the idea of suggesting the principle of the common heritage of mankind.

Pardo was born in Rome on 12 February 1914, and was the child of an international marriage. His father, Guido Pardo, was born in Valetta in 1874, while his mother, Dagmar Julin, was a Swede born in Gothenburg in 1878. Pardo was half Swedish and half Maltese, but was born in Italy and attended kindergarten in London and Geneva. He became an orphan in 1922 at just eight years old. His father died from typhus that he had caught on a mission for the International Labour Organization in Russia, and his mother followed shortly afterwards from complications caused by surgery for appendicitis. His brother had died the year before in a motorcycle accident.⁴³⁰ Bernardo Attolicio, who was an Italian ambassador to Brazil, the Soviet Union and Germany, became his guardian until Arvid Pardo was 21 years old.⁴³¹

Arvid Pardo's bad luck would continue until the end of World War II. Although he was able to gain a doctoral degree in international law in 1933 at the University of Rome and a degree in diplomatic history at the University of Tours in 1938–39,⁴³² he was arrested in Rome in 1940 for underground activities.⁴³³ The exact nature of his offences remains uncertain, other than that he was 'organizing groups to aid the Allies'.⁴³⁴ He was sentenced to 18 years in prison by an Italian court, and was detained in Regina Coeli prison in Rome.⁴³⁵

⁴³⁰ PR-Box: Tributes, Feature, 47, 1990. *See also* Raymond Daniell, 'Malta Assigns a Rare Diplomat to U.N.', *New York Times*, 24 January, 1965, reprinted in *Commemoration of the 30th Anniversary of the United Nations Convention on the Law of the Sea and the Common Heritage of Mankind* (Malta: Ministry of Foreign Affairs; IMO International Maritime Law Institute), 30.

⁴³¹ PR-Box: Tributes, Feature, 47, 1990. *See also* PR-Box: Personal Correspondences & Materials, letter from Arvid Pardo to Secretary Ministry of Commonwealth, 18. October 1968, appendix 'D'. Pardo's CV can be found in: MS-2-744, Box 108, Folder 1.

⁴³² MS-2-744, Box 108, Folder 1, Curriculum Vitae of Dr. Arvid Pardo. 'Educated at Collegio Modragone, Frascati, Italy (1926-33)'. Also more about his positions at the United Nations before he became Ambassador.

⁴³³ *Cf.* PR-Box: Tributes, Feature, 47, 1990. *See also* PR-Box: Personal Correspondences & Materials, letter from Arvid Pardo to Secretary Ministry of Commonwealth, 18. October 1968.

⁴³⁴ MS-2-744, Box 186, Folder 4, Ambassador Arvid Pardo.

⁴³⁵ MS-2-744, Box 186, Folder 4, Ambassador Arvid Pardo.

From a letter Pardo wrote to the Ministry of Foreign Affairs in Malta in 1968, many years later, we learn that his sentence was annulled after World War II.⁴³⁶

In the same letter, he reported further that he was deported to Germany in 1943, together with Ruggero Zangrandi, an Italian journalist and author. Pardo claimed that Zangrandi mentioned him under a pseudonym in his book, *A Train to the Brenner*,⁴³⁷ an account of their deportation and hazardous journey through German prison camps and back to Rome. If we believe Pardo that he is portrayed in the book, we can only guess at which character he is. Most likely, he is one of the two Italian ‘intellectuals’,⁴³⁸ Aldo and Paolo, who are deported together in a bus and taken to the Alexanderplatz prison in Berlin. Since Paolo is the main character in the book – and must therefore be Zangrandi himself – it is likely that the other Italian on the bus, ‘a lawyer named Aldo’,⁴³⁹ represents Arvid Pardo.

Although identifying Pardo’s fictional counterpart is mainly guesswork, Zangrandi’s book can give us a real idea of what Pardo and his companions experienced when they were deported to Germany. For instance, Zangrandi describes the condition of the prison, which was:

[...] characterized by the brilliance of metal, the smell of disinfectant and a frightening layout. All day long squads of Kalfakter washed the floors and walls, polished the gates, railings, pipes, taps and bolts. In spite of such scrupulous cleansing the prison was nearly always in quarantine, because of the epidemics of petechial typhus which broke out at frequent intervals.⁴⁴⁰

Zangrandi reports the death of cell-mates, hunger and envy among the prisoners, and the shell-shocking experience of the bombing of Berlin as witnessed by the inmates. He paints a picture of an existence endured under life-threatening conditions, of endless harassment by the guards – especially towards Italians – and of the hard labour the prisoners had to carry out in order to be fed.

⁴³⁶ PR-Box: Personal Correspondences & Materials, letter from Arvid Pardo to Secretary Ministry of Commonwealth, 18. October 1968.

⁴³⁷ Ruggero Zangrandi, *A Train to the Brenner* (London: GALLERY PRESS LTD, 1963).

⁴³⁸ Zangrandi, *Train to the Brenner*, 15.

⁴³⁹ Zangrandi, *Train to the Brenner*, 128.

⁴⁴⁰ Zangrandi, *Train to the Brenner*, 42.

This corresponds with many of the other reports about conditions in German prisons, and we can assume that Zangrandi's experiences were the same as those of his fellow inmates – including Arvid Pardo. When he was sentenced and imprisoned in Italy, Pardo was just 26 years old. He would spend five years of his life in prison before he was freed by the Red Cross in 1945 and was able to make for the border in southern Germany – on foot, according to some sources.⁴⁴¹ During that time, he was moved from the prison in Rome to the forced labour camp at Grossbeeren to Alexanderplatz prison, and was briefly arrested by the Russians before he could make his journey home.⁴⁴²

Arvid Pardo's inherent interest in peacekeeping and justice could be partly explained through his personal history, especially the war years spent in prison. Soon after returning to Rome, he got a small, administrative position at the United Nations as the chief of the archives⁴⁴³ (1946–1947)⁴⁴⁴ and started to climb the ranks. He served as social affairs officer (1947–1960), represented the UN Development Program in Nigeria and Ecuador (1961–1963/1963–1964) and became Malta's permanent representative to the UN in 1964,⁴⁴⁵ while also being the ambassador of Malta to the United States and the Soviet Union (1966/1968–1971).⁴⁴⁶

It was in his capacity as Malta's ambassador to the United Nations that Pardo gave his speech about the world's oceans. It would earn him the title of 'father of the law of the sea'.

⁴⁴¹ Cf. MS-2-744, Box 186, Folder 4, Ambassador Arvid Pardo.

⁴⁴² MS-2-744, Box 186, Folder 4, Ambassador Arvid Pardo.

⁴⁴³ See Letter of appointment to chief librarian: PR-Box: Personal Correspondences & Materials, letter of appointment, 15. August 1946.

⁴⁴⁴ Cf. MS-2-744, Box 186, Folder 4, Ambassador Arvid Pardo.

⁴⁴⁵ See letter from Prime Minister G. George Olivier 23: PR-Box: Personal Correspondences & Materials, letter from G. George Olivier to Arvid Pardo, 23. November 1964.

⁴⁴⁶ MS-2-744, Box 186, Folder 4, Ambassador Arvid Pardo. See also MS-2-744, Box 108, Folder 1, Curriculum Vitae of Dr. Arvid Pardo.

The Maltese initiative – Did Pardo really do it single-handedly?

Naturally, Arvid Pardo's November 1967 speech at the United Nations did not occur out of the blue and without prior discussion. Back in August, the Maltese had already asked to put the seabed on the agenda, and had thereby announced the Maltese initiative.⁴⁴⁷

It was no secret – either to the United Nations officials or to Mann Borgese and her colleagues at the Center for the Study of Democratic Institutions – that something was about to happen in the United Nations concerning the Law of the Sea and the seafloor. Some UN member states were already critical towards Malta's initiative even before Arvid Pardo took the podium, and the Maltese government felt that their ambassador had to begin his speech by responding to scepticism from the United States. Pardo started out by making it clear that: 'I can categorically state that we are not a sounding-board for any State, and nobody, "put the Maltese Government up to it."⁴⁴⁸

Apparently, there were suspicions that the Maltese were acting as a puppet for Great Britain's maritime interests. This suspicion was not too far-fetched, since Malta had gained independence in 1964, only two years prior to the speech. In that same year, when Arvid Pardo was first made Maltese representative to the United Nations, he had said in an interview for the *New York Times* that his government 'still had ties to Britain'.⁴⁴⁹ However, in 1967 the Maltese were adamant that Arvid Pardo's speech was entirely their own initiative, and that it was simply an attempt to put the tiny archipelagic state on the map.⁴⁵⁰ Considering that Malta was the smallest member of the United Nations by area, making the proposal was a bold step.⁴⁵¹

Arvid Pardo's appearance in the General Assembly is often referred to as a pivotal moment in the history of the Law of the Sea. Sometimes the appreciation of its significance

⁴⁴⁷ For the seabed proposal on 6 October 1967 see UN Doc A/PV.1582, 123.

⁴⁴⁸ UN Doc. A/C.1/PV.1515, 5.

⁴⁴⁹ Daniell, 'Malta Assigns Rare Diplomat', 30.

⁴⁵⁰ Cf. Surabhi Ranganathan, 'Global Commons', *European Journal of International Law* 27, no. 3 (August 2016): 709, <https://doi.org/10.1093/ejil/chw037>.

⁴⁵¹ Cf. Daniell, 'Malta Assigns Rare Diplomat', 30.

goes so far as to suggest that Pardo did this ‘single-handedly’.⁴⁵² However, more recent studies have started to question the notion that Malta and Arvid Pardo were the first to introduce the common heritage concept to the international community. Surabhi Ranganathan attempts to put Pardo’s speech into context, stating that it is ‘often (if wrongly) recalled as the world’s first introduction to the concept of CHM, entailing the international administration of the deep seabed.’⁴⁵³

Especially at the United Nations, but also in other arenas, there were a number of ongoing discussions about the Law of the Sea, and several versions of the common heritage approach had been presented.⁴⁵⁴ One such example was the Chicago committee’s proposal to declare ‘the four elements of life’ as common property.⁴⁵⁵ It is questionable whether a wider audience had encountered the Chicago circle’s 1948 draft of a world constitution, but Arvid Pardo had almost certainly not heard about it. Instead, he mentioned a July 1966 speech by Lyndon B Johnson, the United States president, at the commissioning of the research vessel *Oceanographer*. Johnson had said that:

[...] under no circumstances, we believe, must we ever allow the prospects of rich harvests and mineral wealth to create a new form of colonial competition among the maritime nations. We must be careful to avoid a race to grab and to hold the lands under the high seas. We must ensure that the deep seas and the ocean bottoms are, and remain, the legacy of all human beings.⁴⁵⁶

⁴⁵² Salvino Busuttill, ‘Ocean affairs’, *Times of Malta*, November 6, 2007, <https://www.timesofmalta.com/articles/view/20071106/opinion/ocean-affairs.181476>. Salvino Busuttill reports that that the Swedish king had said this to him.

⁴⁵³ Ranganathan, ‘Global Commons’, 704.

⁴⁵⁴ See for a historical overview: Ingo Klaus Heidbrink, ‘The Oceans as the Common Property of Mankind from Early Modern Period to Today’, *History Compass* 6, no. 2 (February 2008): 659-672, <https://doi.org/10.1111/j.1478-0542.2007.00504>. See also from a legal perspective: Prue Taylor, ‘The Common Heritage of Mankind: A Bold Doctrine Kept Within Strict Boundaries’, in *The Wealth of the Commons. A World Beyond Market & State*, David Bollier and Silke Helfrich, eds., (Amherst: Levellers Press, 2013),

<http://wealthofthecommons.org/essay/common-heritage-mankind-bold-doctrine-kept-within-strict-boundaries>.

⁴⁵⁵ Cf. Hutchins et al., *Preliminary Draft*, 6.

⁴⁵⁶ Lyndon B. Johnson, ‘Remarks at the Commissioning of the Research Ship – *Oceanographer*’, (speech, Washington, DC, July 13, 1966), The American Presidency Project, <http://www.presidency.ucsb.edu/ws/index.php?pid=27711>.

Clearly, different terms were in circulation to describe ownership or entitlement to the resources in the uncharted territory of the ocean floor. Johnson chose to label this right ‘the legacy of all human beings’, while Pardo chose to talk about ‘the common heritage of mankind’. He had considered using the term ‘common property’ as the Chicago committee had done, but he rejected the thought quickly, since ‘property’ might imply a particular sense of entitlement that could lead to a race to grab the resources on the seafloor.⁴⁵⁷

Setting aside the back-and-forth of terms and phrases for a moment, along with the question of who was first to come up with the common heritage concept, the United States’ suspicions concerning Malta’s initiative were still legitimate. Why, of all people, would the ambassador of Malta be interested in talking about resources on the ocean floor?

There are several possible stories to explain this. One is from Arvid Pardo’s own perspective, of which we have some knowledge from letters and explanatory articles in the aftermath of the convention. Another explanation would be the various political and diplomatic climates in Malta, the US Senate and finally in the United Nations, where different proposals were brought forward and discussed openly throughout 1967.

Arvid Pardo’s interest in ocean governance

We will start with Pardo’s own take on the story of how he became interested in the seabed and its resources. Perhaps the most straightforward explanation available is in a letter Arvid Pardo wrote to a Maltese Ministry of Foreign Affairs member called Salvino Busuttil.⁴⁵⁸ Unfortunately, the letter is undated; however, Pardo refers to the introduction of the book *Interfaces: Essays in Honour of Peter Serracino Inglott*,⁴⁵⁹ which was published in 1997 with an introduction by Busuttil. While there is no exact date on the letter, we can thus assume that it must have been written sometime between 1997 and 1999, the year of Pardo’s death.

⁴⁵⁷ Cf. Jean Buttigieg, ‘Arvid Pardo: a diplomat with a mission’, *Symposia Melitensia*, no 12(2016): 17, <https://www.um.edu.mt/library/oar/handle/123456789/14918>.

⁴⁵⁸ See the letter is available at: PR-Box: Personal Correspondences & Materials, undated letter from Dr. Arvid Pardo to Salvino Busuttil (handwritten note on the right corner). CC: Joe Friggieri, Fr Peter Serracino Inglott, Freddie Amato Gauci, ~~Victor Gauci~~, Charlie Vella, Elizabeth Mann Borgese, ~~Victor Ragonesi~~.

⁴⁵⁹ Joe Friggieri and Salvino Busuttil, eds., *Interfaces: essays in philosophy and bordering areas in honour of Peter Serracino Inglott* (Malta: University of Malta, 1997).

The date is of some interest, since it informs us that this is the letter of an old man reminiscing about his career. This becomes even clearer when we learn the reason for the letter: Although framed in friendly words and respectful phrases, Pardo is criticising the introduction of the book for crediting Fr Peter Serracino Inglott – a Maltese priest, philosopher and former rector of the University of Malta⁴⁶⁰ – with responsibility for Malta’s proposal at the General Assembly in 1967. Arvid Pardo refers to the following passage:

On the international scene, Father Peter was behind most of Malta’s initiatives for peace and the rational use of the world’s resources. With Arvid Pardo, he was responsible for Malta’s proposal, presented to the UN General Assembly and accepted in 1967, of putting the resources of the seabed beyond the jurisdiction of nation states and under global management and control.⁴⁶¹

According to Pardo, this version of the story needed rectifying. He argued that, although Inglott had been active in the Law of the Sea question in later years, he had not been part of the preparations prior to the General Assembly speech in 1967. Pardo was probably justified in his criticism, since Inglott does not appear to have been on the scene until later.⁴⁶² A biography about Inglott suggests otherwise, but seems to be based on Inglott’s own memories.⁴⁶³

The letter gives us a fairly direct explanation of how Arvid Pardo, according to his own recollections, became involved with the question of ocean floor governance. He writes:

⁴⁶⁰ *Interfaces: essays in philosophy and bordering areas in honour of Peter Serracino Inglott* has a short biography of Inglott. See Joe Friggieri and Salvino Busuttil, ‘Preface’, in *Interfaces: essays in philosophy and bordering areas in honour of Peter Serracino Inglott*, eds., Joe Friggieri and Salvino Busuttil (Malta: University of Malta, 1997): xii.

⁴⁶¹ Friggieri and Busuttil, ‘Preface’, xii.

⁴⁶² There might be earlier dated letters between Inglott and the IOI in the Dalhousie Archives.

⁴⁶³ See Buttigieg, ‘Arvid Pardo’, 15: ‘According to Daniel Massa, in his book *PSI KINGMAKER*, Dr George Borg Olivier, prime minister of Malta, had asked Fr Peter Serracino Inglott who was teaching philosophy at the University of Malta, what kind peace initiative Malta could take in the United Nations, to promote peace. Fr. Peter found it very difficult to come up with any concrete proposal but things changed when Pardo, charged with a prophetic vision to make the undersea resources a common heritage of mankind, began sending to Malta, draft proposals, memos and other dossiers for Borg Olivier to see.’ Buttigieg refers to the biography: Daniel Massa, *PSI Kingmaker: Life, Thought and Adventures of Peter Serracino Inglott* (Valetta: Allied Newspapers Ltd, 2013), 292. The same story is also retold in, Salvino Busuttil, ‘Foreword’, in Prue Taylor and Lucy Stroud, eds., *Common Heritage of Mankind. A Bibliography of Legal Writing* (Valetta: Foundation de Malta, 2012), xii. Again, the story is inconsistent.

I came to be interested in the seabed for two reasons: 1. A proposal by Ambassador Roosevelt (USA) in November 1966 requesting a UN secretariat study on the mineral resources of the seabed.

2. A dream which I had in January 1967. After this dream I studied the question very hard for several months. I consulted Victor Gauci on the best way to draft a memorandum to the Ministry of Commonwealth and Foreign Affairs requesting permission to present the question to the United Nations. I also asked Victor to test the interest of some poor countries (but not the major powers) in the sea.⁴⁶⁴

There is a hint of esotericism and a tendency towards mystical explanations when the origins of ‘great ideas’ are revisited. We cannot know whether Pardo really dreamed about the seafloor, but parts of his speech at the United Nations have a dreamy, mystical quality, quite at odds with the character of a hard-headed, stoic diplomat. Maybe this was part of Pardo’s personality. At any rate, this is how he remembered the story somewhere towards the end of his life.⁴⁶⁵

From the perspective of content, his first point about the USA’s seabed study proposal from 1966 is rather more interesting.⁴⁶⁶ So far, only references to the study have been found,⁴⁶⁷ pointing to a discussion item at the United Nations.⁴⁶⁸ We can assume that after Truman’s 1945 proclamation on the resources of the sea, seabed resources were discussed in different circles both in the United States and at the United Nations. In fact, Ranganathan addresses this issue when she writes that Pardo’s initiative was ‘only one among numbers of

⁴⁶⁴ PR-Box: Personal Correspondences & Materials, undated letter from Dr. Arvid Pardo to Salvino Busuttil (handwritten note on the right corner). CC: Joe Friggieri, Fr Peter Serracino Inglott, Freddie Amato Gauci, Victor Gauci, Charlie Vella, Elizabeth Mann Borgese, Victor Ragonese.

⁴⁶⁵ Others refer to the dream too – see Christopher Grima, ‘Special Tribute to the late Ambassador Arvid Pardo of Malta on the occasion of the Thirtieth Anniversary of the United Nations Convention on the Law of the Sea’, in *Commemoration of the 30th Anniversary of the United Nations Convention on the Law of the Sea and the Common Heritage of Mankind*, 5-7 (Malta: Ministry of Foreign Affairs; IMO International Maritime Law Institute).

⁴⁶⁶ See the report: ST/ESA/107/Add.1 This UN report from 1982 on the status of seabed minerals hints at the older report that was most likely the outcome of the US request in 1966 for a seabed survey “Sea-Bed Mineral Resource Development: Recent Activities of the International Consortia (United Nations publications, Sales NO. E. 80.II.A.9; A/CN.9/SER.A/1978). See also: GA Resolution 2172 (XXI), *Resources of the sea* (1485th plenary meeting, 6 December 1966): ‘[...] the effective exploitation and development of these resources can raise the economic level of peoples throughout the world, and in particular of the developing countries, [...]’.

⁴⁶⁷ See Ranganathan, ‘Global Commons’, 707: in footnote 80 Ranganathan refers to the survey citing S. Nandan et al., *The Development of the Regime for Deep Sea Mining* (2002). Buttigieg also refers to the survey in: Buttigieg, ‘Arvid Pardo’, 17. He mentions the year 1965.

⁴⁶⁸ See Arvid Pardo, ‘The Origins of the 1967 Malta Initiative’, *International Insights* 9, no.2 (1993): 65, 66.

initiatives of the time, many connected to the UN in some way, and some with more comprehensive subject matter, taking in the seabed and the high seas.⁴⁶⁹ Furthermore, she points out that ‘As early as 1963, a corporate executive suggested the UN assume title to the international seabed and allocate exploitation rights generating revenue for itself.’⁴⁷⁰

It is likely, therefore, that countries like the US would have requested studies on seabed resources, and that they also conducted studies themselves. Since UNCLOS II had left several questions on how to govern the oceans outside national jurisdiction unanswered, there is little doubt that politicians all over the world sought to explore these issues.

Clearly, so did Malta. Apart from Pardo’s personal reminiscences about how he became interested in the seafloor and the questions of seabed governance, there is a bigger picture surrounding the Maltese initiative. We must consider the political and historical context of the newly independent archipelagic state, and how the Maltese initiative got to the United Nations.

Behind the scenes – Malta prepares the seabed proposal

If we are to believe Arvid Pardo, he contacted Victor Gauci⁴⁷¹ – a diplomat who worked for the government of Malta – to help him discuss ideas on seabed governance with the Ministry of Commonwealth and Foreign Affairs. Unfortunately, the exact content of his earlier drafts is uncertain, since they cannot be found in his material.⁴⁷² It is likely that the common heritage of mankind principle was central. He reported in his later letter to Busuttil that he had ‘asked Victor [Sic: Victor Gauci] to test the interest of some poor countries (but not the major

⁴⁶⁹ Ranganathan, ‘Global Commons’, 707.

⁴⁷⁰ Ranganathan, ‘Global Commons’, 707.

⁴⁷¹ Gauci was permanent representative to the United Nations from 1978 onwards. See Michael Testa, ‘An insider’s look at foreign policy’, *Times of Malta*, November 13, 2004, <https://www.timesofmalta.com/articles/view/20041113/local/an-insiders-look-at-foreign-policy.107258>.

powers) in the sea.⁴⁷³ How Victor Gauci tested this interest is unknown, but since he worked as a diplomat, we can only guess that he may have had contacts at the United Nations.⁴⁷⁴

Ranganathan goes so far as to suggest that Arvid Pardo was ‘headhunted’⁴⁷⁵ for the job to ‘establish a voice in international affairs.’⁴⁷⁶ Pardo himself wrote in a 1993 article entitled ‘The Origins of the 1967 Maltese Initiative’ that he had not been aware of subsea resources before he became familiar with the US proposal, after which he started studying the subject.⁴⁷⁷

Leaving aside the exact circumstances in which he came across the idea, the proposal – which arose out of the initiatives of Pardo and others – reached the United Nations on 17 August 1967 in the form of a ‘note verbale’ from the permanent mission of Malta to the United Nations, asking for ‘[...] the inclusion of the following item in the agenda of the twenty-second session of the General Assembly:’

Declaration and treaty concerning the reservation to exclusively for peaceful purposes of the sea-bed and the ocean floor, underlying the seas beyond the limits of present national jurisdiction, and the use of their resources in the interest of mankind.⁴⁷⁸

The proposal was followed by a memorandum in which the unregulated use of the seabed resources was problematised and an international agency was proposed as one possible solution to oversee seabed activity.⁴⁷⁹

From a subsequent report of the First Committee under the General Assembly (which was responsible for disarmament and international security),⁴⁸⁰ we learn that the General Committee recommended the inclusion of Malta’s proposal on 21 September 1967,⁴⁸¹ and

⁴⁷³ PR-Box: Personal Correspondences & Materials, undated letter from Dr. Arvid Pardo to Salvino Busuttil (handwritten note on the right corner). CC: Joe Friggieri, Fr Peter Serracino Inglott, Freddie Amato Gauci, ~~Victor Gauci~~, Charlie Vella, Elizabeth Mann Borgese, ~~Victor Ragonesi~~.

⁴⁷⁴ Gauci has written about this. See Victor J. Gauci, *Genesis of Malta’s Foreign Policy: A Personal Account* (Luqa: Agenda, 2005).

⁴⁷⁵ Ranganathan, ‘Global Commons’, 708.

⁴⁷⁶ Ranganathan, ‘Global Commons’, 708.

⁴⁷⁷ Cf. Ranganathan, ‘Global Commons’, 708, about the proposal in Pardo, ‘The Origins’, 65.

⁴⁷⁸ UN Doc A/6695.

⁴⁷⁹ See memorandum in UN Doc A/6695.

⁴⁸⁰ See United Nations, *Disarmament and International Security (first Committee)*, accessed June 19 2018, <http://www.un.org/en/ga/first/>.

⁴⁸¹ UN Doc A/6840

approved the inclusion on 23 September.⁴⁸² This meant that the General Committee had seen the need to address the question of how to govern the seabed and ocean floor, and that they were willing to put the issue up for discussion.

This did not pass unnoticed. Even before the item had been assigned to its final title, the United States reacted by discussing Malta's initiative in Congress under the headline 'The Maltese Welfare Proposal'.⁴⁸³ One delegate, Mr Hall, voiced his concern, worried that 'ocean floor resources are to be turned over to the United Nations of some nebulous international organization for administration. The revenues from exploration and exploitation are to be turned over to the developing nations of the world.'⁴⁸⁴ He further expressed his surprise over the fact that

The tiny country of Malta on August 17, 1967, in fact, made such a proposal to the United Nations, rushing its proposal as an agenda item for the 22nd session even before studies to formulate proposals for expanded international cooperation were completed. [...] The Maltese proposal looks forward to a treaty which would reserve the ocean for peaceful purpose, establish an international agency to assume jurisdiction over the deep ocean floor [...].⁴⁸⁵

While the Senate was discussing Malta's intentions to 'rush the proposal',⁴⁸⁶ Olivier Borg, the prime minister of Malta, got permission to put forward a proposal at the United Nations. On 6 October 1967, he spoke at a plenary meeting about the seabed proposal put forward by his government. In his speech, he stated that:

[...] a determined search must be made for new major sources of development capital that do not imply increased burdens on the rich countries. It is felt that one such source could (be [sic]) the exploitation of the resources of an internationalized sea-bed and ocean floor.⁴⁸⁷

In reply to his proposal, the plenary put the seabed question on the agenda and promised to put it forward to the General Assembly.⁴⁸⁸ And as we already know, the next step in the

⁴⁸² UN Doc A/6964

⁴⁸³ 113 CONG. REC. H12681 (daily ed. Sept. 28, 1967) (statement of Rep. Hall)

⁴⁸⁴ 113 CONG. REC. H12681 (daily ed. Sept. 28, 1967) (statement of Rep. Hall)

⁴⁸⁵ 113 CONG. REC. H12681 (daily ed. Sept. 28, 1967) (statement of Rep. Hall)

⁴⁸⁶ More on US position see Shigeru Oda, *Fifty Years of the Law of the Sea: With a Special Section on the International Courts of Justice* (Leiden/Boston: Martinus Nijhoff, 2003), 148 ff.

⁴⁸⁷ UN Doc A/PV.1582, 123. The proposal was put forward on Friday, 6 October.

⁴⁸⁸ Cf. UN Doc A/PV.1582, 125.

seabed proposal quarrel was Arvid Pardo's speech at the First Committee Meeting of the UN General Assembly on 1 November 1967.

The Seabed Committee is born

As an immediate reaction to the speech and the ongoing discussions about seafloor resources, the General Assembly decided to set up the Ad Hoc Seabed Committee.⁴⁸⁹ This was what Arvid Pardo had asked for – a collective of representatives to review and organise an overarching global agency responsible for ocean governance.⁴⁹⁰ The Seabed Committee would look into

Examination of the question of the reservation exclusively for peaceful purposes of the seabed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction, and the use of their resources in the interest of mankind.⁴⁹¹

The establishment and preparation of the committee was somewhat complicated. It started with 27 states, who prepared a draft resolution on how the ad hoc committee might look and what tasks it might have. The resolution was then presented by Belgium.⁴⁹² The ad hoc committee ended up having 35 member states, with Malta being one of them.⁴⁹³ The committee's task was to collect together all existing knowledge about the governance of the ocean floor and the evolving technological possibilities that could arise in this area, and to prepare for an international convocation.

This process was similar to previous attempts to prepare for a new Law of the Sea. The League of Nations had set up a comparable 'Committee of Experts' back in 1924, with the brief of gathering information about the Law of the Sea.⁴⁹⁴ After World War II, this task had been taken over by the International Law Commission, which was instructed by the

⁴⁸⁹ See UN Doc A/RES/22/2340

⁴⁹⁰ Cf. Arvid Pardo's speech: UN Doc. A/C.1/PV.1516, 15.

⁴⁹¹ UN Doc A/RES/22/2340

⁴⁹² Cf. UN Doc A/6964, 6. Refers to A/C.1/L.410. For more information and a document collection on the establishment and preparation of the Ad Hoc Seabed Committee see Shigeru Oda, ed., *The Law of the Sea in our Time – II The United Nations Seabed Committee 1968- 1973* (Leiden: Sijthoff, 1977), 3-10.

⁴⁹³ The other members: Kenya, Liberia, Libya, Senegal, Somalia, Tanzania, United Arab Republic, Ceylon, India, Japan, Pakistan, Thailand, Bulgaria, Czechoslovakia, Poland, Romania, USSR, Yugoslavia, Argentina, Brazil, Chile, Ecuador, El Salvador, Peru; Australia, Austria, Belgium, France, Island, Italy, Malta, Norway, UK, USA. Cf. Oda, *Law of the Sea*, 13.

⁴⁹⁴ Cf. Harrison, *Making the Law*, 29.

General Assembly to work up a list of issues to be addressed at the first Law of the Sea Convention in 1958.⁴⁹⁵ So now, after two semi-successful conferences (UNCLOS I and UNCLOS II), the Ad Hoc Seabed Committee was set up to handle similar tasks to those undertaken before them by the Committee of Experts and the ILC. The job of the ad hoc committee was to collect information in preparation for a third United Nations Convention on the Law of the Sea.

In 1969, the committee went from being an ad hoc committee to being officially called the Seabed Committee. It now had 42 member states, with some changes in membership.⁴⁹⁶ In the book *The Law of the Sea in our Time – II The United Nations Seabed Committee 1968-1973*, Shigeru Oda, who was the committee's Japanese representative, provides a detailed run-through of all committee meetings from 1968 to 1973. Although the book is written from the Japanese perspective, it gives us an in-depth report of the events of the Seabed Committee, from the minutiae of rescheduled meetings to the matters that were discussed and the proposals put forward by various representatives.

In 1969, after a great deal of discussion, the Seabed Committee arrived at a resolution that would finally lead to UNCLOS III. Shigeru Oda wrote of the agreement that:

The gist of the resolution was that the Secretary General should ascertain the views of Member States on the desirability of convening at an early date a conference of the law of the sea to review particularly the régimes of the high seas, the continental shelf, the territorial sea and contiguous zone, fishing and conservation of the living resources of the high seas, in order to clarify the definition of the area of the seabed and ocean floor beyond the limits of national jurisdiction, in the light of an international régime for that.⁴⁹⁷

It was also decided that the committee would work on a further task handling the preparations for the impending convention. This task made the Seabed Committee an interesting prospect for people who wanted to shape or influence future discussions on the Law of the Sea.

⁴⁹⁵ Cf. Harrison, *Making the Law*, 29. See also Hollick, *U.S. Foreign Policy*, 128.

⁴⁹⁶ See Oda, ed., *Law of the Sea*, 51. Refers to U.N. Doc. A/RES/2467 (XXIII), 21 December 1968.

⁴⁹⁷ Oda, ed., *Law of the Sea*, 86.

Chapter 4. *Pacem in Maribus* – a think tank for ocean questions

Can Santa Barbara become a think tank for ocean questions?

Elisabeth Mann Borgese realised that Arvid Pardo was becoming an important advocate of the common heritage principle, and that he could play a key role in shaping the Law of the Sea. She contacted him ‘immediately’⁴⁹⁸ after his speech, and invited him to the Center for the Study of Democratic Institutions in Santa Barbara. Pardo made visits to the centre between 1968 and 1970,⁴⁹⁹ during which they worked on three planning meetings that convened in February, May and June of 1968.⁵⁰⁰ These meetings would lead to the first of several *Pacem in Maribus* (PIM) conferences, held in 1970.⁵⁰¹

The name of the conference, *Pacem in Maribus* – which means ‘peace in the oceans’ – must surely have been an adaption of the *Pacem in Terris* convocations of 1965 and 1967. Which meant that by 1970, when Pardo and Mann Borgese organised their first ocean conference, the Center for the Study of Democratic Institutions in Santa Barbara already had experience in convening two far-reaching, international conferences dealing with overarching questions on peace and world order. In using *Pacem in Terris* as a model, Mann Borgese and Pardo had the perfect example to develop further with the backing and help of the centre.⁵⁰²

For Arvid Pardo and Elisabeth Mann Borgese, their new collaboration was the first step towards attempting to influence the development of the Law of the Sea.⁵⁰³ In organising the PIM conferences, they had created their own arena in which they could discuss proposals and designs for the upcoming Law of the Sea Convention. The conferences had the potential to morph into a discussion arena, where delegates of the Ad Hoc Seabed Committee could

⁴⁹⁸ MS-2-744, Box 345, Folder 4, Arvid Pardo, Retrospect and Prospects, 1999.

⁴⁹⁹ MS-2-744, Box 345, Folder 4, Arvid Pardo, Retrospect and Prospects, 1999.

⁵⁰⁰ Cf. Baker, ‘Uncommon Heritage’, 17. Baker refers to *The Ocean Regime*.

⁵⁰¹ Cf. MS-2-744, Box 345, Folder 4, Arvid Pardo, Retrospect and Prospects, 1999. For all past PIM Conferences, see IOI overview: The International Ocean Institute, *Pacem in Maribus (PIM) Conferences – Past Conferences: (1970-2013)*, accessed June 19, 2018, <https://www.ioinst.org/about-1/ioi-story/pacem-in-maribus-pim-conferences/>.

⁵⁰² Milton Mayer about *Pacem in Terris*: Mayer, *Robert Maynard Hutchins*, 484.

⁵⁰³ In the *Saturday Review* chapter, we will see that the group said specifically that their aim was to influence the law-making process.

gather their thoughts and air their interests with a broader audience present than was the case in their own meetings.⁵⁰⁴

In order for this to work, the conference had to attract the right delegates, and Mann Borgese and Pardo succeeded in achieving this. Since Pardo himself was participating in the Seabed Committee on behalf of the Maltese government, he had direct access to colleagues on the committee, some of whom might become important key actors in the forthcoming negotiations. If we take a look at the board of the ad hoc committee (which would later become the Seabed Committee), we can see the same names gracing the guest lists of the *Pacem in Maribus* convocations.⁵⁰⁵ For instance, the chairman, Hamilton Shirley Amerasinghe from Ceylon, the vice-chairman, Alexander Yankov from Bulgaria, and of course a Maltese delegate, Victor J Gauci, who functioned as rapporteur.⁵⁰⁶

Naturally, some of the names would change over the years. For instance, in 1969 another Maltese diplomat, Charles Vella, took over from Gauci as rapporteur of the Seabed Committee.⁵⁰⁷ The role of chair, however, would be held by Amerasinghe right up until he was elected president of UNCLOS III in 1973.⁵⁰⁸

Pacem in Maribus I was held on Malta in 1970, under the headline ‘Quiet Enjoyment: Arms Control and Police Forces for the Oceans’.⁵⁰⁹ Amerasinghe agreed to chair PIM I, a fact Mann Borgese used as an argument to underline PIM’s closeness with the Seabed

⁵⁰⁴ Baker, ‘Uncommon Heritage’, 18. Baker about PIM I: ‘The February planning meeting attracted enough members of the UN Sea-Bed Committee, and evidently offered enough worthwhile substance, that relatively high-level participation at subsequent meetings was assured. This meant in turn that at least some of the ideas discussed had a chance of finding their way into the deliberations of the committee itself – a rough measure for determining influence and flow of ideas, but worth noting.’

⁵⁰⁵ See MS-2-744, Folder 218, Box 33, Summary of Discussions, Planning Session on the Law of the Seas, February 24-26, 1968.

⁵⁰⁶ See Oda, ed., *Law of the Sea*, 14.

⁵⁰⁷ See Oda, ed., *Law of the Sea*, 97.

⁵⁰⁸ See *Statement by Mr. Hamilton Shirley Amerasinghe (Sri Lanka)*, elected President, Third United Nations Conference on the Law of the Sea, 1st meeting. United Nations Headquarters, New York: Codification Division, Office of Legal Affairs. (3 December 1973), available at <http://legal.un.org/avl/ha/uncls/video01.2.html>.

⁵⁰⁹ MS-2-744, Box 345, Folder 4, Arvid Pardo, Retrospect and Prospects, 1999.

Committee.⁵¹⁰ In an interview given many years later in 1991, Elisabeth Mann Borgese said that the first conference was ‘a great success’.⁵¹¹

Looking back on it, the journey from Mann Borgese’s first encounter with questions of ocean governance to *Pacem in Maribus* and finally into the United Nations appears to have gone relatively smoothly. However, at the time not everyone at the Center for the Study of Democratic Institutions in Santa Barbara was initially delighted with her proposal to concentrate on ocean-related matters in the forthcoming years – although she claimed to have ‘easily convinced Hutchins’⁵¹² with the prospect of applying some of their ideas on international world governance to the issue of ocean governance.⁵¹³

Elisabeth Mann Borgese may have been enthusiastic, but the same could not be said for all her colleagues at the centre. The fellows had a practice of sending so-called ‘memorandums’⁵¹⁴ back and forth between them, discussing issues like the focus of their work and other important matters. Various memorandums from 1968 and 1969 – when *Pacem in Maribus* was in preparation and Mann Borgese was pushing the centre to take on a bigger role in the ocean discussions – reveal that some fellows had their concerns.

Memorandums with titles like ‘The Institutional Practice of Good in the World (Malta and similar undertakings)’⁵¹⁵ discussed issues such as how to engage in the activities that Malta was driving. Questions were raised about whether too many staff members would be tied up in the work, and whether other commitments would be undermined if the centre was to focus too much on ocean governance. The ‘Practice of Good’⁵¹⁶ in the title was perhaps an ironic sideswipe at Mann Borgese and Pardo’s enthusiastic – even idealistic – engagement with the common heritage principle.

⁵¹⁰ Baker, ‘Uncommon heritage’, 22. Baker refers to MS-2-744, Box 63, Folder 1, EMB to Forrest Murdon, 25 May 1973.

⁵¹¹ Hermann, ed., *Die Meer Frau*, 89.

⁵¹² MS-2-744, Box 345, Folder 4, Arvid Pardo, Retrospect and Prospects, 1999.

⁵¹³ Cf. MS-2-744, Box 345, Folder 4, Arvid Pardo, Retrospect and Prospects, 1999.

⁵¹⁴ For a collection of memorandums concerning PIM, see MS-2-744, Box 47, Folder 6 and MS-2-744, Box 125, Folder 3.

⁵¹⁵ MS-2-744, Box 47, Folder 6MS 47-6, Center Memorandum, 19 February 1969.

⁵¹⁶ MS-2-744, Box 47, Folder 6MS 47-6, Center Memorandum, 19 February 1969.

Since Pardo's first visit to the Center for the Study of Democratic Institutions, he and Mann Borgese had organised several planning workshops centred around specific questions to do with the oceans.⁵¹⁷ Some of these took place in Malta, others in Santa Barbara. In a letter to Pardo, Mann Borgese wrote that the first *Pacem in Maribus* conference would be a more ambitious attempt to collect together the ideas they had been working on in these workshops, and to rehearse her concept of a 'Maritime Assembly'.⁵¹⁸

The government of Malta, prompted in this case by Pardo, was very interested in hosting the conference, and in January 1969 they sent out an official invitation to the Center for the Study of Democratic Institutions.⁵¹⁹ In March 1969, the centre accepted,⁵²⁰ though memorandums reveal that this decision was not taken without some internal wrangling.

One fellow at the centre, P Ferry, wrote a memorandum to the 'Malta Committee' – meaning the fellows at the centre who were working with Arvid Pardo and the Maltese proposal. These were Elisabeth Mann Borgese, Harvey Wheeler and William Goreman.⁵²¹ Ferry asserted in his memorandum that '[...] a Conference at Malta is not a good idea.'⁵²² He feared that other projects would suffer if they became too heavily engaged in the Malta issue, and he was also worried about the political implications that could go hand-in-hand with such a project.⁵²³

Elisabeth Mann Borgese replied to Ferry's concerns by explaining that all the experts and leaders present would be invited 'in a private and personal capacity',⁵²⁴ and that they would '[...] not speak for their governments in any way, but make the kind of contribution to the Convocation, that active members of Government have made to the *Pacem in Terris* Convocations or to other conferences at the Center.'⁵²⁵

⁵¹⁷ See Chircop, 'Elisabeth Mann Borgese's humanist conception', 122-124.

⁵¹⁸ MS-2-744, Box 108, Folder 1, EMB to Arvid Pardo, 22 September 1969.

⁵¹⁹ Cf. MS-2-744, Box 47, Folder 6, UN 1/7/14 (B) 8127.

⁵²⁰ Cf. MS-2-744, Box 108, Folder 1, Robert M. Hutchins to Arvid Pardo, 4 March 1969.

⁵²¹ Most likely this is fellow William Gorman, the 'young philosopher' Cf. Mayer, *Robert Maynard Hutchins*, 472.

⁵²² MS-2-744, Box 47, Folder, Center Memorandum, 20 February 1969.

⁵²³ Cf. MS-2-744, Box 47, Folder 6, Center Memorandum, 20 February 1969.

⁵²⁴ MS-2-744, Box 47, Folder 6, Center Memorandum, 3 February 1969.

⁵²⁵ MS-2-744, Box 47, Folder 6, Center Memorandum, 3 February 1969.

She was backed up by Harvey Wheeler, who stressed the ultimate aim of the gathering. Wheeler wrote that '[...] it must not be permitted to assume the character of an informal diplomatic gathering, the essential purpose of which is to draft the treaty for the regime of the seas.'⁵²⁶ P Ferry was not satisfied with the explanation, and in his reply a week later he queried why the ocean project had become,

[...] such a big and urgent issue, merely because we received an invitation from the government of Malta. I have not seen the invitation (it would be nice to know exactly what the Maltese have in mind) but this is surely not enough reason to commit the energies of the Center for a year and a half to a project no-one ever thought of three weeks ago.⁵²⁷

It seemed that for Ferry, Mann Borgese's sudden enthusiasm for a project 'no-one ever thought of three weeks ago' was too rash, especially if there was the possibility it might hinder other activity at the Center for the Study of Democratic Institutions. There were probably other reasons for Ferry's reservations too. In 1968, the centre – which was constantly on the search for funding – was in crisis, and was about to be restructured.⁵²⁸

Milton Mayer wrote that 'As big-name conferences and convocations flourished and dialogue faltered, bickering and backbiting became the order of the day [...]'.⁵²⁹ The Pardo-Borgese convocation initiative, together with *Pacem in Terris*, marked a changing trend from dialogue towards large conferences, which not only tied up other fellows at the centre but also strained the centre's funds.⁵³⁰ Despite Ferry's concerns, though, the fellows accepted the conference invitation in March 1969, and the 'Malta Committee' could resume planning the forthcoming event.

***Pacem in Maribus* – An ambitious undertaking**

P Ferry was not mistaken in his suspicions that Elisabeth Mann Borgese had grand plans for the ocean project. In a subsequent memorandum about organising the first *Pacem in Maribus* conference, she wrote that she hoped '[...] the conference could be organised so that it would facilitate the beginning of an Ocean Regime through the establishment of a forerunner

⁵²⁶ MS-2-744, Box 47, Folder 6, Center Memorandum, 11 February 1969.

⁵²⁷ MS-2-744, Box 47, Folder 6, Center Memorandum, 19 February 1969.

⁵²⁸ Cf. Mayer, *Robert Maynard Hutchins*, 487.

⁵²⁹ Mayer, *Robert Maynard Hutchins*, 486

⁵³⁰ Mayer on funds, see Mayer, *Robert Maynard Hutchins*, 487.

nonprofit corporation with a three year program of research, planning and communication financed by foundations, multinational firms (and governments?).⁵³¹

From correspondence between Mann Borgese and Arvid Pardo, we can glean two things: firstly, their intended outcome for the conference, which was to kick-start negotiations on something they referred to as the ‘Ocean Regime’.⁵³² That they used the term ‘regime’ suggests that Pardo and Mann Borgese were thinking about the governance of the oceans in a holistic way, rather than as a collection of separate elements. Their intention was not to examine different areas of ocean governance separately, but rather to look at them as parts of a whole. A Law of the Sea Treaty, in which the oceans were treated holistically, would consequently be an ‘Ocean Regime’.

Secondly, the memorandums discussing the first PIM conference underline the importance they placed on the significance of the gathering. Elisabeth Mann Borgese had very specific ideas about how the conference should be framed, and stressed that it had to be as official and celebratory as possible. When she learned that the Governor’s Palace in Malta was not available for the opening and afternoon session,⁵³³ she wrote to Pardo:

It is sad news that we cannot have the Governor’s Palace. I don’t want the Hilton (or Corinthia Palace) Convention halls. They are very nice and beautifully equipped, but if we wanted a businessmen’s convention at a Hilton Hotel, we could have it at Beverly Hills [...]. We do want this rehearsal for the “Maritime Assembly” as official and solemnly housed and as closely and specifically tied to Malta as possible.⁵³⁴

The plan for the conference was ambitious: ‘We are hoping that the opening banquet will be addressed by your Prime Minister, followed by U Thant [Sic: Secretary-General of the United

⁵³¹ MS-2-744, Box 125, Folder 3, Center Memorandum, 5 November 1970. And further MS-2-744, Box 125, Folder 3, Pacem in Maribus. A proposed International Convocation on ‘Frontiers of the Deep Seas’ to Explore Peaceful Uses of The High Seas and the Sea-Bed Beyond the Limits of National Jurisdiction: ‘The Center feels that the planning and carrying out of such activities must be based upon a new kind of dialogue among national governments, the international community and the public and private organizations engaged directly in development of living and non-living ocean resources and the scientific community.’ There is also an advertisement of Convocation. See MS-2-744, Box 125, Folder 3, newspaper article, New Peril for Mankind, 2 April 1970.

⁵³² MS-2-744, Box 125, Folder 3, Center Memorandum, 5 November 1970.

⁵³³ See MS-2-744, Box 108, Folder 1, Arvid Pardo to EMB, 12 September 1969.

⁵³⁴ MS-2-744, Box 108, Folder 1, EMB to Arvid Pardo, 22 September 1969.

Nations], and Mr Hutchins for the Center. [...] the closing session will be addressed by your Prime Minister.⁵³⁵

Mann Borgese and Pardo invited experts from the fields of research and science, the political arena, industry, and the Seabed Committee, and as Mann Borgese reported in a letter to Pardo:

We have lined up the 85 experts who will constitute the “core” of the Convocation, and are just in the process of sending out invitations to all the fishery organizations. Invitations have gone out, as you know, to the Mission of all Members of the Sea-bed Committee. I know that a number of them will accept. It might be very useful if you or your Government could send out concurrent invitations. This might be good practice also in the case of the fishery organizations: Many of whom might be more interested in Malta than in the Center for the Study of Democratic Institutions [...].⁵³⁶

Obviously, Elisabeth Mann Borgese suspected that they would need the help of the Maltese government in some cases, and that important contacts in politics and industry would only attend if they were assured of the importance of the gathering. In several letters that shuttled back and forth between Malta and Santa Barbara, she reported on which delegates had confirmed their attendance, and asked Pardo for help with the invitations where she suspected invitees might have reservations.⁵³⁷

In terms of international organisations, she tried to get the International Atomic Energy Agency to attend, after having already secured the presence of the ‘[...] IMCO, WMO, IOC and FAO[...]’.⁵³⁸ She could also report that she was ‘[...] still working on ILO and a few others[...]’,⁵³⁹ and found it ‘very important that this agency whose activities have such a bearing on maritime pollution, should be present at the Convocation. Do you think your Government could send a strongly-worded invitation?’⁵⁴⁰

Apart from encouraging the Maltese government to write ‘strongly-worded invitations’ (whatever that meant – unfortunately we have not been able to examine one), Mann Borgese also made a last-minute suggestion of producing *Pacem in Maribus* postage

⁵³⁵ MS-2-744, Box 108, Folder 1, Madeline C. Marina to Arvid Pardo, 6 February 1969.

⁵³⁶ MS-2-744, Box 108, Folder 1, EMB to Arvid Pardo, 18 February 1969.

⁵³⁷ See MS-2-744, Box 108, Folder 1, EMB to Arvid Pardo, 8 April 1970. EMB enclosed a list of fishery people to contact.

⁵³⁸ MS-2-744, Box 108, Folder 1, EMB to Arvid Pardo, 14 April 1970.

⁵³⁹ MS-2-744, Box 108, Folder 1, EMB to Arvid Pardo, 14 April 1970.

⁵⁴⁰ MS-2-744, Box 108, Folder 1, EMB to Arvid Pardo, 14 April 1970.

stamps, perhaps to add an official note of importance to the undertaking. Pardo replied to her idea saying it was ‘excellent’,⁵⁴¹ but while he did pass it on to his government, he also pointed out that ‘The difficulty is time.’⁵⁴² Mann Borgese had sprung this idea on him in March 1970, and the convocation was to be held in June of the same year.

Reaching out to the Seabed Committee – An article in the *Saturday Review*

After the first convocation, an extended feature article about *Pacem in Maribus* was published in the *Saturday Review* in September 1970. The *Saturday Review* was an American weekly magazine that had been founded in 1924. In its early years, the magazine focused on literature, but from the 1940s onwards it broadened its thematic scope.⁵⁴³

Norman Cousins, who was editor-in-chief of the magazine from 1942 until 1972, had a broad interest in the United Nations and world governance.⁵⁴⁴ Under Cousins’s leadership, the *Saturday Review* became more focused on politics, and the *New York Times* wrote of his magazine that it became a ‘[...] reflection of his [sic. Cousins] own wide-ranging tastes and curiosities, exploring such topics as disarmament and environmental protection long before they became fashionable causes.’⁵⁴⁵ This made the *Saturday Review* an ideal platform for presenting the efforts of *Pacem in Maribus* to a well-informed readership that was interested in evolving questions around world governance and the United Nations. Hutchins had met Cousins at least once in 1967 at a fundraising dinner in New York after the first *Pacem in Terris* convocation, when the Center for the Study of Democratic Institutions was running short of money.⁵⁴⁶

The report on ocean governance for the *Saturday Review* was put together by the Center for the Study of Democratic Institutions. It was mainly written by Elisabeth Mann

⁵⁴¹ MS-2-744, Box 108, Folder 1, Arvid Pardo to EMB, 11 March 1970.

⁵⁴² MS-2-744, Box 108, Folder 1, Arvid Pardo to EMB, 11 March 1970.

⁵⁴³ See *Encyclopaedia Britannica*, s.v. ‘History of Publishing – The United States – Saturday Review’, accessed 19. June 2018, <https://www.britannica.com/topic/publishing/Magazine-publishing#ref398505>.

⁵⁴⁴ Cf. Eric Pace, ‘Norman Cousins, 75, Dies; Edited The Saturday Review’, *New York Times*, December 1, 1990, <https://www.nytimes.com/1990/12/01/obituaries/norman-cousins-75-dies-edited-the-saturday-review.html>.

⁵⁴⁵ Jonathan Friendly, ‘Saturday Review Shuts down’, *New York Times*, August 17, 1982, <https://www.nytimes.com/1982/08/17/business/saturday-review-shuts-down.html>.

⁵⁴⁶ Cf. Mayer, *Robert Maynard Hutchins*, 485.

Borgese, who had documented the outcomes of PIM in a larger report. Having undergone some ‘surgery’⁵⁴⁷ (meaning that it was heavily shortened and de-Germanised) courtesy of Harry Ashmore, the centre’s president at that time, this report gives us the essentials of the convocation.⁵⁴⁸

The *Saturday Review* publication was a way to reach out to the Seabed Committee in Geneva and to the general public, and a letter from Harry Ashmore to Mann Borgese sent just prior to the publication of the *Saturday Review* piece tells us a bit about the ambitions the PIM organisers had for the article. They wanted to make public what they had been doing at *Pacem in Maribus*, and hoped especially to reach the people working at the United Nations on the Seabed Committee.

Harry Ashmore wrote to Mann Borgese: ‘As you are aware, time is of the essence if we are to get this stuff in general circulation in time to be of influence at Geneva. I hope, therefore, that you will be able to cable your clearance immediately.’⁵⁴⁹ With regards to the platform afforded by the magazine, he added that: ‘I think this is probably the best exposure we could possibly have in the United States, since the Review is heavily United Nations oriented.’⁵⁵⁰

Ashmore’s assessment of the *Saturday Review*’s readership was quite accurate. With Cousins at the helm, the magazine reached more than 600,000 readers.⁵⁵¹ According to Cousins, his readers were like a ‘second family’,⁵⁵² interested in the same issues as he was – namely world peace, disarmament and the nuclear threat.⁵⁵³ If Cousins was right about his own readers, then this kinship was not just between him and his readership, but also with Mann Borgese, Arvid Pardo, and all the others who had been involved in the preparation period and were interested in renegotiating ocean governance under the common heritage of mankind principle.

⁵⁴⁷ MS-2-744, Box 125, Folder 2, Robert M. Hutchins to Norman Cousins, 17 August 1970.

⁵⁴⁸ For the material the fellows put together, see MS-2-744, Box 125, Folder 2.

⁵⁴⁹ MS-2-744, Box 125, Folder 2, Robert M. Hutchins to EMB, 18 August 1970.

⁵⁵⁰ MS-2-744, Box 125, Folder 2, Robert M. Hutchins to EMB, 18 August 1970.

⁵⁵¹ See Pace, ‘Norman Cousins’

⁵⁵² Harvard Square Library, *Cousins, Norman (1915-1990)*, accessed June 19 2018, <http://www.harvardsquarelibrary.org/biographies/norman-cousins-2/>.

⁵⁵³ Cf. Harvard Square Library, *Cousins*.

That the article was aimed at a very specific audience becomes even more apparent from a letter sent by Ashmore to Cousins about the timing of publication: ‘We are assuming that the 42-nations U.N. Committee on Peaceful Uses of the Seabed will still be in session at the time all of this is published.’⁵⁵⁴ Apparently, the fellows in Santa Barbara hoped the report would be noticed by United Nations officials, and that it would be regarded as a contribution to the discourse. Some days later, Ashmore wrote to Cousins again, stating that he was, ‘[...] anxious to attract as much attention as possible around the world while the Seabed Committee is still sitting in Geneva.’⁵⁵⁵

Ashmore also expressed a desire to publish the same or similar reports in ‘England, France, Germany, Italy, Japan and anywhere else [...]’.⁵⁵⁶ It is difficult to assess how much attention the report garnered, but it was published in the *Saturday Review* in September 1970, with the following preface from the editors:

Saturday Review presents the following summary report by Mrs. Borgese, and excerpts from the more significant contributions, in the belief that they represent a major contribution to the international dialogue.⁵⁵⁷

The report was accompanied by a handful of brief articles, probably in box-out style, featuring short contributions from several of the convention’s attendees. In total, there were seven contributors,⁵⁵⁸ and some of the headlines were quite eye-catching: ‘Appeal to all nations, to all men and women of the planet’,⁵⁵⁹ ‘Savannahs of the blue’,⁵⁶⁰ and ‘The issue is survival’.⁵⁶¹ The headlines alone delivered the essence of what PIM was about: a plea for immediate action, a hint towards the possibilities in the uncharted territory of the ‘blue

⁵⁵⁴ MS-2-744, Box 125, Folder 2, Robert M. Hutchins to Norman Cousins, 17 August 1970.

⁵⁵⁵ MS-2-744, Box 125, Folder 2, Harry Ashmore to Norman Cousins, 19 August 1970.

⁵⁵⁶ MS-2-744, Box 125, Folder 2, Robert M. Hutchins to EMB, 18 August 1970.

⁵⁵⁷ MS-2-744, Box 125, Folder 2, Revised 8/28/70 (Prefatory material to introduce Pacem in Maribus takeout).

⁵⁵⁸ The reports by Richi Kalder and Alva Myrdal are not included because they were more factual.

⁵⁵⁹ MS-2-744, Box 125, Folder 2, Revised 8/28/70 (Prefatory material to introduce Pacem in Maribus takeout).

⁵⁶⁰ MS-2-744, Box 125, Folder 2, Revised 8/28/70 (Prefatory material to introduce Pacem in Maribus takeout).

⁵⁶¹ MS-2-744, Box 125, Folder 2, Revised 8/28/70 (Prefatory material to introduce Pacem in Maribus takeout).

Savannah’, and a reminder of the life-and-death urgency of solving questions of ocean governance.

The ‘appeal to all nations’⁵⁶² was a summary of a speech made by the former Romanian ambassador to the United States and the United Nations, Silviu Brucan. At the time, he was a professor of sociology at the University of Bucharest, and he gave his audience a choice:

The oceans, with their pure water and sunny beaches can be a source of unmitigated joy or they can become the victim of unleashed technology. They can become a source of new bounty or they can become a vast graveyard for fish and other living species annihilated by pollution.⁵⁶³

The picture he painted of the worst-case scenario for the future of the oceans was dramatic. Who could possibly want ‘unleashed technology’ running wild in a ‘vast graveyard for fish’? To deliver the oceans from this eventuality, he stressed that the aim had to be to reserve the seafloor outside national jurisdiction for peaceful purposes only, ‘[...] in order to remove the abysman [sic: abysmal] gap between the haves and the have-nots of this planet.’⁵⁶⁴

By the ‘haves’, Brucan was referring to the developed nations, such as the United States or European Nations like Germany, France and the United Kingdom. When he talked about the ‘have-nots’, he meant the developing countries, some of them former colonies who had only recently gained independence. These countries still had to catch up with the technological development of a rapidly advancing world.

Clare Luke,⁵⁶⁵ an attendee at PIM, wrote about the ocean future that might lie before humanity if the speeches of the Maltese Ambassador were to be believed. In Luke’s portrayal, Pardo is presented as an almost prophetic figure.

Here on the Island of Malta there was a man who dreamed an impossible dream and reached for an unreachable star. His dream was of an ocean regime which would rule the great unclaimed savannahs of the blue and develop them and fructify them for the benefit of all mankind.⁵⁶⁶

⁵⁶² MS-2-744, Box 125, Folder 2, Revised 8/28/70 (Prefatory material to introduce Pacem in Maribus takeout).

⁵⁶³ MS-2-744, Box 125, Folder 2, Brucan Save the Seas and the Oceans for Mankind.

⁵⁶⁴ MS-2-744, Box 125, Folder 2, Brucan Save the Seas and the Oceans for Mankind.

⁵⁶⁵ Former Ambassador to Italy. *See* MS-2-744, Box 125, Folder 2, Participants in the Pacem in Maribus Convocation.

⁵⁶⁶ MS-2-744, Box 125, Folder 2, Luke, Savannah of the Blue.

There is the image of ‘the dream’, reaching for ‘the stars’ and the ability to ‘fructify’. What more could one want from the father of the Law of the Sea? According to Luke his speech at the United Nations had the impact ‘of a tidal wave’.⁵⁶⁷

The man behind this alleged tidal wave, Arvid Pardo, made some contributions of his own to the *Saturday Review* feature. His article addressed the urgency of the enterprise, and according to him, it was a question of life and death. Like Brucan, he presented his readers with the various potential effects of recent technological development. ‘Technology can unite and it can divide. It can elevate and it can degrade. It can create a new civilization of abundance, it may destroy all civilization and life on this globe.’⁵⁶⁸ Pardo’s core message was that the path for the future of the oceans had to be chosen wisely, and he concluded his piece with a powerful warning: ‘At stake is the survival of man himself.’⁵⁶⁹

The florid language, dramatic tone and almost poetic elements of these various smaller articles must have made entertaining reading, but despite this, the report as a whole had a very serious side to it. The tranquility and mystery of the ocean have inspired all kinds of texts over the years, but the PIM article connected this poetic aspect of the oceans with a much more practical call to action.

In fact, the poetic tone that permeates the *Saturday Review* article seems to be a recurring element in discussions about the Law of the Sea in the 1970s. This was perhaps most strikingly illustrated in Pardo’s first speech at the United Nations, where he talked about the oceans as the ‘womb of life’.⁵⁷⁰ The entire speech had a lyrical quality that would be reflected in the way others subsequently talked about the Law of the Sea. Perhaps Arvid Pardo’s choice of tone inspired others to speak about the subject in a similar fashion, but nevertheless, however poetic his contribution there was a concrete purpose behind it: to influence the Seabed Committee’s work.

⁵⁶⁷ MS-2-744, Box 125, Folder 2, Luke, Savannah of the Blue.

⁵⁶⁸ MS-2-744, Box 125, Folder 2, Pardo, The Issue is Survival.

⁵⁶⁹ MS-2-744, Box 125, Folder 2, Pardo, The Issue is Survival.

⁵⁷⁰ UN Doc. A/C.1/PV.1515, 7.

Discussions and achievements of *Pacem in Maribus*

The short pieces that accompanied Elisabeth Mann Borgese's larger review of PIM can give us an overview of the central themes and motivations of the convocation. The purposes of the conference were to prompt action, to call for the preservation of the oceans, and to influence members of the Seabed Committee.

About 180 participants from 51 states were present at the gathering in Malta.⁵⁷¹ The list of participants included famous names like the 'Oceanographer [and] Explorer'⁵⁷² Jacques Piccard and sitting members of the Seabed Committee such as Hamilton Shirley Amerasinghe of Ceylon, along with a vast number of United Nations ambassadors and industry representatives from all over the world.⁵⁷³

The list of influential participants alone suggests that the convocation was a huge undertaking. Apparently, Malta's 'strongly-worded' invitations had fulfilled their purpose. Even without the attention from the *Saturday Review*, it is reasonable to suppose that the gathering would have had some impact on those important United Nations ambassadors who attended the convention and later the gatherings of the Seabed Committee.⁵⁷⁴ Of those who attended PIM I or the subsequent conferences, several would go on to be deeply involved in the Law of the Sea Convention in various capacities over the coming years.

In a letter to Aurelio Peccei, Mann Borgese was clear about the purpose of the conference. The *Pacem in Maribus* (PIM) Convocation was about bringing together scientists, political leaders and industry to represent "the internationalization of research & development,"⁵⁷⁵ "the world community of science"⁵⁷⁶ and "the world community of

⁵⁷¹ All participants are listed in: MS-2-744, Box 125, Folder 2, Participants in the *Pacem in Maribus* Convocation.

⁵⁷² MS-2-744, Box 125, Folder 2, Participants in the *Pacem in Maribus* Convocation.

⁵⁷³ The complete list see MS-2-744, Box 125, Folder 2, Participants in the *Pacem in Maribus* Convocation. Norwegian delegate Jens Evensen participated too. This information will be important later in this study.

⁵⁷⁴ In line with Baker, 'Uncommon Heritage', 17-18. Baker argues that the pre-conferences had already attracted attention.

⁵⁷⁵ MS-2-744, Box 43, Folder 49, EMB to Dr. Aurelio Peccei, May 15, 1969.

⁵⁷⁶ MS-2-744, Box 43, Folder 49, EMB to Dr. Aurelio Peccei, May 15, 1969.

production.”⁵⁷⁷ Their task was to discuss the utilization of resources, the ecology of the ocean and the role of scientists.⁵⁷⁸

From the *Saturday Review* report, we learn that the gathering revolved around five major topics: ‘The Scientific Dilemma’,⁵⁷⁹ ‘The Harvest of the Seas’,⁵⁸⁰ ‘The Ocean Enterprise’,⁵⁸¹ ‘The Underwater Arms Race’⁵⁸² and ‘The Nixon Proposal’.⁵⁸³

Having gathered together such a wide group of experts from different fields, it was inevitable that interests would differ tremendously on many aspects of ocean governance. It must have been challenging – if not impossible – to channel and unite all these points of view, but the conference gave a fairly accurate indication of the differing interests that would be present ‘in the field’. Meaning, of course, in the United Nations, where each country had agendas and preferences that were influenced by their geographical location, their political system, their state of technological development, their industrial background, and their international alliances and agreements. Planning a conference like this would indeed be a ‘rehearsal for the “Maritime Assembly”’,⁵⁸⁴ just as Elisabeth Mann Borgese had envisioned it.

While Mann Borgese’s report made the undertaking seem promising, the planning committee had in fact run into problems even at the invitation stage. Afterwards, Mann Borgese admitted that ‘The major American and allied European oil producers were unrepresented at Pacem in Maribus, in response to a de facto boycott called by the American Petroleum Institute [...]’.⁵⁸⁵ As a consequence, only smaller enterprises had attended the conference, while the big players – those with the real power and influence – had stayed away.

⁵⁷⁷ MS-2-744, Box 43, Folder 49, EMB to Dr. Aurelio Peccei, May 15, 1969.

⁵⁷⁸ Cf. MS-2-744, Box 43, Folder 49, EMB to Dr. Aurelio Peccei, May 15, 1969.

⁵⁷⁹ MS-2-744, Box 125, Folder 2, Pacem in Maribus: A report and Some Reflections by EMB.

⁵⁸⁰ MS-2-744, Box 125, Folder 2, Pacem in Maribus: A report and Some Reflections by EMB.

⁵⁸¹ MS-2-744, Box 125, Folder 2, Pacem in Maribus: A report and Some Reflections by EMB.

⁵⁸² MS-2-744, Box 125, Folder 2, Pacem in Maribus: A report and Some Reflections by EMB.

⁵⁸³ MS-2-744, Box 125, Folder 2, Pacem in Maribus: A report and Some Reflections by EMB.

⁵⁸⁴ MS-2-744, Box 108, Folder 1, EMB to Arvid Pardo, 22 September 1969.

⁵⁸⁵ MS-2-744, Box 125, Folder 2, Pacem in Maribus: A report and Some Reflections by EMB.

One participant at PIM, Dr Robin Murray of Great Britain from the London Graduate School of Business Studies,⁵⁸⁶ was concerned at the control exerted by these big companies. He reported that, despite the boycott, '[...] one of the major oil companies, while declining to be represented at Malta, put pressure on one or two of the convocation's participants to see that this particular aspect of their operations was not aired at all.'⁵⁸⁷ Unfortunately, we do not know which oil company this was, or which conference participants they supposedly tried to manipulate. Still, Murray's allegations can tell us two things: Firstly, that the oil industry made sure its interests were taken into account, regardless of the boycott, and secondly, that these companies must have recognised that PIM was a reasonably important platform – since they took the trouble not only to boycott it but at the same time to try and put someone on the case to watch out for their interests.

Despite the hiccup of the oil company boycott, the report shows that the conference participants managed to articulate some essential elements of what should later be negotiated during the Law of the Sea Convention. Several delegates argued in favour of a new approach to governing the oceans, instead of applying 'terrestrial thinking'⁵⁸⁸ to ocean governance. Ambassador Mojsov of Yugoslavia said 'we often follow the analogy of arguments used in the delimitation of national boundaries among different states and powers. [...] If we continue along this line we shall, in the end, arrive at the proclamation of seabed colonies or seabed states.'⁵⁸⁹

General Said Uddin Khan of Pakistan, a former head of UN peace-keeping missions,⁵⁹⁰ pointed out that the essentially different nature of ocean boundaries had to be considered when it came to addressing the concept of peace-keeping operations in such an environment. 'You have to invent something quite new,' General Khan said. 'People in blue hats in boats will be quite helpless.'⁵⁹¹

⁵⁸⁶ See List of Participants MS-2-744, Box 125, Folder 2, Participants in the Pacem in Maribus Convocation.

⁵⁸⁷ MS-2-744, Box 125, Folder 2, Pacem in Maribus: A report and Some Reflections by EMB.

⁵⁸⁸ MS-2-744, Box 125, Folder 2, Pacem in Maribus: A report and Some Reflections by EMB.

⁵⁸⁹ MS-2-744, Box 125, Folder 2, Pacem in Maribus: A report and Some Reflections by EMB.

⁵⁹⁰ See List of Participants MS-2-744, Box 125, Folder 2, Participants in the Pacem in Maribus Convocation.

⁵⁹¹ MS-2-744, Box 125, Folder 2, Pacem in Maribus: A report and Some Reflections by EMB.

Defining pressing ocean governance problems

One of the first things that Elisabeth Mann Borgese mentioned in her report was the ‘crisis of science’.⁵⁹² Having spoken to several scientists and researchers who were in attendance, she found that many of them reported challenges surrounding the difference between accumulating knowledge and utilising it. Mann Borgese wrote that ‘[...] scientists whose speculations and research spawned the Marine Revolution are appalled by many of the results that followed once technologists began to convert their theories into hardware.’⁵⁹³

This quote has distinct overtones of the Manhattan Project, and we should bear in mind that the founder of the Center for the Study of Democratic Institutions was Robert Maynard Hutchins. Elisabeth Mann Borgese had worked with him for more than a decade, and she was familiar with his background and his reasons for establishing the Committee to Frame a World Constitution – much of which had carried over to the centre in Santa Barbara. Hutchins’s background as founding father of the centre makes it likely that they were acutely aware of the ‘hazards’ of scientific innovation.

Although Mann Borgese does not mention the Manhattan Project in the report, we can make the connection between what had been observed during the Manhattan Project and the concerns around maritime issues reported by researchers. Once any research results were published, governmental, military or industrial bodies could exploit them without the researcher having control over what was done with their findings.⁵⁹⁴ As a consequence, Mann Borgese reported that some researchers and scientists among her representatives had concluded that science was in an ‘acute professional crisis’.⁵⁹⁵

She concluded that researchers ‘[...] who have freely roamed the seas since Darwin’s day, now encounter severe restrictions arising from growing nationalism compounded by the fear that scientific investigation in the most remote waters might lead to exploitations by foreign commercial interests.’⁵⁹⁶

⁵⁹² MS-2-744, Box 125, Folder 2, Pacem in Maribus: A report and Some Reflections by EMB.

⁵⁹³ MS-2-744, Box 125, Folder 2, Pacem in Maribus: A report and Some Reflections by EMB.

⁵⁹⁴ Cf. MS-2-744, Box 125, Folder 2, Pacem in Maribus: A report and Some Reflections by EMB.

⁵⁹⁵ MS-2-744, Box 125, Folder 2, Pacem in Maribus: A report and Some Reflections by EMB.

⁵⁹⁶ MS-2-744, Box 125, Folder 2, Pacem in Maribus: A report and Some Reflections by EMB.

Not everyone at the gathering thought this was a negative thing. According to Mann Borgese's report, some considered that the freedom to explore science in the oceans could be a source of opportunity. Professor Milner Schaefer predicted that the '[...] United States will soon declare, unilaterally, freedom of scientific research on the seas and seabed adjacent to its own shores, even within the limits of national jurisdiction.'⁵⁹⁷ Despite some differing opinions as to how far freedom of research would be an advantage or disadvantage for scientists and their results, Mann Borgese could report that:

All agreed [...] it is no longer possible to cling blindly to the old concept of science as confined to passively observing and describing nature. Under modern conditions this creates a catastrophic gap between knowledge and action, and constructive impulses die away in a proliferating bureaucracy.⁵⁹⁸

The discussion then turned to the 'harvest of the sea' – in other words, the question of how to govern the utilisation of the oceans within and outside of national jurisdiction. One topic was the living resources, meaning the fishing industry, which had representatives at the convocation.⁵⁹⁹ In the case of marine minerals, Elisabeth Mann Borgese reported that

Representatives of the developing nations see their interests best served by a strong, effective international organization. Only this could enable them to participate at the essential stage of planning, when decisions must be made as to the allocation of resources and the setting of priorities for technological development.⁶⁰⁰

The issue of how resources on the ocean floor could be governed was discussed under the headline 'The Ocean Enterprises',⁶⁰¹ by which Mann Borgese meant to encompass all entities (private or public) that would in the future engage in industrial activities in the oceans, along with questions of how these activities should be governed. Mann Borgese wrote that US oil companies and their supporters in Congress '[...] seek to apply the traditional doctrine of freedom of the seas to the sea bottom as "first come, first served" [...] there can be no doubt that they would enjoy a head start in any race to the undersea oil fields and mineral deposits.'⁶⁰² This comment emphasised the technology gap between industrialised and

⁵⁹⁷ MS-2-744, Box 125, Folder 2, Pacem in Maribus: A report and Some Reflections by EMB.

⁵⁹⁸ MS-2-744, Box 125, Folder 2, Pacem in Maribus: A report and Some Reflections by EMB.

⁵⁹⁹ See list of participants.

⁶⁰⁰ MS-2-744, Box 125, Folder 2, Pacem in Maribus: A report and Some Reflections by EMB.

⁶⁰¹ MS-2-744, Box 125, Folder 2, Pacem in Maribus: A report and Some Reflections by EMB.

⁶⁰² MS-2-744, Box 125, Folder 2, Pacem in Maribus: A report and Some Reflections by EMB.

developing nations – an issue that was becoming increasingly visible in the early discussions surrounding marine resources and minerals prior to UNCLOS III.

The freedom of the seas doctrine proposed by the US would favour those who possessed the necessary technological knowledge to exploit ocean resources. Therefore, even at PIM I in 1970, delegates were already airing the idea of internationally governed forms of ‘Ocean Enterprises’, that would be tasked with administering the differing interests of developing and industrial states.⁶⁰³

Another major topic of the conference – and one that affected all ocean governance questions – was the underwater arms race. The Ad Hoc Seabed Committee had been set up to look into the potential use of the seafloor for peaceful purposes as a result of Pardo’s speech in 1967, and at PIM I, Arvid Pardo again spoke about the challenges that would face the negotiators of the new Law of the Sea Treaty. According to Pardo, there were several interlinked issues connected to military action on the seafloor: ‘Environmental reality’,⁶⁰⁴ ‘Military reality’,⁶⁰⁵ ‘Technical reality’,⁶⁰⁶ ‘Legal reality’,⁶⁰⁷ and ‘Political reality’.⁶⁰⁸ Pardo expressed that, for the time being ‘the only hope is a limited treaty, such as the one being negotiated in Geneva, [sic: In the Geneva Disarmament Committee⁶⁰⁹] dealing with relatively peripheral issues.’ According to Mann Borgese, he further noted that the treaty of the Disarmament Committee could set an ‘important precedent [...]’.⁶¹⁰

Mann Borgese mentioned another participant who proposed a solution to the arms race problem. ‘By pushing peaceful, industrial uses of the oceans [...],’⁶¹¹ said Dr V Pavicevic of Yugoslavia’s Mission to the UN; ‘[...] it may be possible to advance a peace system in which the arms race simply would have no place.’⁶¹² The idea was that enhanced industrial utilisation of the oceans could replace military activity, because states would be

⁶⁰³ Cf. MS-2-744, Box 125, Folder 2, Pacem in Maribus: A report and Some Reflections by EMB.

⁶⁰⁴ MS-2-744, Box 125, Folder 2, Pacem in Maribus: A report and Some Reflections by EMB.

⁶⁰⁵ MS-2-744, Box 125, Folder 2, Pacem in Maribus: A report and Some Reflections by EMB.

⁶⁰⁶ MS-2-744, Box 125, Folder 2, Pacem in Maribus: A report and Some Reflections by EMB.

⁶⁰⁷ MS-2-744, Box 125, Folder 2, Pacem in Maribus: A report and Some Reflections by EMB.

⁶⁰⁸ MS-2-744, Box 125, Folder 2, Pacem in Maribus: A report and Some Reflections by EMB.

⁶⁰⁹ See report MS-2-744, Box 125, Folder 2, Pacem in Maribus: A report and Some Reflections by EMB.

⁶¹⁰ MS-2-744, Box 125, Folder 2, Pacem in Maribus: A report and Some Reflections by EMB.

⁶¹¹ MS-2-744, Box 125, Folder 2, Pacem in Maribus: A report and Some Reflections by EMB.

⁶¹² MS-2-744, Box 125, Folder 2, Pacem in Maribus: A report and Some Reflections by EMB.

motivated to decrease military activity in order not to disrupt industrial activities and the economic benefits that came with them.

The first ‘Maritime Assembly’, as Mann Borgese had envisioned the *Pacem in Maribus* conference, concluded with a statement from Elisabeth Mann Borgese herself. ‘Either there will be no ocean regime at all—with chaotic revolutionary consequences—or there will be a comprehensive structure shaped to political reality.’⁶¹³ Mann Borgese called for international cooperation, new thinking and action to design a treaty that would incorporate and administer the needs of not just all states, but also entities within the states that were in some way or other concerned with the oceans. A selection of industry representatives, scientists, researchers and policy-makers had all been present at the conference, and had contributed to working up ideas around the outstanding issues of ocean governance. What they had arrived at, according to Mann Borgese’s report, was that in order to achieve a functioning ocean regime, something new had to be invented and old concepts had to be remodelled, whether those concepts related to research, property rights, ownership or military uses of the oceans.

⁶¹³ MS-2-744, Box 125, Folder 2, *Pacem in Maribus: A report and Some Reflections by EMB*.

Chapter 5. ‘The Ocean Regime’ and the ‘Draft Ocean Space Treaty’

A holistic treaty – Elisabeth Mann Borgese’s ‘The Ocean Regime’

In December 1970, the United Nations General Assembly had released a resolution commissioning the Seabed Committee to ‘[...] prepare for the conference on the law of the sea draft treaty articles embodying the international regime—including an international machinery—for the area and the resources of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction’⁶¹⁴ The Geneva sessions were scheduled for March, July and August 1971.

As it happened, Elisabeth Mann Borgese and Arvid Pardo were already working on proposals for an ‘international regime’ and its ‘international machinery’. At *Pacem in Maribus I*, the participants were handed a draft paper entitled ‘The Ocean Regime’,⁶¹⁵ which was intended to be used as basis for the discussion. (In a letter from Harry Ashmore concerning the *Saturday Review* article, we learn that Mann Borgese would have liked to see ‘The Ocean Regime’ printed in the *Saturday Review*, but Ashmore had to turn down her request due to limited space in the publication).⁶¹⁶

In 1999, long after those first discussions on ocean governance at the United Nations, Arvid Pardo wrote a letter to Salvino Busuttil. The letter is important in several ways. We have already referred to parts of it, where Pardo questions the involvement of certain people in the Maltese initiative. The letter also tells us where, and most likely when, Elisabeth Mann Borgese and Arvid Pardo met for the first time. But closer investigation reveals that there is even more to the letter than this.

In his letter to Busuttil, Arvid Pardo reveals the truly radical nature of Mann Borgese’s ideas, even at such an early stage in the preparation period prior to UNCLOS III.

⁶¹⁴ UN Doc. GA RES 2750 (XXV). B. 17 December 1970.

⁶¹⁵ MS-2-744, Box 175, Folder 21, The Ocean Regime, December 1970.

⁶¹⁶ MS-2-744, Box 125, Folder 2, Harry Ashmore to EMB, 18 August 1970: ‘Your model got squeezed out by space requirements, but you will note that we are offering a free copy of The Ocean Regime to anyone who writes in.’

Pardo writes that, ‘During the period when I was representative of Malta I was reluctant to support Prof. Borgese’s enthusiasm [...]’.⁶¹⁷ He outlines three reasons for his reluctance:

1. My dream had been limited to the seabed and oceans. 2. I was afraid that publicizing the broader implications of the common heritage concept would impact adversely ongoing treaty negotiations. 3. I believed that serious action to broaden the concept of common heritage in the sense desired by Prof. Borgese should take place only after a reasonably satisfactory ocean space (not seabed) treaty was safely in place.⁶¹⁸

Initially, it might come as something of a surprise that Mann Borgese had an even broader understanding of the common heritage concept and its applications than Pardo. After all, Arvid Pardo is generally recognised as the initiator of the common heritage concept. However, when we consider the circles in which Mann Borgese moved, her work at the Committee to Frame a World Constitution in Chicago, and the purpose of her employment at the Center for the Study of Democratic Institutions, it is not so very surprising that she tried to use the question of ocean governance to implement a broader application of the common heritage principle.

In fact, one could go so far to suggest that her first draft of ‘The Ocean Regime’ was an attempt to extend ocean governance to world governance.⁶¹⁹ To understand this, we must look further into the background of the draft that she presented to the participants at *Pacem in Maribus I*.

Before the draft of ‘The Ocean Regime’ was presented at PIM in 1970, Elisabeth Mann Borgese held a lecture,⁶²⁰ dated 1969, in which she presented her ideas about the ocean regime. Unfortunately, the draft lecture does not tell us anything about where or for what purpose the lecture was held. It may have been prepared for one of the planning meetings held by the centre in the run-up to PIM I.

⁶¹⁷ PR-Box: Personal Correspondences & Materials, undated letter from Dr. Arvid Pardo to Salvino Busuttil (handwritten note on the right corner). CC: Joe Friggieri, Fr Peter Serracino Inglott, Freddie Amato Gauci, ~~Vietor Gauei~~, Charlie Vella, Elizabeth Mann Borgese, ~~Vietor Ragonesi~~.

⁶¹⁸ PR-Box: Personal Correspondences & Materials, undated letter from Dr. Arvid Pardo to Salvino Busuttil (handwritten note on the right corner). CC: Joe Friggieri, Fr Peter Serracino Inglott, Freddie Amato Gauci, ~~Vietor Gauei~~, Charlie Vella, Elizabeth Mann Borgese, ~~Vietor Ragonesi~~.

⁶¹⁹ Baker comes to the same conclusion in Baker, ‘Uncommon Heritage’.

⁶²⁰ Place, date and time unfortunately unknown. For the lecture see MS-2-744, Box 139, Folder 16, Lecture on the Ocean Regime by Elisabeth Mann Borgese.

Although the circumstances of the lecture are unclear, it can be treated as a precursor to the 1970 draft. Apart from a detailed explanation of how the regime should be constructed, the lecture also sketches the background to ‘The Ocean Regime’. Since it is a lecture, the tone is personal, and the various explanations of how the ideas behind ‘The Ocean Regime’ were formed give us insights into Mann Borgese’s philosophies and personal beliefs. This information is missing from the more straight-laced draft of 1970, but is crucial to understanding where the draft stemmed from and where she intended it to go.

She started her lecture with the following words: ‘The Oceans are free. The mere thought that they could be “appropriated” by any ruler, however mighty, by any nation, no matter how vast its empire, has something blasphemous.’⁶²¹ Several aspects of this introductory sentence are striking. Mann Borgese chose to emphasise that the oceans were free and should not be ‘appropriated’, while at the same time repeatedly using the phrase ‘common property of mankind’⁶²² elsewhere in the lecture. We now know that the term ‘property’ was intentionally replaced by the term ‘heritage’ in later drafts. This was a deliberate decision, and in his 1967 speech to the UN, Pardo too had chosen to avoid the term ‘property’ in order not to give the false impression that he was emphasising the potential utilisation of the seabed and its resources.⁶²³

Mann Borgese’s main point – it seems reasonable to suppose – was that ocean resources should not be viewed as property that could only be owned by a finite number of nation states or companies who had the capabilities to utilise them. She also introduced an important spiritual note to the issue by using the term ‘blasphemous’.⁶²⁴ This gave the impression that the ocean was a god-like creature or mysterious natural power with the potential to be insulted.

⁶²¹ MS-2-744, Box 139, Folder 16, Lecture on the Ocean Regime by Elisabeth Mann Borgese.

⁶²² MS-2-744, Box 139, Folder 16, Lecture on the Ocean Regime by Elisabeth Mann Borgese. EMB writes: ‘—that the ocean floor and its resources beyond the present limits of national jurisdiction is to be considered the common property of mankind.’

⁶²³ Cf. Buttigieg, ‘Arvid Pardo’, 17: ‘Arvid Pardo, in his speech to the General Assembly, specifically avoided referring to these natural resources as belonging to the whole of mankind. What Pardo had in mind, and it was in this formulation that he was prophetic, was a new concept of the use of property that was not in any way related to appropriation.’

⁶²⁴ MS-2-744, Box 139, Folder 16, Lecture on the Ocean Regime by Elisabeth Mann Borgese.

Mann Borgese launched into her lecture with a historical overview of the period when the oceans were ‘extra-human, superhuman, indomitable’.⁶²⁵ She painted a colourful picture of what the oceans meant to humankind back in the days when they were mystical and inaccessible.

The air above, [...], was for the birds, not for man; and the depth below, hiding sunken cities or continents, treasures, monsters and mermaids, was a dream world unfathomable as man’s unconscious or the Milky Way.⁶²⁶

With this talk of treasures, monsters and mermaids, Mann Borgese’s lecture once again emphasises the mystical nature of the ocean – a common theme across so many of the speeches, lectures and articles that were delivered on the subject in the 1960s and 1970s. Such language reminds us of the florid prose some PIM participants used in their *Saturday Review* pieces in 1970.⁶²⁷

Mann Borgese continued her lecture by outlining how human progress had added dimensions to the ocean. First, the invention of the submarine had added depth. Then the installation of underwater cables for telecommunication on the ocean floor had imparted a new principle of freedom. Finally, the airspace above the surface of the water was added to the domain of humanity with the invention of aeroplanes.⁶²⁸

These new dimensions had caused humanity to view the ocean as a complex space. According to Mann Borgese, under-sea cables had made it necessary to study the seafloor, which in turn had prompted humanity to realise the wealth that lay upon and under it.⁶²⁹ This discovery of wealth posed a new challenge – the question of what to do with it – and Mann Borgese presented her listeners with two options:

Two courses are open to mankind. One is to extend the law of the land to the submarine lands. That is, as technology develops, the developed nations would appropriate even larger portions of the submarine lands and subject them to their national sovereignty. The other course is to extend the law of the seas to the ocean floor, adding a fifth freedom to those embodied in the

⁶²⁵ MS-2-744, Box 139, Folder 16, Lecture on the Ocean Regime by Elisabeth Mann Borgese.

⁶²⁶ MS-2-744, Box 139, Folder 16, Lecture on the Ocean Regime by Elisabeth Mann Borgese.

⁶²⁷ Cf. MS-2-744, Box 125, Folder 2, Luke, Savannah of the Blue. See also MS-2-744, Box 125, Folder 2, Brucan Save the Seas and the Oceans for Mankind.

⁶²⁸ Cf. MS-2-744, Box 139, Folder 16, Lecture on the Ocean Regime by Elisabeth Mann Borgese.

⁶²⁹ Cf. MS-2-744, Box 139, Folder 16, Lecture on the Ocean Regime by Elisabeth Mann Borgese.

Conventions on the High Seas, by declaring that the ocean floor and its resources belong to mankind as a whole, are God's road, and cannot be appropriated by any Nation.⁶³⁰

In the face of technological development, Mann Borgese feared the rise of what she called 'neo-imperialism'⁶³¹ and warned that, 'The colonial occupation of the ocean floor would be the death of the oceans, [sic: and is] bringing us closer, by one giant step, to the death of the planet as a whole.'⁶³² Therefore, she stated, the seafloor must be the 'property of mankind'.⁶³³ The purpose of the lecture, Mann Borgese explained to her audience, was to examine the Maltese seabed proposal,⁶³⁴ to tease out its shortcomings or challenges, and then to present a solution to these problems, all of which would be comprised in the draft of the 'The Ocean Regime'.

Mann Borgese identified two main challenges inherent in the Maltese proposal. First, that the complexity of ocean space made it difficult to apply the common heritage of mankind concept to just one part of it, meaning the seafloor.⁶³⁵ The complexity of ocean space, she pointed out, meant that its governance had to be handled as a whole, or as she put it, in a 'systemic'⁶³⁶ way rather than a fractured one. This led on to her second point, which was that ocean governance should be independent or different from the existing United Nations system, since such a system, in her view, was not designed to handle issues in a holistic way.⁶³⁷

Reading further into her lecture, it soon becomes clear that this criticism of the Maltese proposal was Mann Borgese's way of preparing her audience for her own more holistic solution to ocean governance. She wanted to stress that innovation was essential. Not only did she intend to revolutionise ocean governance, she also intended to revolutionise the

⁶³⁰ MS-2-744, Box 139, Folder 16, Lecture on the Ocean Regime by Elisabeth Mann Borgese.

⁶³¹ MS-2-744, Box 139, Folder 16, Lecture on the Ocean Regime by Elisabeth Mann Borgese.

⁶³² MS-2-744, Box 139, Folder 16, Lecture on the Ocean Regime by Elisabeth Mann Borgese.

⁶³³ MS-2-744, Box 139, Folder 16, Lecture on the Ocean Regime by Elisabeth Mann Borgese.

⁶³⁴ Referring to Arvid Pardo's 1967 speech and perhaps an unpublished earlier version of the 'Draft Ocean Space Treaty'. Arvid Pardo and Mann Borgese worked closely together in 1970 and might have exchanged proposals.

⁶³⁵ Cf. MS-2-744, Box 139, Folder 16, Lecture on the Ocean Regime by Elisabeth Mann Borgese.

⁶³⁶ MS-2-744, Box 139, Folder 16, Lecture on the Ocean Regime by Elisabeth Mann Borgese.

⁶³⁷ Cf. MS-2-744, Box 139, Folder 16, Lecture on the Ocean Regime by Elisabeth Mann Borgese.

whole system within which the United Nations operated, making ocean governance the starting point for this revolution. Her vision for the new system was that:

It must be administratively efficient. It must be the trustee for all mankind. It must give maximum opportunity for participation. It must accommodate socialist and nonsocialist economies [...] and, the Regime must serve the interests both of developed and developing, of maritime and of land locked nations.⁶³⁸

The system Elisabeth Mann Borgese had in mind had to be efficient, include all mankind, rely on participation, unite different economic systems, and combine the interests of developed and developing countries. It was an ambitious brief.

But Mann Borgese was not going to leave it at that. Her contribution went beyond simply making the case for an interesting sounding vision of idealism. She had actually prepared a detailed description of what ‘The Ocean Regime’ might look like, along with thoughts on what would have to be changed in the United Nations system to make it work. In 1971, she prepared a 28-page draft statute, in which the various bodies of the new regime and their functions and tasks were laid out.⁶³⁹ Together with an earlier version of the statute drafted in December 1970,⁶⁴⁰ this elaborated upon the ideas that she had presented in the lecture in 1969. Both these draft statutes were most likely improved after having been discussed at the *Pacem in Maribus* conference in 1970.

Before Elisabeth Mann Borgese outlined her draft statute for ‘The Ocean Regime’, she pointed towards examples of similar undertakings in recent history. The most obvious one was the Outer Space Treaty.⁶⁴¹ She identified several resemblances, relating to the different ‘zones’ or areas one was faced with in both spaces. Territorial waters were comparable to the atmosphere, outer space to the high seas, and the seabed and ocean floor to the moon and other celestial bodies.⁶⁴² The difference, she pointed out, was that the issue of accessibility would pose more challenges in the case of the seafloor, arguing that it was

⁶³⁸ MS-2-744, Box 139, Folder 16, Lecture on the Ocean Regime by Elisabeth Mann Borgese.

⁶³⁹ See MS-2-744, Box 132, Folder 1, The Ocean Regime Draft Statute (Revised, February 1971).

⁶⁴⁰ See MS-2-744, Box 175, Folder 21, The Ocean Regime, December 1970.

⁶⁴¹ *Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies*, Adopted by the General Assembly in its resolution 2222 (XXI), opened for signature on 27 January 1967, entered into force on 10 October 1967.

⁶⁴² Cf. MS-2-744, Box 139, Folder 16, Lecture on the Ocean Regime by EMB. There are parallels to Pardo’s speech in 1967.

‘[...] considerably easier to keep the Moon and Other Celestial Bodies demilitarised than to keep the ocean floor demilitarised.’⁶⁴³

There were also examples closer to home, like the European Coal and Steel Community (ECSC).⁶⁴⁴ The difference in this case, according to Mann Borgese, was that Europe was ‘closely knit’,⁶⁴⁵ and the world’s nation states as a whole were not. On the other hand, ‘Coal and steel were thought to constitute the major war making potential of the European nations.’⁶⁴⁶ In this respect, the potential value of the ocean floor was very similar to what was at stake when the European Coal and Steel Community was negotiated. The possibility of using the ocean floor for stationary weapon systems had been a point of concern both in Pardo’s speech in 1967 and also during the PIM I discussions, and it was clearly a driving force behind the need for renegotiation that Mann Borgese also recognised in her draft of ‘The Ocean Regime’.

Mann Borgese would express the European Coal and Steel Community’s efforts for unity in terms of the potential ocean negotiations by stating that ‘Coal and steel are, more or less, of yesterday. The ocean, the ocean floor, and outer space are essential for war and peace tomorrow. The Soviet Union and the United States are playing approximately the role in the world at large that France and Germany played in Europe.’⁶⁴⁷

Another example Mann Borgese drew some parallels to was the Euratom Treaty.⁶⁴⁸ The important point here was the ‘common property’⁶⁴⁹ aspect of Euratom. She claimed that ‘Under the Euratom Treaty, all fissionable material is the property of the Community, and there is a set of elaborate provisions that spell out this concept.’⁶⁵⁰ Mann Borgese understood that the principle of the Euratom Treaty as a concept of ‘common property’ by material sharing was similar to the common property idea that she herself intended to apply to seabed resources in the early drafts of ‘The Ocean Regime’.

⁶⁴³ MS-2-744, Box 139, Folder 16, Lecture on the Ocean Regime by EMB.

⁶⁴⁴ Cf. MS-2-744, Box 139, Folder 16, Lecture on the Ocean Regime by EMB.

⁶⁴⁵ MS-2-744, Box 139, Folder 16, Lecture on the Ocean Regime by EMB.

⁶⁴⁶ MS-2-744, Box 139, Folder 16, Lecture on the Ocean Regime by EMB.

⁶⁴⁷ MS-2-744, Box 139, Folder 16, Lecture on the Ocean Regime by EMB.

⁶⁴⁸ Cf. MS-2-744, Box 139, Folder 16, Lecture on the Ocean Regime by EMB.

⁶⁴⁹ MS-2-744, Box 139, Folder 16, Lecture on the Ocean Regime by EMB.

⁶⁵⁰ MS-2-744, Box 139, Folder 16, Lecture on the Ocean Regime by EMB.

The intention of this historical overview of comparable transnational collaborations was most likely to prepare Mann Borgese's audience to be convinced of the possibility of an even larger cooperative venture: A regime for the oceans with a possible outlook for a new world regime.

An ocean regime through participation

The new aspect Elisabeth Mann Borgese introduced to the question of ocean governance – and one for which there was no precedent or similar attempt on a smaller scale – was an International Assembly based on participation. She argued that it was essential to introduce an innovative new participation aspect to 'The Ocean Regime', and that in designing an International Assembly, '[...] drafters of the statute for an Ocean Regime must take a bold new step [...]'.⁶⁵¹

Mann Borgese pointed out that Arvid Pardo had acknowledged in his speech before the General Assembly that developed countries would be unlikely to take part in a regime where they had a similar or lesser degree of power than the developing countries.⁶⁵²

With this in mind, Mann Borgese presented three different alternatives for the creation of an innovative assembly. The first was to run it as a 'business corporation',⁶⁵³ meaning that it would be organised solely for the governance and organisation needed to utilise the resources of the ocean floor. This, however, would mean the 'triumph of technocracy over democracy'.⁶⁵⁴ The second option would be to 'adapt the national democratic parliamentary process somehow to the international scene'.⁶⁵⁵ The problem in this case would be to work out a vote-weighting system that would be acceptable for all countries, and Mann Borgese deemed this so time-consuming that it would never be worked out in the foreseeable future.⁶⁵⁶ The third option she offered was '[...] to recognize that parliamentary representative democracy has reached a dead end and that new principles have

⁶⁵¹ MS-2-744, Box 139, Folder 16, Lecture on the Ocean Regime by EMB.

⁶⁵² Cf. MS-2-744, Box 139, Folder 16, Lecture on the Ocean Regime by EMB. For the passage in Pardo's speech, see UN Doc. A/C.1/PV.1516, 8.

⁶⁵³ MS-2-744, Box 139, Folder 16, Lecture on the Ocean Regime by EMB.

⁶⁵⁴ MS-2-744, Box 139, Folder 16, Lecture on the Ocean Regime by EMB.

⁶⁵⁵ MS-2-744, Box 139, Folder 16, Lecture on the Ocean Regime by EMB.

⁶⁵⁶ Cf. MS-2-744, Box 139, Folder 16, Lecture on the Ocean Regime by EMB.

to be discovered.⁶⁵⁷ The existing system was direct and representative democracy, but Mann Borgese's new idea would go beyond that. She proposed to introduce 'participational democracy',⁶⁵⁸ and perhaps to go even further.

What would this mean for 'The Ocean Regime'? Mann Borgese explained that the idea of participation was that '[...] workers must participate not only in the profits but in the decision-making processes of enterprises, students in the management of universities, tenants in the administration of housing projects etc [...].'⁶⁵⁹ She added further, '[...] that participation, responsibility and initiatives are more important incentives than profits, that cooperation today is more productive than competition, that consensus is more important than coercion.'⁶⁶⁰

This passage is very interesting because it reveals some of Mann Borgese's most deeply rooted beliefs about the effectiveness of internationalism. Cooperation instead of competition, consensus instead of coercion. In that sense, her initial idea – although it was altered in the course of the negotiations at UNCLOS – was embedded in internationalist ideology and clearly visible in her proposal for an ocean regime as presented in 1969.

Mann Borgese would continue her lecture by explaining how she determined this principle could be applied to the ocean regime. She envisioned a Maritime Commission or Governing Board that would be responsible to an International Maritime Assembly. Then there would be four chambers or houses. One would represent the nations and would be composed of delegates from the United Nations General Assembly, who would be appointed by the General Assembly. The second chamber would represent the experts and technocrats who would be involved in any kind of seabed mining/resource extraction activity. All NGOs, governmental and intergovernmental organisations working in this field would be part of this second chamber too. The third chamber would represent the fisheries, assembled in the same

⁶⁵⁷ MS-2-744, Box 139, Folder 16, Lecture on the Ocean Regime by EMB.

⁶⁵⁸ MS-2-744, Box 139, Folder 16, Lecture on the Ocean Regime by EMB.

⁶⁵⁹ MS-2-744, Box 139, Folder 16, Lecture on the Ocean Regime by EMB.

⁶⁶⁰ MS-2-744, Box 139, Folder 16, Lecture on the Ocean Regime by EMB.

way as the second. Finally, the fourth chamber would be made up of scientists working on ocean-related matters.⁶⁶¹

As we can see, these chambers represent pretty much the same assortment of diplomats, scientists and technological experts that Mann Borgese and Pardo had invited to *Pacem in Maribus*. In fact, Mann Borgese wrote in a letter to Pardo that PIM would be the rehearsal for a 'Maritime Assembly'.⁶⁶² This had been her intention even back in 1969, and as we can see from the report in the *Saturday Review*, it ended up genuinely being the case. In 1971, after PIM I, Mann Borgese revised her draft of 'The Ocean Regime'. When we compare it to the first draft as presented in her earlier lecture, we can see that she had now added a fifth chamber, representing shipping and cable companies.⁶⁶³ We can assume that the chamber was added after the draft was discussed at PIM, and the representatives of shipping and cable companies expressed their right to a chamber of their own in which they could represent their own interests.

The essential advantage of a chamber system comprised of experts in different fields was that it would be possible to add an unlimited number of new chambers representing new and emerging fields. And this represented the first opening into a wider world constitution. Because if ocean matters could be discussed this way, why not any other matters? Why not add together an infinite number of chambers for an infinite number of matters and gather them under an International Assembly?⁶⁶⁴

Any kind of issue that had to be decided upon would be voted for in the first chamber, along with whichever chamber represented the issue that was being discussed. So for instance, if a matter concerning deep sea mining regulations was to be voted on, the first chamber – representing all nations – would vote, together with the second chamber that represented the extraction of minerals. In Mann Borgese's system, the decision-making would require a simple majority of the first chamber plus the specialist secondary chamber.

⁶⁶¹ Cf. MS-2-744, Box 139, Folder 16, Lecture on the Ocean Regime by EMB.

⁶⁶² MS-2-744, Box 108, Folder 1, EMB to Arvid Pardo, 22 September 1969.

⁶⁶³ See MS-2-744, Box 132, Folder 1, The Ocean Regime Draft Statute (Revised, February 1971). The fourth chamber.

⁶⁶⁴ See MS-2-744, Box 139, Folder 16, Lecture on the Ocean Regime by EMB.

Mann Borgese also introduced the concept of a maritime court before which nations and nation states – but also non-governmental and intergovernmental agencies and businesses – would be able to stand.⁶⁶⁵ With the Maritime Assembly, the Maritime Commission and the Maritime Court, executive, legislative and judiciary powers were taken care of. Mann Borgese then added a twist to the traditional branches of governance by introducing something she called a Maritime Planning Agency.⁶⁶⁶ This agency would ‘take care of the problem of coordinating all the activities of the U.N. that are now dispersed.’⁶⁶⁷ In her lecture, Mann Borgese did not explain the specific function of the Planning Agency any further, but its purpose and function are outlined in detail in the 1971 draft statute. In Article X, Section C. the agency’s responsibilities and task are specified, saying that it shall

[...] coordinate all efforts and projects presently undertaken by all organizations, within the U.N. system and outside, in the sphere of its competence; to prepare plans to maximize development and exploitation of living and non-living ocean resources and to ensure their conservation; to prepare a budget for the Regime; to redistribute revenue accruing to the Regime from fees, royalties, taxes or grants, and to take appropriate measures to protect developing Nations against the fluctuation of prices of minerals and metals, and in general, maximize the creation of wealth from the oceans while minimizing harmful interference with the interests of land-based industries and economies.⁶⁶⁸

Clearly ‘The Ocean Regime’ was not meant to divide up the different disciplines, to fracture management and coordination tasks, or to distribute responsibility between a number of different organisations. The goal was a holistic approach to ocean governance through introducing the participation principle to the regime, held together by a ‘Planning Agency’. In Mann Borgese’s system, anyone who wanted to partake in the utilisation of ocean space would also take part in the governance of it. Hence the four, five or eventually limitless number of chambers that would undertake the decision-making processes together with the first chamber of the nations. At the same time, the system was kept flexible by distributing responsibilities for different fields in ocean matters to different chambers. This meant it would be possible to let the relevant chamber of experts for a specific issue take part in the

⁶⁶⁵ See MS-2-744, Box 139, Folder 16, Lecture on the Ocean Regime by EMB.

⁶⁶⁶ See MS-2-744, Box 139, Folder 16, Lecture on the Ocean Regime by EMB.

⁶⁶⁷ MS-2-744, Box 139, Folder 16, Lecture on the Ocean Regime by EMB.

⁶⁶⁸ MS-2-744, Box 132, Folder 1, The Ocean Regime Draft Statute (Revised, February 1971), (Article X, C.).

decision-making process, and that Mann Borgese's ocean regime would be flexible without being fragmented.

Elisabeth Mann Borgese concluded her lecture by pointing out four key advantages of her draft. First, that the 'Planning Agency' – specially designed for the ocean space – would 'solve functional problems',⁶⁶⁹ and furthermore that

It would create a considerable amount of new wealth, by giving to enterprises a security for their investments without which technological development would inevitably slow down; and it would facilitate the re-distribution of this wealth.⁶⁷⁰

Second, that the concept of 'nations' and all their sovereignty or whatever they had claimed sovereignty over would be preserved. No territorial or governing rights would have to be given up, since ocean space was uncharted territory. 'No iota of national sovereignty would be surrendered, but a new sovereignty would be created in a geographic and functional sphere which does not belong to any nation now.'⁶⁷¹

Her third point was that there would not need to be any revision of the UN Charter or other bodies of the UN. Instead, the ocean regime could shape new bodies of the UN member states. Mann Borgese argued that 'Their respective charters and statutes already contain enabling clauses under which they may set up committees, commissions, new organizations, and cooperate with these as the circumstances and the purpose set forth in these statutes or charters may require.'⁶⁷² Without this final point, the ocean regime would be 'utopian',⁶⁷³ because changing the UN Charter would be too laborious to ever work out. Lastly, her fourth and final point was that the ocean regime would '[...] open new ways for the evolutionary transformation of the United Nations.'⁶⁷⁴

From ocean regime to world regime?

Those present at *Pacem in Maribus* must have discussed the draft, and the various scientists, industry representatives, politicians and diplomats will have come up with amendments to

⁶⁶⁹ MS-2-744, Box 139, Folder 16, Lecture on the Ocean Regime by EMB.

⁶⁷⁰ MS-2-744, Box 139, Folder 16, Lecture on the Ocean Regime by EMB.

⁶⁷¹ MS-2-744, Box 139, Folder 16, Lecture on the Ocean Regime by EMB.

⁶⁷² MS-2-744, Box 139, Folder 16, Lecture on the Ocean Regime by EMB.

⁶⁷³ MS-2-744, Box 139, Folder 16, Lecture on the Ocean Regime by EMB.

⁶⁷⁴ MS-2-744, Box 139, Folder 16, Lecture on the Ocean Regime by EMB.

Mann Borgese's ocean regime. Her 1971 draft statute is likely to have been the initial outcome of this.

The point of the *Pacem in Maribus* convocation and the papers prepared for it – including 'The Ocean Regime' – was to somehow transport the concepts discussed at PIM to the United Nations. The question is, how did they make their way from one to the other? One matter that was discussed in the opening meeting of UNCLOS in Caracas was the 'Draft Ocean Space Treaty'.⁶⁷⁵ Officially, it was submitted by the Maltese delegation, but how much of it came from Elisabeth Mann Borgese's proposed ocean regime? Or was it a totally independent draft, developed by Arvid Pardo alone?

It is unlikely that this draft evolved entirely independently of Mann Borgese's work. Though handed in as a Maltese working paper, it was mostly written by Arvid Pardo, and was based on the ideas he had developed during 1967 and 1968. By the time the draft was presented, he and Mann Borgese had already collaborated for three years and had held several workshops and four *Pacem in Maribus* conventions. Although we lack the correspondence between them about the first drafts,⁶⁷⁶ meaning that we cannot know exactly how the discussions of different drafts and ideas unfolded, we can nonetheless examine the Maltese proposal for an ocean space treaty in comparison with Mann Borgese's ocean regime paper. We can also assume that Pardo's proposed ocean space treaty must have been influenced by the *Pacem in Maribus* gatherings and their outcomes.

Arvid Pardo's letter to Salvino Busuttil in the late 1990s has already hinted at Pardo's take on Mann Borgese's ideas. He found her suggestion of applying the common heritage principle to the entire ocean space too radical. As we have seen, Mann Borgese's ultimate aim was to design an ocean regime that could eventually be expanded into a world regime, while Pardo was more focused on applying the principle of common heritage to the seafloor outside national jurisdiction. His hesitation to agree completely with Mann Borgese was also partly due to the fact that he was still working for the Maltese government. As a

⁶⁷⁵ United Nations General Assembly, 'Draft Ocean Space Treaty. Working paper submitted by Malta', A/AC.138/3. (23. August 1971), available at <http://repository.un.org/handle/11176/167474>.

⁶⁷⁶ To date no letters concerning their early collaboration could be found in either of the archives. It is likely they actually sat down together and discussed these things in person.

representative of Malta, Pardo was not acting in a personal capacity, and thus – as might be expected – the ‘Draft Ocean Space Treaty’ is more toned-down than Mann Borgese’s ‘The Ocean Regime’.

Arvid Pardo’s convictions and visions for the future

Prior to the *Pacem in Maribus* gatherings, Arvid Pardo had been vocal about his ideas concerning ocean governance. In October 1968, he published an article in *Foreign Affairs* with the title ‘Who Will Control the Seabed’.⁶⁷⁷ Just as Elisabeth Mann Borgese’s lecture gives us deeper insights into her thoughts and intentions than those afforded by her draft of ‘The Ocean Regime’, so this article tells us more about Pardo’s beliefs than the dry and technical ‘Draft Ocean Space Treaty’ can.

In the article, Pardo attempted to resolve the question posed in the headline, concluding with two possible answers as to who might control the seabed in the future. One was that ‘only coastal States have the right to exploit the ocean floor[...]’,⁶⁷⁸ while the alternative, in Pardo’s view, was that ‘an international regime’⁶⁷⁹ would be established. This, he thought, was only possible if the international community was willing to negotiate an appropriate treaty. In contrast to Mann Borgese, who explored the composition of ‘The Ocean Regime’ in detail, Pardo remained silent about how the regime he had in mind should be organised.

He preceded this conclusion that a regime of some sort was needed with a very detailed discussion of why ocean governance was necessary. The reasons for this, as set out in the 1968 article, tell us a lot about why Pardo believed the ocean space needed new organisation, and why it was so urgent.

It seems that Pardo’s sense of urgency was fuelled by superlatives about technological progress and invention. For example, he wrote that ‘[...] rapid technological progress has resulted in the discovery of vast mineral resources on and under the ocean floor [...]’,⁶⁸⁰ and

⁶⁷⁷ Arvid Pardo, ‘Who Will Control the Seabed?’, *Foreign Affairs* 47, no. 1 (October 1968): pp.123-137.

⁶⁷⁸ Pardo, ‘Who Will’, 134.

⁶⁷⁹ Pardo, ‘Who Will’, 134.

⁶⁸⁰ Pardo, ‘Who Will’, 123.

that '[...] immense, untapped mineral resources exist on and under the ocean floor, some are likely to remain unexploited for the foreseeable future [...] however [...]'.⁶⁸¹ Pardo anticipated huge and possibly unforeseeable potential in these resources.

Although Pardo was careful not to sound too optimistic about technological progress – deliberately referring to conservative estimates that the Ad Hoc Seabed Committee had made⁶⁸² – he pointed out that there were 'several indications that major breakthroughs may be imminent.'⁶⁸³ This prediction was followed by a list of technological leaps made in recent years, like the increase in drilling depth from 359 feet to over 600 feet,⁶⁸⁴ or the construction of underwater vessels that could now reach down to 9,000 feet (2,740 metres) below sea level.⁶⁸⁵

Clearly, Pardo had great confidence in the human ability to adapt, construct and invent. Which was made very clear by his next example – namely that '[...] it has been confidently predicted that by 1975 there will be colonies of aquanauts living and working on the ocean floor at depths in the neighborhood of 1,500 feet.'⁶⁸⁶

Notions of these 'aquonauts', along with his idea of using dolphins as sheepdogs for fish,⁶⁸⁷ neatly illustrate Pardo's ability to conjure up futuristic scenarios with a sense of imminence. While it remains impossible to make such predictions with any degree of accuracy, nevertheless, put Pardo in front of an audience and he had the ability to inspire people with his florid language and futuristic optimism – as demonstrated during his 1967 speech, where he had already discussed much of what he wrote in the 1968 article. However, many of his scenarios remain to be realised (at any rate, the sheepdog dolphins have not yet appeared, and we are still waiting for an abundance of aquanauts to colonise the plains of the seafloor).

⁶⁸¹ Pardo, 'Who Will', 125.

⁶⁸² *Cf.* Pardo, 'Who Will', 125.

⁶⁸³ Pardo, 'Who Will', 125.

⁶⁸⁴ *Cf.* Pardo, 'Who Will', 125.

⁶⁸⁵ *Cf.* Pardo, 'Who Will', 126.

⁶⁸⁶ Pardo, 'Who Will', 126.

⁶⁸⁷ *See* UN Doc. A/C.1/PV.1515, 33.

Years later, in his obituary, Elisabeth Mann Borgese touched on Pardo's fascination with technological development – but also his clear-sightedness concerning the increasing importance of the utilisation of ocean space. Writing about how he had been criticised for his optimistic predictions, she asserted that '[...] his estimate was totally realistic. He was not talking about manganese nodules, to which UNCLOS III and the International Sea-bed Authority erroneously limited their attention. He was speaking of all known resources of the ocean floor [...].'⁶⁸⁸ She also reported that, 'During his later years, Pardo avidly followed every discovery, and every new technological development, all of which corroborated his earlier vision.'⁶⁸⁹

In his article, Pardo addressed another concern which could be solved by utilising marine and seafloor resources: the world's growing population and its demand for resources of all kinds. He wrote that 'It is unlikely that the land alone will be able to provide for all the needs of mankind at acceptable cost; hence the vital importance of oceanic and suboceanic resources.'⁶⁹⁰

In terms of economic interest, it was corporations that would be the driving force in exploring, inventing and possibly exploiting. But Pardo also identified governmental interest in the seafloor, and he was in no doubt that the main interest of governments in the ocean was of a military nature.⁶⁹¹ He warned of an 'arms race in the sea neighborhood',⁶⁹² and stressed that '[...] vigorous action by the international community is becoming imperative in the interests of all.'⁶⁹³ Such 'vigorous actions' could include establishing an 'ocean space treaty' that would oversee seabed and sea activities.

Pardo designed the 'Draft Ocean Space Treaty' differently from Mann Borgese's 'The Ocean Regime', and it seems reasonable to view his ideas in the light of the beliefs and

⁶⁸⁸ MS-2-744, Box 345, Folder 4, Arvid Pardo, Retrospect and Prospects, 1999. Which is true, *see* Pardo, 'Who Will', 125.

⁶⁸⁹ MS-2-744, Box 345, Folder 4, Arvid Pardo, Retrospect and Prospects, 1999.

⁶⁹⁰ Pardo, 'Who Will', 128.

⁶⁹¹ *Cf.* Pardo, 'Who Will', 129.

⁶⁹² Pardo, 'Who Will', 130.

⁶⁹³ Pardo, 'Who Will', 131.

predictions he made in his 1968 article. How exactly his own version of holistic ocean governance would look was presented to the Seabed Committee by Pardo himself in 1971.⁶⁹⁴

The Maltese ‘Draft Ocean Space Treaty’

The treaty was marked as a working paper, and was submitted by Malta. The document had 89 pages, and was separated into five parts. Part one was concerned with ‘ocean space’, part two with ‘coastal state jurisdiction in ocean space’, and part three with ‘national ocean space’. Part four tackled ‘international ocean space’, and finally part five dealt with ‘the international ocean space institutions’.⁶⁹⁵

As with Elisabeth Mann Borgese’s draft ocean regime, Arvid Pardo’s treaty had undergone development at the *Pacem in Maribus* conferences. In this case it was *Pacem in Maribus* II, which was specifically about ‘A Constitution for the Oceans’.⁶⁹⁶ Pardo presented his draft to the gathering in Malta, most likely to test and discuss it before putting it forward to the Seabed Committee.⁶⁹⁷

A contemporary witness, Henry J Glazer, reported on the early PIM convocations⁶⁹⁸ in the *Ecology Law Quarterly* in 1974, and he mentioned Pardo and Mann Borgese’s draft proposals for ocean regimes. Apart from these documents from Pardo and Mann Borgese, drafts from the US, the UK, Tanzania and France were also discussed, each expressing varying standpoints on the freedom of the sea and seabed utilisation.⁶⁹⁹

⁶⁹⁴ See A/AC.138/53

⁶⁹⁵ See A/AC.138/53, 3–4.

⁶⁹⁶ International Ocean Institute, *Pacem in Maribus*

⁶⁹⁷ See J. Henry Glazer, ‘The Maltese Initiatives within the United Nations - A Blue Planet Blueprint for Trans-National Space’, *Ecology Law Quarterly* 4, no. 2 (1974): 291, <http://scholarship.law.berkeley.edu/elq/vol4/iss2/3>.

‘[...] a draft treaty prepared by Arvid Pardo was circulated to participants at PIM II and became the focus of intensive discussion at the conference prior to its formal introduction into the United Nations.’

⁶⁹⁸ It is somewhat unclear in how far the early PIM Convocations were strictly about the topics their headlines suggested. Glazer argues that EMB’s draft was discussed in PIM II, while I could find EMB’s draft already discussed in the *Saturday Review* article, so she must have presented it in PIM I already. Maybe she discussed an earlier version of it (1969 lecture or 1970 version?) and then presented the most recent 1971 version at PIM II?

⁶⁹⁹ Cf. Glazer, ‘The Maltese Initiatives’, 291.

Glazer describes the UK's draft as being on the 'opposing end of the spectrum'⁷⁰⁰ to Arvid Pardo's treaty, since it

[...] merely provides reinforcement for the proposition that each state on the planet is to be allocated its very own block of seabed [...] to be achieved through a physical division of the entire seabed on a global basis with a parcelling out of wet acreage among states signatory to a type of bizarre treaty which should properly be drafted by private real estate developers.⁷⁰¹

Looking back at the initial Maltese vision for ocean governance from 1967, suggestions like this one from the UK had not been what Arvid Pardo had in mind when he gave his famous speech. The 'Draft Ocean Space Treaty', on the other hand, was an attempt to propose a form of governance for the ocean as a whole, as one entity – 'hydrospace' – rather than hacking it up into parts. Glazer also recorded some of the responses to Pardo's draft from other participants at PIM II:

At PIM II Anatoly Kolodkin of the USSR discerned some useful and positive provisions in the ocean space treaty drafts of Pardo and Borgese (see note 58 supra) pointing out, however, as to the Pardo draft, as it then existed, certain conflicts between it and the U.N. charter [...].⁷⁰²

Arvid Pardo's draft was criticised for inflicting change on the UN charter – something Mann Borgese's draft was less likely to do, at least if we believe what she told her audience at the 1969 lecture. In fact, one of her main aims when she presented her own ocean regime was to keep the system flexible without having to change the UN charter.⁷⁰³

It is not possible to discuss the entire 'Draft Ocean Space Treaty' at length in this section. Pardo's draft covered a huge range of matters pertaining to ocean space, from 'navigation' to 'slavery, piracy and narcotic drugs', to 'submarines, pipelines'⁷⁰⁴ and so forth. The first two parts of the treaty were 'mainly to update existing law of the sea as incorporated in the 1958 Geneva Convention on the Territorial Sea and in that relating to the High Seas within the framework of a comprehensive approach to ocean space.'⁷⁰⁵

⁷⁰⁰ Glazer, 'The Maltese Initiatives', 292.

⁷⁰¹ Glazer, 'The Maltese Initiatives', 292.

⁷⁰² U.N. GAOR Supp. 21, at II, 48 U.N. Doc. A/9021 (1973), quoted in Glazer 'The Maltese Initiatives', 292, footnote 52.

⁷⁰³ See MS-2-744, Box 139, Folder 16, Lecture on the Ocean Regime by EMB.

⁷⁰⁴ For an overview of the content of the treaty, see UN Doc. A/AC.138/53, 3-4.

⁷⁰⁵ UN Doc. A/AC.138/53, 6.

The most important parts of the drafted treaty when it came to the principle of the common heritage of mankind were Part IV (with the common heritage of mankind (CHM)) and Part V (regulating freedom of ocean space for the exploitation of natural resources).⁷⁰⁶ In these portions, Pardo introduced organisations he called ‘International Ocean Space Institutions’,⁷⁰⁷ which were intended to be overarching transnational institutions with an ‘international juridical personality’,⁷⁰⁸ and would oversee all kinds of activities in ocean space.⁷⁰⁹

Among their most important purposes would be to ‘Maintain international Law and order in ocean space’,⁷¹⁰ to ‘safeguard the quality of the marine environment’,⁷¹¹ to ‘harmonize the actions of nations’,⁷¹² to ‘encourage investigation’,⁷¹³ to ‘promote development and practical application of advanced technologies’,⁷¹⁴ to ‘provide assistance for Contracting Parties’,⁷¹⁵ and to ‘ensure the equitable sharing by all States in the benefits derived from the development of natural resources’.⁷¹⁶

In the terms of the treaty, every nation state that was part of the Law of the Sea could be a member of these International Ocean Space Institutions, comprised of an assembly, an international maritime court and a secretariat.⁷¹⁷

Pardo’s draft divided the assembly into three member categories that were supposed to meet and discuss certain matters separately before meeting in the assembly. To be in category A, an institution would need to be a coastal state with more than 90 million inhabitants, or to have six out of nine qualities that would qualify them to be an A member despite having less than 90 million inhabitants. Those qualities were, for instance, having a

⁷⁰⁶ *Cf.* UN Doc. A/AC.138/53, 46.

⁷⁰⁷ The International Ocean Space Institutions are not to be mistaken for the future International Ocean Institute.

⁷⁰⁸ UN Doc. A/AC.138/53, 47.

⁷⁰⁹ *See* UN Doc. A/AC.138/53, 47.

⁷¹⁰ UN Doc. A/AC.138/53, 49.

⁷¹¹ UN Doc. A/AC.138/53, 49.

⁷¹² UN Doc. A/AC.138/53, 49.

⁷¹³ UN Doc. A/AC.138/53, 49.

⁷¹⁴ UN Doc. A/AC.138/53, 49.

⁷¹⁵ UN Doc. A/AC.138/53, 49.

⁷¹⁶ UN Doc. A/AC.138/53, 49.

⁷¹⁷ *Cf.* UN Doc. A/AC.138/53, 51.

coastline longer than 5,000 kilometres, or being a state with a strong fishing, marine mineral or cable industry.⁷¹⁸ Category B would be comprised of all other coastal states, and category C of all non-coastal states.⁷¹⁹

Though the members of the different categories had equal rights in the assembly, there was a built-in inequality when it came to the council. All members of category A were supposed to be council members, but while there would be the same number of members from category B, there would only be five members from category C, who were the representatives of the non-coastal states.⁷²⁰ This hierarchical categorisation reflected an argument Pardo had made back in his 1967 speech, which was that granting more power to coastal and industrial states would be important in securing the willingness of those states to cooperate at an international level.⁷²¹

Henry Glazer wrote that Malta's treaty 'compels the adoption of a completely new and equitable international legal order of a broad institutional character for the whole of hydrospace rather than just a regime and machinery applicable to the seabed beyond national jurisdiction.'⁷²² Meaning that what made the Maltese treaty special was the fact that Pardo had tried to cover all hydrospace or ocean space within it, not just the seabed. Glazer added that comparisons of drafts similar to the 'Draft Ocean Space Treaty' had been made by others in 1974.⁷²³

According to Glazer, what set the Maltese Treaty apart was that the Maltese idea of a holistic hydrospace was in agreement with '[...] positions and admonitions of scientists and marine environmentalists who continue to plead their case that no matter what is decided in 1974 at Caracas, the entire ecology of the planet will still not arrange itself into neat national compartments.'⁷²⁴ This comment was directed at other draft treaties that were mainly focused on how to divide the ocean and ocean floor up into different blocks of territory, which could

⁷¹⁸ In more detail, see UN Doc. A/AC.138/53, 55-56.

⁷¹⁹ Cf. UN Doc. A/AC.138/53, 56.

⁷²⁰ Cf. UN Doc. A/AC.138/53, 60.

⁷²¹ Cf. Pardo presents this view in the 1967 speech and later in the article. See UN Doc. A/C.1/PV.1515; see also Arvid Pardo, 'Who Will'.

⁷²² Glazer, 'The Maltese Initiatives', 292.

⁷²³ See Glazer, 'The Maltese Initiatives', 294.

⁷²⁴ Glazer, 'The Maltese Initiatives', 293.

be exploited and utilised under the regime of the respective coastal state. Certainly, not all states taking part in the negotiations were interested in a ‘strong operational international machinery’.⁷²⁵ The United Kingdom, for instance, advocated a minimum of interference from international organs.⁷²⁶

As a side note, concern about the environment is not entirely absent in Pardo’s treaty. Chapter XXV of the draft treaty has a section about ‘maintenance of the ecological integrity of International Ocean Space’, which is concerned with contamination of ocean space.⁷²⁷

Although the tasks of the International Ocean Space Institutions were intricately described in the draft, Pardo’s treaty lacked detailed information around the exploitation of natural resources. Elisabeth Mann Borgese argued in 1999 that keeping the draft clear of too many instructions based on estimates and predictions of future inventions had been intentional. One of the main ‘mistakes’⁷²⁸ made at UNCLOS III concerning the seafloor provisions had been that they had turned out ‘practically inapplicable’⁷²⁹ because of the ‘Over-burdening of the Convention with administrative and even fiscal detail’⁷³⁰ without knowing the technological realities in which the treaty would be tested in the future.

In a footnote to Pardo’s 1999 obituary, Elisabeth Mann Borgese quotes the former President of UNCLOS, the late Shirley Amerasinghe, who, according to Mann Borgese, had said shortly before his own death in 1980: ‘[...] had we paid attention to Arvid’s draft in 1971, we might have spared ourselves ten years of work.’⁷³¹

Both Elisabeth Mann Borgese and Arvid Pardo had prepared draft treaties in 1970 and 1971 that took a ‘holistic approach’ to ocean governance. What differentiated them from one another was their level of emphasis on the common heritage principle, and the scope of their ambition. While both proposed designing ‘international machinery’⁷³² with the task of overseeing ocean activities, those agencies had different potential across the two drafts.

⁷²⁵ Glazer, ‘The Maltese Initiatives’, 291.

⁷²⁶ Cf. Glazer, ‘The Maltese Initiatives’, 292.

⁷²⁷ Cf. UN Doc. A/AC.138/53, 71.

⁷²⁸ MS-2-744, Box 345, Folder 4, Arvid Pardo, Retrospect and Prospects, 1999.

⁷²⁹ MS-2-744, Box 345, Folder 4, Arvid Pardo, Retrospect and Prospects, 1999.

⁷³⁰ MS-2-744, Box 345, Folder 4, Arvid Pardo, Retrospect and Prospects, 1999.

⁷³¹ MS-2-744, Box 345, Folder 4, Arvid Pardo, Retrospect and Prospects, 1999.

⁷³² Like it was asked for in: UN Doc. GA Res 2750 (XXV). B. 6.

In Mann Borgese's draft, this agency was the Planning Agency. It was designed in a way that would make it easy to develop it further into an agency overseeing world governance, with the potential to broaden the application of the common heritage principle to the high seas, not just the seabed outside national jurisdiction. Arvid Pardo's International Ocean Space Institutions, on the other hand, were only designed to oversee ocean governance. Despite what Pardo said in hindsight, the common heritage principle in the Maltese draft was also applied to what he called 'international ocean space', by which he meant all ocean space outside national jurisdiction. In Pardo's case, though, the question of what exactly lay outside national jurisdiction was not answered, meaning that it would be left to further negotiations to define what exactly ocean space would be.

The 'holistic approach' of Arvid Pardo's draft would become a major stumbling block for the Maltese in the lead-up to the UNCLOS negotiations.

Chapter 6. Rise and decline of headquarters

Malta's struggle for direction

By the time the Maltese delegation sat down around the negotiating table during the first and second Caracas sessions, Arvid Pardo – their figurehead in ocean matters – was no longer a member of the Maltese delegation.⁷³³ Throughout UNCLOS, he would be present only in a peripheral capacity, since he had lost his political influence on the Maltese government before the convention even started. How had this happened?

Arvid Pardo had not planned on being sidelined when he first started to engage in ocean matters on Malta's behalf. On 18 October 1968, Pardo had written to the Secretary of the Ministry of Commonwealth and Foreign Affairs about Malta's role in the new Law of the Sea: 'If Malta is to maintain her leadership in marine matters, it is essential for Government to submit a draft treaty at the U.N.: Seabed Committee session which opens on 19th July.'⁷³⁴

At first, it was Pardo's 'Draft Ocean Space Treaty' that the Maltese delegation presented to the Seabed Committee, but the document was quickly set aside.⁷³⁵ Most likely, Malta was shouted down by other countries that had absolutely no interest in a 'holistic approach' of governing the ocean and establishing International Ocean Institutions. The Maltese government would later claim that they could not keep pushing a treaty that had not even attracted the support of developing countries, and that their relationships with these developing countries had started to become 'embarrassing'.⁷³⁶

Malta's representatives changed their tune several times over the years between 1971 and 1975. One reason was the change in government, which meant a change in the dominant political personalities when the Labour Party leader, Dom Mintoff, became Malta's new

⁷³³ Maltese Delegation *see*: UN Doc. A/CONF.62/INF.3/Rev.1, 40: 'H.E.Mr. Joseph Attard Kingswell, Ambassador Extraordinary and Plenipotentiary Permanent Representative to the United Nations (head of Delegation), Mr. Alfred Bellizzi, First Counsellor Deputy Permanent Representative to the United Nations, Mr. Carmel Vella, Second Secretary, Permanent Mission to the United Nations.'

⁷³⁴ PR-Box: Personal Correspondences & Materials, letter from Arvid Pardo to Secretary Ministry of Commonwealth, 18. October 1968, appendix 'C'.

⁷³⁵ *See* Glazer, 'The Maltese Initiatives', 291.

⁷³⁶ MS-2-744, Box 62, Folder 8, Seabed Authority Centre, *Times of Malta*, 29 May 1975.

prime minister in 1971.⁷³⁷ Another likely factor could have been Malta's changing alliances during the discussions at the United Nations. Though Malta was keen to take a leading role, at the same time it was a tiny nation state that was not prepared to stick its neck out unless it was assured of gathering enough support. Dropping the 'Draft Ocean Space Treaty' was the first step in demonstrating Malta's indecisiveness.

Ambassador Joseph Attard Kingswell took over from Arvid Pardo as the new head of the Maltese delegation at the United Nations. At first, it seemed like he intended to continue his predecessor's work. In the General Assembly's 1965th Plenary Meeting on Wednesday 13 October 1971, he said of the 'Draft Ocean Space Treaty' that:

[...] the Government of Malta continues to take a keen and lively interest in the work which the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction is doing in preparation for a conference on the law of the sea, scheduled to take place, we hope, in 1973.⁷³⁸

A year later, on 10 October 1972, Kingswell's tone had changed. This time, when he spoke at the General Assembly about Malta's position on the 'Draft Ocean Space Treaty', the Maltese ambassador did so in very different terms:

One of the items on the agenda of the present session concerns a review of the Charter of the United Nations [item 89]; my delegation is aware of the strong feelings aroused in many quarters by this item, and, to be quite frank, we do not believe that the time is ripe for the Charter to be profitably amended.⁷³⁹

Malta had beaten a quick retreat from their bold vision to revolutionise ocean space. Instead, the country would keep a low profile at the ensuing meetings, until the 'international machinery' to overlook activity in the area outside national jurisdiction had been reduced to something that would later be known as the International Seabed Authority.⁷⁴⁰ The initial idea of International Ocean Space Institutions – as proposed by Pardo – was discarded. What

⁷³⁷ Cf. *Encyclopaedia Britannica*, s.v. 'Dom Mintoff', accessed 20. June 2018, <https://www.britannica.com/biography/Dom-Mintoff>.

⁷³⁸ UN Doc. A/PV.1965, 94.

⁷³⁹ UN Doc. A/PV.2061, 242. Malta's hesitation is not broadly discussed in literature about Malta's initiative. See Tuerk, 'The Thirtieth Anniversary', 19. However, Borg comments on the Maltese shortcoming in Borg, *Malta and the Law*, 73: 'When his [sic: Pardo's] connection with Malta was discontinued, it was a loss both for Malta and for the U.N. Nobody filled his absence at UNCLOS and one can only conjecture what the final version of the convention would have looked like if he had continued to lead the Malta delegation.'

⁷⁴⁰ The exact date of when the authority was called the 'International Seabed Authority' is uncertain. It seems like several proposals were discussed: International Ocean Institutions, Planning Agency etc.

is more, the idea of gathering together all matters of activity on ocean space under one umbrella (as Mann Borgese had intended with her proposed Planning Agency) had by then been narrowed in scope to the seafloor outside national jurisdiction. It was only then, in autumn 1974, that Malta suddenly came forward wanting to host the International Seabed Authority.⁷⁴¹

The Maltese, represented by the head of their delegation, Alfred Bellizzi,⁷⁴² made this announcement in the General Assembly on 9 October 1974:

[...] my Government feels that it is no longer premature to consider the location of the proposed International Sea-Bed Authority, and it has accordingly made known its decision to offer Malta as the site for the Authority's headquarters. In announcing this offer, my Government believes that many members of the international community would like to associate Malta in the most appropriate way with the tangible and lasting results which will have emerged from the Maltese initiative of 1967.⁷⁴³

Playing on the historical importance of Arvid Pardo's speech was a clever move, but it came too late. Jamaica had handed in its application before Malta, and had been able to gather major support from the developing countries.⁷⁴⁴ Malta, in contrast, had hesitated too long, and through this delay it had lost both time and momentum.

Elisabeth Mann Borgese, who had been working towards establishing an international institution on Malta since 1971, wrote in a telegram to Attard Kingswell in November 1974 that: 'Our position with regard to the Law of Sea Conference and headquarters rapidly deteriorating immediate action needed I hope you will be able to follow up on suggestions discussed on October 23.'⁷⁴⁵ Her telegram was in vain, however, and in 1981, the International Seabed Authority would finally go to Jamaica.⁷⁴⁶

Years later, the Maltese ambassador Saviour F Borg wrote an article called '30 Years of UNCLOS, Malta's Contribution to the Process: Past and Present'. In it, he touched on

⁷⁴¹ For the statement of the Maltese delegate Mr. Bellizzi, see UN Doc. A/PV.2263, 209.

⁷⁴² See delegation UN Doc. A/CONF.62/INF.3/Rev.1, 40.

⁷⁴³ UN Doc. A/PV.2263, 209.

⁷⁴⁴ Cf. MS-2-744, Box 210, Folder 14, Malta and the International Seabed Authority, *The Sunday Times*, 31. May 1981.

⁷⁴⁵ MS-2-744, Box 94, Folder 1, Telegram EMB to Attard Kingswell, 4 November 1974.

⁷⁴⁶ Maltese newspaper reports on the loss of the Authority: MS-2-744, Box 210, Folder 14, Leo Brincat, Loss of Seabed Authority Site Gross inaccuracies by Opposition, *Daily News*, 25 August 1981; MS-2-744, Box 210, Folder 14, Local reaction to Malta's defeat in vote for I.S.A. site, *Sunday Times*, 23 August 81.

Malta's efforts at UNCLOS III, and especially on their ambitions to host the International Seabed Authority.

The greatest efforts made by the Delegation of Malta during UNCLOS III to obtain the support of the participants for Malta to host the seat of the Authority cannot be underestimated even though at a certain point of time, especially in the first years of the Conference, it relinquished its leadership in this regard.⁷⁴⁷

Malta's seemingly abrupt change of direction in 1971, and its subsequent about-turn in 1975, had a back-story. Behind the scenes, there had been heated discussions, as Elisabeth Mann Borgese worked intensely to steer Malta one way, while the new prime minister, Dom Mintoff, pulled the wheel in the opposite direction.

Dom Mintoff – A stumbling block for Elisabeth Mann Borgese and Arvid Pardo?

In a collection of private photographs belonging to Arvid Pardo, there is a picture of a couple of men in black ties and suits posing together. Someone has drawn devil horns on one of the men, and the short, black-haired man in question appears to be Dom Mintoff, Malta's prime minister.⁷⁴⁸ On the reverse of the photo, someone has written 'Margot added horns'.⁷⁴⁹

Margot was Arvid Pardo's wife, and if she was defacing photos of the Maltese prime minister with devil horns, it was probably because he had caused Arvid Pardo a great deal of trouble in the years between 1971 and 1974. Dom Mintoff would engage in an intense quarrel with Arvid Pardo and Elisabeth Mann Borgese that would eventually lead to Pardo's dismissal as ambassador.

In a 1972 article from the *New York Times*, Mintoff is described as a 'Loner on a Small Island'.⁷⁵⁰ According to the journalist, Paul Hofmann, Mintoff was known to be 'erratic', 'dictatorial, tactless and rude'.⁷⁵¹ Hofmann added that 'Even the Prime Minister's

⁷⁴⁷ Saviour Borg, '30 Years of UNCLOS. Malta's Contribution to the Process: Past and Present', speech at *UNCLOS at 30 Seminar* organised by International Ocean Institute and the University of Malta, 23 November 2012: 3. (copy: courtesy of Saviour Borg).

⁷⁴⁸ PR-Box: Photographs

⁷⁴⁹ PR-Box: Photographs

⁷⁵⁰ MS-2-744, Box 52, Folder 9, Paul Hofmann, Loner on a Small Island, *The New York Times*, 12 January 1972.

⁷⁵¹ MS-2-744, Box 52, Folder 9, Paul Hofmann, Loner on a Small Island, *The New York Times*, 12 January 1972.

supporters concede that he is secretive and unpredictable, but, an admirer said, “he has charisma”.⁷⁵²

In an article in *The Guardian* published in January 1973, the journalist Richard Gott reflected on Mintoff’s political achievements after almost two years in office.⁷⁵³ In the article, Mintoff is described as a ‘maverick’⁷⁵⁴ who advocated ‘Malta for the Maltese’⁷⁵⁵ while at the same time having to navigate larger power struggles. At one point, the article quoted Mintoff directly: ““For a small nation to keep its freedom,” Mintoff explains, “it’s important to balance the interests of big nations and to see that one neutralizes the other.””⁷⁵⁶ This political style might have kept the government under Mintoff from being too bold in their statements concerning the ‘Draft Ocean Space Treaty’ and Malta’s position in the enterprise.

In 1971, when Pardo’s services in the Maltese delegation were no longer required, some of those who had followed Malta’s initiative closely were rather puzzled, as ‘Ironically, the hero-figure of UNCLOS III reforms was left on the touchlines as an observer when the famous conference began officially in December 1973.’⁷⁵⁷

For anyone familiar with the Law of the Sea Convention without in-depth knowledge of the detailed political background, the fact that the person widely referred to as the ‘father of the Law of the Sea’ was sidelined by their own government would seem odd. The Maltese government’s peculiar way of treating the future legend of the convention can be understood either as an internal political move or as a necessary expedient to keep Malta on good terms with countries opposed to his holistic approach.

The government considered reintroducing Arvid Pardo in 1975 to help obtain the International Seabed Authority – once the Authority had been reduced to a smaller, more specialised institution. Legal historian Douglas Johnston has argued that ‘Arvid Pardo refused to sulk in his tent, remaining deeply involved in the great debate on all issues

⁷⁵² MS-2-744, Box 52, Folder 9, Paul Hofmann, Loner on a Small Island, *The New York Times*, 12 January 1972.

⁷⁵³ See MS-2-744, Box 52, Folder 9, Richard Gott, Mintoff the maverick, *The Guardian*, 27 January 1973.

⁷⁵⁴ MS-2-744, Box 52, Folder 9, Richard Gott, Mintoff the maverick, *The Guardian*, 27 January 1973.

⁷⁵⁵ MS-2-744, Box 52, Folder 9, Richard Gott, Mintoff the maverick, *The Guardian*, 27 January 1973.

⁷⁵⁶ MS-2-744, Box 52, Folder 9, Richard Gott, Mintoff the maverick, *The Guardian*, 27 January 1973.

⁷⁵⁷ Douglas Johnston and W. Michael Reisman, *The Historical Foundations of World Order. The Tower and the Arena* (Boston/Leiden: Martinus Nijhoff, 2007), 58.

negotiated at UNCLOS III⁷⁵⁸ while also noting that it ‘[...] was no secret that he was frustrated by his inability to participate inside the arena, especially when it became clear that much of his vision would be sacrificed to the need for compromises.’⁷⁵⁹

Arvid Pardo’s demotion from ambassador to seabed delegate

Arvid Pardo was demoted in two steps. Firstly, with the change of government in 1971, he was removed from his job as head of the Maltese delegation, which did not seem a particularly dramatic development at that time, given that he would keep his position as ambassador in a slightly different form, and would remain concerned with questions in the Seabed Committee.⁷⁶⁰

Around the time Arvid Pardo’s dismissal was being discussed, Elisabeth Mann Borgese met the politician who would later remove Pardo from office, and described him in a letter to her daughter, Nica Borgese. In the letter, dated 14 July 1971, she reported on the ‘peaceful revolution’ that had taken place in Malta.⁷⁶¹ Mann Borgese seemed content enough with the change of government, reporting that:

The old Prime Minister was an operetta figure, the new one is a human being, and we got along just fine. [...] he opened the Convocation, and it all went very well. [...] Financially, it was far less catastrophic than anticipated. We are going to have another Convocation next year, and are setting up the Institute at the University. So, it all is growing, and I cannot complain.⁷⁶²

Clearly, she was optimistic despite the change of government. The prime minister had shown willingness to collaborate, and it seemed like the country’s new leader did not oppose plans to establish an ‘Institute’⁷⁶³ at the University of Malta that would coordinate further *Pacem in Maribus* convocations.

⁷⁵⁸ Johnston and Reisman, *Historical Foundations*, 58.

⁷⁵⁹ Johnston and Reisman, *Historical Foundations*, 58.

⁷⁶⁰ Pardo continued to work for a sub-committee at the Seabed Committee until 1973: See MS-2-744, Box 108, Folder 1, Permanent Mission of Malta to the United Nations, Statement Delivered by Ambassador Arvid Pardo in Sub-Committee III, 14 March 1973. See also PR-Box: Personal Correspondences & Materials, Tony Loftas, Pardo, politics and pollution, *New Scientist and Science Journal*, 8. July 1971.

⁷⁶¹ EMB B4 Mann Borgese, 14.07.1971.

⁷⁶² EMB B4 Mann Borgese, 14.07.1971.

⁷⁶³ The *Pacem in Maribus* Institute was the start of what would later be the International Ocean Institute. It changed its name throughout the years, formally thought to be a Mediterranean institute, to become the headquarters of an ocean regime (later reduced to the ISA) all of which was not obtained by EMB and Malta.

Interestingly, while Arvid Pardo had been dropped from the Maltese delegation, there were prospects of a new government role. It seemed like Dom Mintoff had no immediate plans to exclude Arvid Pardo completely from all government matters, and this is borne out by a letter to Mintoff that Pardo wrote after *Pacem in Maribus II* on 7 July 1971. In the letter, he discusses his possible role in the new government, and poses the question of how he could ‘[...] serve Malta at the United Nations while at the same time not dealing with some political questions, such as the question of China [...]’.⁷⁶⁴

This remark about China provides an interesting piece of the puzzle as to why Arvid Pardo had to be removed from the Maltese delegation. Dom Mintoff was keen to forge good relations with the People’s Republic of China, in order to distance himself from Malta’s former colonial ties with the British government. In 1972, he made an official visit to Peking, where he said in his official speech:

The people of Malta are just now finding their independence, after many hundreds of years in the service of foreign dominators, after participating in many wars out of which my people won only tears, blood and hunger. The people of Malta, like the people of China, have known at first hand and only recently the bitter humiliations of colonialism and long years of life without dignity.⁷⁶⁵

This was a direct swipe at the British colonial dominance on Malta that had persisted to some extent during the early years of independence. It might be recalled that Arvid Pardo had said in a newspaper article in 1965, right after he came to office, that the Maltese government ‘still had ties to Britain’.⁷⁶⁶ This might have made it a question of political expediency more than personal inclination that Pardo should be removed from the front lines of Mintoff’s socialist government. Arvid Pardo’s own comment on China in the letter to Mintoff makes it clear that he was aware of this fact.

Instead of pleading to stay in the delegation, Pardo asked Mintoff to appoint him as ‘a special adviser (or consultant) to the Government of Malta, with the rank of Ambassador, to deal with such problems as the Governments might wish [...], such as the questions of the

⁷⁶⁴ PR-Box: Personal Correspondences & Materials, Arvid Pardo to the Prime Minister, Appendix ‘A’, 7 July 1971. Malta and the question of China, see Prime Minister Mintoff of Malta Welcomed in China, *Peking Review* 14, April 7, 1972, <https://www.marxists.org/subject/china/peking-review/1972/PR1972-14.pdf>.

⁷⁶⁵ Mintoff, *Peking Review*, 8.

⁷⁶⁶ Cf. Daniell, ‘Malta Assigns Rare Diplomat’, 30.

Oceans, of the biosphere, of old age, new problems raised by technology, or disarmament matters.⁷⁶⁷ Arvid Pardo concluded his letter by confidently pointing out his expertise in such matters, ‘which is not elsewhere available in Malta.’⁷⁶⁸ This wish of Pardo’s to be appointed as a ‘special adviser’ to the government on specific issues was granted.

In other circles, Arvid Pardo’s dismissal from the Maltese delegation to the United Nations gave rise to some astonishment. On 8 July 1971, an article with the headline ‘Pardo, politics and pollution’ was published in the *New Scientist and Science Journal*, reporting on Pardo’s dismissal by Dom Mintoff. ‘One of the less publicized actions of Dom Mintoff, Malta’s new leader,’ the article stated, ‘has been the dismissal of Dr Arvid Pardo, head of the country’s Permanent mission to the United Nations.’⁷⁶⁹

The writer in the *New Scientist and Science Journal* added that ‘Unfortunately, in the eyes of Malta’s socialist eagle, Dr Pardo apparently ranked as a political appointee to be purged with the rest.’⁷⁷⁰ This meant that the opening ceremony of *Pacem in Maribus II*, which convened on Malta between 29 June and 5 July 1971, unfolded ‘with an air of embarrassment’,⁷⁷¹ since Arvid Pardo – who had been one of the key organisers – had suddenly lost some of his official importance as head of the Maltese delegation. The journalist Tony Loftas reported on the atmosphere at the opening ceremony, recounting that

[...] bold tributes were made and the applause came loud from the attending delegates. But the fact remained that Dr Pardo had been deprived of the forum, the UN, that he treasured most. And Malta had chosen to shun a man who had shown that a small nation can have a positive role in providing vital socially-conscious rallying calls within the UN system.⁷⁷²

Regardless of how Tony Loftas felt about Pardo’s dismissal as head of the Maltese delegation, it is unlikely that this was a major concern for Elisabeth Mann Borgese or Arvid

⁷⁶⁷ PR-Box: Personal Correspondences & Materials, Arvid Pardo to the Prime Minister, Appendix ‘A’, 7 July 1971.

⁷⁶⁸ PR-Box: Personal Correspondences & Materials, Arvid Pardo to the Prime Minister, Appendix ‘A’, 7 July 1971.

⁷⁶⁹ PR-Box: Personal Correspondences & Materials, Tony Loftas, Pardo, politics and pollution, *New Scientist and Science Journal*, 8. July 1971.

⁷⁷⁰ PR-Box: Personal Correspondences & Materials, Tony Loftas, Pardo, politics and pollution, *New Scientist and Science Journal*, 8. July 1971.

⁷⁷¹ PR-Box: Personal Correspondences & Materials, Tony Loftas, Pardo, politics and pollution, *New Scientist and Science Journal*, 8. July 1971.

⁷⁷² PR-Box: Personal Correspondences & Materials, Tony Loftas, Pardo, politics and pollution, *New Scientist and Science Journal*, 8. July 1971.

Pardo himself in July 1971. Pardo had not been ‘shunned’,⁷⁷³ rather he had gained a different position – albeit not one with quite the status of being head of the Maltese delegation to the United Nations. That political change would prompt some changes of position was to be expected, especially since Pardo had worked for the previous government. For the time being, Pardo continued as ‘Malta’s representative in regard to the peaceful uses of the seabed’,⁷⁷⁴ although he lost his immediate influence at the Maltese delegation in New York.

Big plans for Malta – Establishing the International Ocean Institute

Elisabeth Mann Borgese’s campaign to help Malta gain the ‘international machinery’, that was intended to oversee activities in the area outside national jurisdiction accelerated at *Pacem in Maribus II* in 1971. Now that Pardo had lost his platform, there was some uncertainty about the extent to which the ‘Draft Ocean Space Treaty’ would be altered by the time Malta presented it at the forthcoming UNCLOS negotiations.⁷⁷⁵ Perhaps in an attempt to rescue the initiative, another interesting proposal was made. Loftas reported a discussion about setting up a so-called ‘Mediterranean Council’⁷⁷⁶ or ‘Mediterranean Institute’⁷⁷⁷ that would be able to present the treaty in its original form at the United Nations. The plan was to base this enterprise in Malta.

It seems likely that this peculiar ‘institute’ or ‘council’ was a precursor to the ‘international machinery’ for the ocean regime that Mann Borgese intended to establish in Malta. It is important to note here that she used various different terms to refer to this organisation. In her letters to the Maltese government, she called it the ‘headquarters of the new ocean regime’,⁷⁷⁸ while if we look at her draft of ‘The Ocean Regime’, such an

⁷⁷³ PR-Box: Personal Correspondences & Materials, Tony Loftas, Pardo, politics and pollution, *New Scientist and Science Journal*, 8. July 1971.

⁷⁷⁴ MS-2-744, Box 52, Folder 9, Governor-General to EMB, 28 July 1971.

⁷⁷⁵ Cf. PR-Box: Personal Correspondences & Materials, Tony Loftas, Pardo, politics and pollution, *New Scientist and Science Journal*, 8. July 1971.

⁷⁷⁶ Cf. PR-Box: Personal Correspondences & Materials, Tony Loftas, Pardo, politics and pollution, *New Scientist and Science Journal*, 8. July 1971.

⁷⁷⁷ Cf. PR-Box: Personal Correspondences & Materials, Tony Loftas, Pardo, politics and pollution, *New Scientist and Science Journal*, 8. July 1971.

⁷⁷⁸ See MS-2-744, Box 52, Folder 9, EMB to Mintoff, 14 August 1971.

organisation would be what she had called the Planning Agency.⁷⁷⁹ Loftas mentioned a third name when he reported that '[...] Elizabeth Mann Borgese, chief architect of the *Pacem in Maribus* meetings, claims that she has found three major institutions interested in helping the Mediterranean Institute during its formative years.'⁷⁸⁰

The reason differing terms were in circulation might have been that this 'international machinery' was still evolving, and was being designed and adapted along the way. Perhaps Mann Borgese did not yet have a clear understanding of why exactly the institute should be established, other than some sort of wider vision that it could potentially become an 'international machinery' for governing the ocean regime as a whole.

A letter from Elisabeth Mann Borgese to Dom Mintoff dated 14 August 1971 demonstrates how she attempted to lobby for the establishment for such an organisation.⁷⁸¹ In the letter, she described a chance meeting with a journalist from the *New York Times*. The journalist, it seemed, had become extremely interested in Malta's case for hosting the 'headquarters of the new ocean regime'.⁷⁸² For all we know, this 'accidental' meeting might have been completely fabricated, but on the other hand, it could easily have been true. It was perfectly possible that Elisabeth Mann Borgese could indeed have met the journalist and provoked his interest in the story with her infectious enthusiasm. The exact circumstances of the meeting cannot be reconstructed, and they do not really matter in the grand scheme of things.

The main point here is the way Mann Borgese presented this meeting to the prime minister. Her goals, it seems, were twofold. First, if a publication like the *New York Times* was going to report on Malta's potential interest in providing the 'headquarters of the new ocean regime', a necessary first step would be for Malta to publicly broadcast its interest in such an undertaking. Second, an investigating journalist could put some pressure on the indecisive prime minister to take a stance one way or the other, forcing him to signal to the

⁷⁷⁹ Cf. MS-2-744, Box 132, Folder 1, The Ocean Regime Draft Statute (Revised, February, 1971).

⁷⁸⁰ PR-Box: Personal Correspondences & Materials, Tony Loftas, Pardo, politics and pollution, *New Scientist and Science Journal*, 8. July 1971.

⁷⁸¹ See MS-2-744, Box 52, Folder 9, EMB to Mintoff, 14 August 1971.

⁷⁸² MS-2-744, Box 52, Folder 9, EMB to Mintoff, 14 August 1971.

world whether Malta was interested or not. In this way, Elisabeth Mann Borgese could find out what the government actually wanted, and could pressure Mintoff into taking a public position.⁷⁸³

The ‘Ocean Regime Headquarters’ discussions also marked another important beginning, as Elisabeth Mann Borgese started to gather funding to set this institute up. She had a financing plan all prepared, which she presented to the prime minister in a letter in October 1971. The plan involved the Maltese government making an application for a United Nations Development Programme (UNDP) grant, which would then finance the initial years of a pilot project that would be ‘carried out by the *Pacem in Maribus* Institute at the University of Malta.’⁷⁸⁴ In this funding document, Mann Borgese had casually introduced another name for her organisation: the ‘*Pacem in Maribus* Institute’.⁷⁸⁵

Though the names varied, Elisabeth Mann Borgese’s ambitious plans for the institute were clear: ‘The Institute has a tremendous potential for expansion and development. If Malta should become the Headquarters of the international ocean regime, here is a precise and concrete beginning.’⁷⁸⁶ This comment proves the scale of her ambition. These plans she had to establish an institute on Malta were ultimately intended to mark the starting point for an international institution or headquarters overseeing the ‘international ocean regime’.

Unfortunately, the prime minister was hesitant to seize the day, in spite of Mann Borgese’s exhortations to make a ‘precise and concrete beginning’. It fell on deaf ears when she argued that ‘The world owes Malta great deal for having initiated the U.N. quest for an international ocean regime. We are working hard to get the international community to pay this debt to Malta by making it the headquarters of the new regime.’⁷⁸⁷ It is likely that she enclosed the ‘*Pacem in Maribus* Institute Draft Budget 1972-1974’⁷⁸⁸ when she wrote to

⁷⁸³ See the letter MS-2-744, Box 52, Folder 9, EMB to Mintoff, 14 August 1971. MS 52-9 (p 27) EMB letter to Mintoff August 14, 1971

⁷⁸⁴ MS-2-744, Box 52, Folder 9, EMB to Mintoff, 13 October 1971.

⁷⁸⁵ MS-2-744, Box 52, Folder 9, EMB to Mintoff, 13 October 1971.

⁷⁸⁶ MS-2-744, Box 52, Folder 9, EMB to Mintoff, 13 October 1971.

⁷⁸⁷ MS-2-744, Box 52, Folder 9, EMB to Mintoff, 13 October 1971.

⁷⁸⁸ MS-2-744, Box 52, Folder 9, EMB to Mintoff, 13 October 1971.

Mintoff, and this shows just how far her plans for the institute had already evolved even in 1971.

In autumn 1971, several letters flew back and forth between Elisabeth Mann Borgese and the prime minister on the issue of establishing the institute and finding funding, without anything ever becoming more concrete. Mann Borgese referred to governmental interest in the issue when she wrote that ‘Both you yourself, Mr. Prime Minister, and Mr. Buttigieg indicated to me your strong interest in having a U.N. Specialized Agency or equivalent established in Malta as early as possible.’⁷⁸⁹

Apparently, Malta was interested in hosting an institution, but unfortunately we do not know in what form it hoped to do this, or why the government was hesitant to support Mann Borgese’s attempts to establish it. At first, the tangible financial plans⁷⁹⁰ that she had provided were met with some interest. Mintoff replied in an undated telegram about the funding issue saying: ‘Hope you will agree that the maximum we can do is to finance a director some equipment and other small items out of our IPF stop.’⁷⁹¹ But by the time Mintoff’s next telegram turned up, things had already gone downhill: ‘Worried about turn of events regarding the setting up of oceanographic institute⁷⁹² [...] funds over and above what Malta gets for the other activities regret not to forward proposal stop please inform Pardo Hoffmann accordingly’.⁷⁹³

Despite the Maltese government’s hesitation to help fund the indefinitely named institute,⁷⁹⁴ in 1972 Mann Borgese succeeded in founding an ‘independent, international,

⁷⁸⁹ MS-2-744, Box 52, Folder 9, EMB to Mintoff, 20 October 1971.

⁷⁹⁰ See letter about UNDP and government: MS-2-744, Box 52, Folder 9, EMB to Mintoff, 8 November 1971.

⁷⁹¹ MS-2-744, Box 52, Folder 9, Telegram Mintoff to EMB, undated. It was likely the answer to the letter of November 8, 1971.

⁷⁹² Mintoff meant the IOI idea – we know this because Pardo and Hoffman were those who EMB had been discussing the funding question with. Hoffman had made EMB aware of the fact that she could apply for funds.

⁷⁹³ MS-2-744, Box 52, Folder 9, Telegram Mintoff to EMB, undated.

⁷⁹⁴ Mintoff introduces the name ‘oceanographic institute’ – there was most likely not only confusion about the name but also about the function of such an institution. We can see that in: MS-2-744, Box 210, Folder 14, Impact, Translation from IN-Nazzjon Taghna, 18 March 1975. After having lost the ISA, EMB had said: ‘The most important thing however that Malta could do would be to promote the setting up of the “Ocean Space Authority” since this is even better than the “International Seabed Authority”.’

nongovernmental, nonprofit organization headquartered at the University of Malta'.⁷⁹⁵ The organisation was called the International Ocean Institute (IOI).⁷⁹⁶ While the name should not be confused with the International Ocean Space Institutions from Arvid Pardo's 'Draft Ocean Space Treaty', we can speculate that the final decision on the institute's title was perhaps influenced by Pardo's proposal. This becomes increasingly plausible when we consider the ambitious plans Mann Borgese had for the institute.

It is likely that Mann Borgese managed to get some funding from the Maltese government after all. In a newspaper article in 1973, Mintoff was reported to have said that his government had aided the International Ocean Institute, and had set aside funds to help it organise research in the region.⁷⁹⁷ From Mintoff's statement, we learn that Mann Borgese had managed to achieve at least part of her ambition for the institute on Malta. The government had helped establish the institute, but in the official version of events, it had been set up to aid research in the region, not to become the headquarters of a future ocean regime.

Mann Borgese and Mintoff used different terms to refer to the institute in their letters. Names like '*Pacem in Maribus* Institute', 'Mediterranean institute', 'headquarters of the ocean regime' and even 'oceanographic institute' were used interchangeably. Although it is very likely that this confusion over names was due to the fact that there was some disagreement over the form and function of the institution, we cannot completely rule out the possibility that some of the ideas discussed were intended to be separate from one another. However, it is likely that Mann Borgese saw the institute as the 'precise and concrete beginning' of an institute based in Malta with the long-term goal to become the 'headquarters of the international ocean regime' – regardless of its eventual name.

Dreaming about the headquarters of the ocean regime on Malta

With the International Ocean Institute in place, Elisabeth Mann Borgese had established her own personal headquarters on Malta, from which she could work towards her mission of

⁷⁹⁵ MS-2-744, Box 398, Folder 15, International Ocean Institute – Past, Present and Future.

⁷⁹⁶ Cf. MS-2-744, Box 398, Folder 15, International Ocean Institute – Past, Present and Future.

⁷⁹⁷ Cf. MS-2-744, Box 94, Folder 1, Borg Olivier, Malta's interest in Caracas conference on Law of the Sea, *Times of Malta*, 23 July 1973.

transforming the IOI into a central organisation in the Law of the Sea. The discussions of how and whether the Maltese government should engage politically with the process of turning the IOI into the ‘headquarters of the new ocean regime’ continued throughout 1972 and 1973.

The issue became increasingly pressing the closer it came to first session at Caracas, which was scheduled for December 1973. Mann Borgese had foreseen that other countries might show interest in hosting such a prestigious United Nations institution, and she wanted Malta to have it.

Mann Borgese was not alone in her efforts. In fact, Pardo – who in 1972 was still engaged in the Seabed Committee on behalf of the Maltese government – had sent out a memorandum to the Maltese government and ambassador Attard Kingswell. We learn this in a letter from Mann Borgese to the prime minister, written in early 1973, where she writes that:

In this memorandum he [sic: Pardo] set forth proposals and recommendations which, although we developed our thinking on this subject independently from each other, are remarkably close to those I made to you and the Governor General.⁷⁹⁸

The discussions had now turned from establishing a starting point for the ocean regime headquarters – in the form of the IOI – to how the official headquarters themselves could be obtained. Of course, it was not up to the Maltese government or Elisabeth Mann Borgese to decide whether Malta would be chosen to host the ‘international machinery’ for the ocean regime. Their application, if they were to present one, had to be approved by all parties to the Law of the Sea Convention, and in order to obtain this approval, detailed plans had to put forward.

Elisabeth Mann Borgese had worked up detailed and practical drafts of how to design such headquarters. In the letter presenting her proposal to Dom Mintoff, she spoke in specific terms, talking about the form of the organisation, the arguments that could be put forward to gain it for Malta, and the strategies the Maltese government should use to achieve this goal.⁷⁹⁹

⁷⁹⁸ MS-2-744. Box 84, Folder 12, EMB to Mintoff, 17 January 1973.

⁷⁹⁹ Cf. MS-2-744. Box 84, Folder 12, EMB to Mintoff, 17 January 1973.

Regarding the form of the institution, Mann Borgese presented two possible options. It might end up being a small institution dealing only with seabed matters, or a larger one responsible for all ocean space. Of these, she believed the latter to be the more likely outcome in 1973, at least if we trust her judgement. She reported that ‘Current discussions at the U.N. [...] seem to indicate quite clearly a shift from a narrow concept to a far wider concept of ocean space institutions. This trend was triggered off by the introduction of the Maltese Ocean-space Draft Treaty in August, 1971.’⁸⁰⁰

Clearly, between 1971 and 1973, the scope of the institute Mann Borgese had in mind had changed. It had gone well beyond the concept of a kind of collaborative Mediterranean institute that would be able to present Pardo’s ‘Draft Ocean Space Treaty’ at the United Nations, and Mann Borgese was now presenting practical ideas of how ‘ocean space institutions’ should be organised.

In her letter of 1973, Mann Borgese laid out a proposed structure for the larger version of the institute, and detailed the requirements for the host country. She mentioned secretariats for: ‘oceanic mining’,⁸⁰¹ ‘management of living resources’,⁸⁰² ‘shipping and communication’,⁸⁰³ and ‘Management for international scientific research’,⁸⁰⁴ all of which were very similar to the ideas for organising a potential international regime into different chambers that she had proposed back in her draft of ‘The Ocean Regime’ in 1970.

Concerning the geographical location, Mann Borgese presented arguments as to why Malta would be well-suited, noting that ‘[...] the institutions must be located in a maritime site offering port and dock facilities. Among maritime sites, the Mediterranean offers the most concentrated confluence of communications and cultures [...]’⁸⁰⁵ Regarding the island state’s political standing, Mann Borgese argued that ‘Malta is, politically as well as economically and culturally, a natural mediator between developed and developing

⁸⁰⁰ MS-2-744. Box 84, Folder 12, EMB to Mintoff, 17 January 1973. EMB was probably exaggerating to convince Mintoff.

⁸⁰¹ MS-2-744. Box 84, Folder 12, EMB to Mintoff, 17 January 1973.

⁸⁰² MS-2-744. Box 84, Folder 12, EMB to Mintoff, 17 January 1973.

⁸⁰³ MS-2-744. Box 84, Folder 12, EMB to Mintoff, 17 January 1973.

⁸⁰⁴ MS-2-744. Box 84, Folder 12, EMB to Mintoff, 17 January 1973.

⁸⁰⁵ MS-2-744. Box 84, Folder 12, EMB to Mintoff, 17 January 1973.

nations.⁸⁰⁶ Another argument was the ‘historical consideration’, in which she emphasised the role of ambassador Pardo and his address at the United Nations in 1967.⁸⁰⁷

Elisabeth Mann Borgese also outlined the financial advantages of hosting the institutes: ‘[...] (1) direct inflow of currency and (2) a considerable impulse toward development.’⁸⁰⁸ At the same time, she was aware of the fact that hosting a United Nations institution could become a financial burden for smaller countries. Therefore, she presented another solution: ‘In the case of a small and developing nation such as Malta (or Kenya) agreements should be such that there is a direct financial benefit. Thus the institutions should pay a rental.’⁸⁰⁹

She also attached a detailed plan for ‘immediate and long-range steps’⁸¹⁰ that would help Malta achieve the goal of hosting the institute – which entailed participation in all kinds of conferences and gatherings, and appointing a ‘Secretary for Ocean Affairs’⁸¹¹ along with a group of experts. Finally, she did her best to include the IOI – which by then had been established with UNDP funds and money from the Ford Foundation – in the process, stating that ‘The Secretary for Ocean Affairs should work in close cooperation with the International Ocean Institute and avail himself of its documentation and files.’⁸¹²

In effect, Mann Borgese had drawn up a detailed recipe for ‘how to obtain a United Nations institution for the government of Malta’,⁸¹³ and had basically done the Maltese government’s job for them. In theory, all the government had to do was follow her step-by-step guide. Yet even with the master-plan in hand, and the justifications and arguments gathered together for them, they refused to do so.

In fact, quite the opposite was about to occur. Over the course of 1973 and *Pacem in Maribus* III and IV, the plan for a Maltese HQ crumbled, together with the goodwill for Arvid Pardo’s work on the Seabed Committee.

⁸⁰⁶ MS-2-744. Box 84, Folder 12, EMB to Mintoff, 17 January 1973.

⁸⁰⁷ See MS-2-744. Box 84, Folder 12, EMB to Mintoff, 17 January 1973.

⁸⁰⁸ MS-2-744. Box 84, Folder 12, EMB to Mintoff, 17 January 1973.

⁸⁰⁹ MS-2-744. Box 84, Folder 12, EMB to Mintoff, 17 January 1973.

⁸¹⁰ MS-2-744. Box 84, Folder 12, EMB to Mintoff, 17 January 1973.

⁸¹¹ MS-2-744. Box 84, Folder 12, EMB to Mintoff, 17 January 1973.

⁸¹² MS-2-744. Box 84, Folder 12, EMB to Mintoff, 17 January 1973.

⁸¹³ MS-2-744. Box 84, Folder 12, EMB to Mintoff, 17 January 1973.

In summer 1973, the Maltese government publicly admitted its reluctance to host an international authority. In a newspaper article in the *Times of Malta*, the prime minister was asked by a parliamentary representative about Malta's plans for the international authority. Mintoff answered that:

[...] no decision has yet been taken in Caracas about the setting up of an international authority on the sea-bed. [...] I can state that the Maltese Government has long ago noted that these developments are a long way away. So much so that efforts were made to have in Malta at least an Institute of Marine Research for this region. To achieve this aim Malta dedicated a substantial part of the aid for two years received from the United Nations Development Programme to help the International Ocean Institute – responsible for the coordination of work by all the members of Pacem in Maribus so that this regional research may be carried out in Malta.⁸¹⁴

The IOI was left hanging in thin air. Instead of putting all their efforts into preparing for the International Ocean Institute to be transformed into the headquarters of the ocean regime, the Maltese government wavered. Mintoff's newspaper statement suggested that the government had funded the IOI just to 'coordinate' issues, and not to be the seed of something that would later be transformed into the future seabed authority. Either the Maltese thought they still had plenty of time since 'developments were a long way away',⁸¹⁵ or they felt they needed to test the waters at the United Nations further, since not all developing nations were agreed on the matter.

In an exchange of letters between Mann Borgese and Mintoff (undated but most likely from the second half of 1973) we can sense a sudden shift in tone. Instead of promoting practical plans for Malta's next steps in obtaining the ocean regime headquarters, Mann Borgese.⁸¹⁶ She wrote to Mintoff '[...] What I am REALLY concerned about is Malta which I love as much as you do and whose achievements during these last few years have filled me with pride, as though I were a Maltese.'⁸¹⁷

⁸¹⁴ MS-2-744, Box 94, Folder 1, Borg Olivier, Malta's interest in Caracas conference on Law of the Sea, *Times of Malta*, 23 July 1973.

⁸¹⁵ MS-2-744, Box 94, Folder 1, Borg Olivier, Malta's interest in Caracas conference on Law of the Sea, *Times of Malta*, 23 July 1973.

⁸¹⁶ We find this in a handwritten draft with a note that says addressed to Mintoff. We cannot know if he read it. See MS-2-744, Box 84, Folder 12, EMB draft Mintoff, undated. (likely 1973)

⁸¹⁷ MS-2-744, Box 84, Folder 12, EMB draft Mintoff, undated.

It seems likely that political considerations – probably tensions between developed and developing nations and some clashes of interest – lay at the root of the Maltese government’s caution, and Mann Borgese’s attempts to persuade the prime minister point towards this interpretation. She wrote: ‘Contrary to the impression you may have had, the developing nations have a vital interest in the establishment of a new type of international system for the ocean [...]’⁸¹⁸ Instead of the developing nations, she claimed that it was the super powers that were problematic, since they were ‘blocking progress with their surrealist dreams of annexing half the world’s oceans.’⁸¹⁹ To try and convince the Maltese government to take a strong stance in ocean governance issues, she argued that ‘[...] they all—and that includes China!⁸²⁰— want a strong international machinery: strong enough so that it cannot be dominated by the big powers.’⁸²¹

The ‘strong international machinery’ she spoke of would be located in the headquarters of the ocean regime, and Elisabeth Mann Borgese was still keen to pursue the goal of bringing this to Malta, despite the fact that the prime minister had put the brakes on. The situation must have been enormously frustrating for her, especially since it seemed like the time would soon be ripe to achieve her aim:

And now that under Malta’s leadership we have won the first round, and the Conference is actually going to start, you want to pull out? If you really do, it is a tragedy of the first magnitude. Not so much for the world (although it is a sad loss for the world) as for Malta itself which, at the very last moment, is forfeiting its hard earned first place in this struggle.⁸²²

Together with the Maltese government’s desire to ‘pull out’, it seemed that the island state’s leading figure, Arvid Pardo, was going to be pulled out too. After already having lost his seat in the Maltese delegation in 1971, he was now about to lose his involvement in the Seabed Committee as well, and Mann Borgese was harshly critical of this decision in her letter: ‘The price you have to pay for keeping Dr. Pardo in the Seabed Committee (whose work during

⁸¹⁸ MS-2-744, Box 84, Folder 12, EMB draft Mintoff, undated.

⁸¹⁹ MS-2-744, Box 84, Folder 12, EMB draft Mintoff, undated.

⁸²⁰ China was politically very important for the socialist government of Malta. EMB wanted to emphasise that China was on their side.

⁸²¹ MS-2-744, Box 84, Folder 12, EMB draft Mintoff, undated.

⁸²² MS-2-744, Box 84, Folder 12, EMB draft Mintoff, undated.

the next eight weeks in Geneva is of crucial importance) and in the Law of the Sea Conference is really piddling.⁸²³

Review of networks and re-grouping to face UNCLOS III

While Elisabeth Mann Borgese was becoming increasingly frustrated with the Maltese government, her home base at the Center for the Study of Democratic Institutions in Santa Barbara was beginning to fall apart. She had not been successful in mobilising general support for her ocean project, beyond getting some support with the first *Pacem in Maribus* conference.

The centre's official involvement with *Pacem in Maribus* had finished back in 1970 after PIM I. In the 'Summary Remarks' of the convocation in Malta in July 1970, Harry Ashmore wrote that the centre's 'primary role'⁸²⁴ in *Pacem in Maribus* ended with the first convocation, and that they stood '[...] ready to pass on the title'.⁸²⁵ He also promised to provide the '[...] considerable body of material [...], to a continuing international group' and that the Center for the Study of Democratic Institutions would be '[...] available to assist in the effort to locate acceptable financial support for such an undertaking, and to use our offices to guarantee its independence of any national, private or ideological interest.'⁸²⁶

This statement closed the book on Mann Borgese's vision for the centre. Making the deep sea and the oceans the main topic for the research fellows in Santa Barbara was no longer an option. A year earlier, in 1969, the fellows had already discussed the issue, and one fellow had stated in a memorandum: 'I think the Deep Seas is an important subject and problem. I do not think that the deep seas is either sufficiently important or inherently rich in the problematic sense to warrant the imperialist claims now being advanced for it so far as other important Center studies are concerned.'⁸²⁷ Thus, Elisabeth Mann Borgese's 'imperialistic claims'⁸²⁸ were sidelined.

⁸²³ MS-2-744, Box 84, Folder 12, EMB draft Mintoff, undated.

⁸²⁴ MS-2-744, Box 120, Folder 25, Summary Remarks *Pacem in Maribus* Convocation, 3 July 1970.

⁸²⁵ MS-2-744, Box 120, Folder 25, Summary Remarks *Pacem in Maribus* Convocation, 3 July 1970.

⁸²⁶ MS-2-744, Box 120, Folder 25, Summary Remarks *Pacem in Maribus* Convocation, 3 July 1970.

⁸²⁷ MS-2-733, Box 43, Folder 46, Center Memorandum, 12 February 1969.

⁸²⁸ MS-2-733, Box 43, Folder 46, Center Memorandum, 12 February 1969.

This meant she had to move on and find another platform from which she could engage in the development of ocean governance. As we have seen, she continued working with Pardo and carried on with the PIM conferences, raising money independently⁸²⁹ and successfully founding the IOI on Malta – with the purpose of contributing to the Seabed Committee’s ongoing discussions, and in an attempt to lay the cornerstone for a future ‘international authority’ overseeing the ocean regime.

Although the Center for the Study of Democratic Institutions at large was not involved in any major way in the subsequent PIM conferences, Mann Borgese continued to be employed by it until 1978.⁸³⁰ Even in 1974, however, the future of the centre in Santa Barbara was already looking bleak.

In June 1974, *The New York Times* published an article about the centre with the headline: ‘Center for Study of Democratic Institutions Has a New Chief and a Fiscal Crisis’.⁸³¹ The article was prompted by the fact that Malcom C Moos had taken over Robert M Hutchins’s position that same year.⁸³² Hutchins had been battling ill-health for a while, and was finally unable to continue his work. The change in leadership and Hutchins’s health issues meant the *New York Times* saw fit to report on the uncertain future of the centre, stating that: ‘While seeking immortality, the center is running out of money, and intimations of mortality contend with the hope that something may turn up.’⁸³³

The article quoted several fellows who had been asked about their thoughts on the matter. One fellow, John Wilkinson said: ‘“We’ve been drifting. [...] Everybody made an itinerary taking him away for long periods, and found a focus and locus outside the center. How could people think when they were above a cloud?”’⁸³⁴

⁸²⁹ How exactly EMB funded and organized PIM is almost as overarching as the question of IOI foundation or any kind of funding. The issue is difficult to research because there was private money and EMB’s use of connections involved.

⁸³⁰ See MS-2-744, Box 16, Folder 19, EMB CV.

⁸³¹ MS-2-744, Box 85, Folder 17, Israel Shenker, The Center for the Study of Democratic Institutions Has New Chief and a Fiscal Crisis, *The New York Times*, 5 June 1974.

⁸³² MS-2-744, Box 85, Folder 17, Israel Shenker, The Center for the Study of Democratic Institutions Has New Chief and a Fiscal Crisis, *The New York Times*, 5 June 1974.

⁸³³ MS-2-744, Box 85, Folder 17, Israel Shenker, The Center for the Study of Democratic Institutions Has New Chief and a Fiscal Crisis, *The New York Times*, 5 June 1974.

⁸³⁴ MS-2-744, Box 85, Folder 17, Israel Shenker, The Center for the Study of Democratic Institutions Has New Chief and a Fiscal Crisis, *The New York Times*, 5 June 1974.

Another fellow, Harvey Wheeler, who had worked with *Pacem in Maribus* at the centre, suggested that Hutchins's style of leadership might have been behind their recent struggles, explaining that the centre was '[...] a bureaucratization of Hutchinson, and extension of his personality – and he's a strong and compelling person with a piercing mind and an alarming ability to see behind social facades'.⁸³⁵ Harvey Wheeler told the newspaper: 'It's Hutchin's Center.'⁸³⁶

Alexander King told the *New York Times*: 'I am very disappointed with the dialogue. It's too inbred . . . incestuous.'⁸³⁷ He was probably hinting at the ivory tower-like style of research at the centre, where fellows did not make much of an effort to reach a wider audience with their publications and findings.⁸³⁸

Elisabeth Mann Borgese, too, was interviewed for the article. Her verdict was fairly damning: 'The group is pretty polarized,' [...] 'There are those who are trying to do something – not just be intelligent, and those who feel they have to be cynical and revel in destructiveness and pessimism and get a kick out of it.'⁸³⁹ Perhaps her comment was a jab at those who had opposed her ambitious ideas, but in some respects she may have been right. With her plans to engage with the Seabed Committee and questions of ocean governance, she had tried to step outside what King had called the 'incestuous'⁸⁴⁰ atmosphere of the centre, and those fellows who had been reluctant to support her may well have been as destructive and pessimistic as she claimed. Ultimately, it is possible that the Center for the Study of Democratic Institutions really had missed out on a chance to gain and retain importance when it decided to drop the ocean question.

⁸³⁵ MS-2-744, Box 85, Folder 17, Israel Shenker, The Center for the Study of Democratic Institutions Has New Chief and a Fiscal Crisis, *The New York Times*, 5 June 1974.

⁸³⁶ MS-2-744, Box 85, Folder 17, Israel Shenker, The Center for the Study of Democratic Institutions Has New Chief and a Fiscal Crisis, *The New York Times*, 5 June 1974.

⁸³⁷ MS-2-744, Box 85, Folder 17, Israel Shenker, The Center for the Study of Democratic Institutions Has New Chief and a Fiscal Crisis, *The New York Times*, 5 June 1974.

⁸³⁸ CHECK MILTON M he says something about this

⁸³⁹ MS-2-744, Box 85, Folder 17, Israel Shenker, The Center for the Study of Democratic Institutions Has New Chief and a Fiscal Crisis, *The New York Times*, 5 June 1974.

⁸⁴⁰ MS-2-744, Box 85, Folder 17, Israel Shenker, The Center for the Study of Democratic Institutions Has New Chief and a Fiscal Crisis, *The New York Times*, 5 June 1974.

However, there was also the separate issue of funding, and this had been problematic even when Hutchins still worked there. If it truly was ‘Hutchins’s Center’, then it was going to be even harder to keep it going without him at the helm.⁸⁴¹ When it came to the centre’s reluctance to commit resources to further *Pacem in Maribus* conferences, we also have to bear in mind that it still had two more *Pacem in Terris* convocations to organise – one in 1973 and the last one in 1975 – with up to 3,000 participants attending each gathering.⁸⁴² Therefore, it is not surprising that the fellows were disinclined to take on the organisation of another mammoth project on top of the consecutive *Pacem in Terris* conferences.

In 1974, Mann Borgese wrote to one of her daughters about the situation at the centre. ‘Life is hectic as always. I love the new house. The dogs are fine. The Center is going to hell in a bucket. The oceans are very much alive and keep me on my toes [...]’⁸⁴³ In a letter to her mother, Katia Mann, we learn how busy she must have been at the time. Mann Borgese reported travelling to Washington to meet ‘the father of the oceans’,⁸⁴⁴ journeying to New York to attend an energy conference, and that she planned to go straight on from there to Malta to attend a meeting of the Board of Trustees of the International Ocean Institute.⁸⁴⁵ Referring her own project, the IOI, she was proud to tell her mother that it had been referred to by the media as ‘[...] the most influential nongovernmental institute on ocean affairs’.⁸⁴⁶

Because of her ‘most influential institute’, Elisabeth Mann Borgese had become one of those fellows in Santa Barbara that existed mostly ‘above the clouds’.⁸⁴⁷ Instead of relying on the centre in Santa Barbara for support in organising subsequent conferences on ocean

⁸⁴¹ Milton Mayer writes about Hutchins’s reduced capacity due to illness and refers to the same article in Mayer, *Robert Maynard Hutchins*, 492-493.

⁸⁴² See Mayer, *Robert Maynard Hutchins*, 482: ‘Two more *Pacem* convocations were held. One took place in October of 1973 in Washington, attended by three thousand people, who heard Henry Kissinger and William Fulbright in a knock-down, drag-out debate on American foreign policy. The concluding *Pacem in Terris IV* in Washington in December of 1975, was attended by two thousand people. The four conferences, while they produced both notice and income, also produced additional dissatisfaction among the Fellows of the Center, many of whom felt that the Hutchins-Ashmore impresario ventures, successful as they were, were diverting the Center from its appointed task: the dialogue.’

⁸⁴³ EMB B4 Mann Borgese, 15 November 1974.

⁸⁴⁴ B.III.17-Mann-126, 15.11.1974. ‘Vater der Ozeane’

⁸⁴⁵ Cf. B.III.17-Mann-126, 15.11.1974.

⁸⁴⁶ B.III.17-Mann-126, 15.11.1974.

⁸⁴⁷ MS-2-744, Box 85, Folder 17, Israel Shenker, The Center for the Study of Democratic Institutions Has New Chief and a Fiscal Crisis, *The New York Times*, 5 June 1974.

governance, she had established the International Ocean Institute on Malta in 1972, and was busy developing it into an operational centre for her work towards a new Law of the Sea.

Despite her frustrations with the Center for the Study of Democratic Institutions in 1974, the fact remained that from 1967 onwards it had served her well as a platform from which she could organise the *Pacem in Maribus I* conference and as a place where important people could meet and exchange ideas. As a centre fellow, Elisabeth Mann Borgese had the necessary official recognition and institutional backing to be taken seriously, and without the centre behind her, it is questionable whether Arvid Pardo would ever have got involved with her work.

From her first engagement with ocean governance in 1967, as she moved through the successful preparation conferences and towards the foundation of the IOI in 1972, Mann Borgese had been establishing a wide network of contacts. Her work organising successive PIM convocations and establishing the IOI on Malta brought her into contact with important policy makers, many of whom were involved in high-level discussions on ocean governance and the Seabed Committee. All of this was achieved with the backing of the centre, and in this regard it was very valuable to her.

Another of her affiliations with an international think tank organisation that was formed through her fellowship in Santa Barbara was Mann Borgese's involvement with the Club of Rome, which she was invited to join around 1970 (the exact date and circumstances are a matter of debate).⁸⁴⁸ According to Mann Borgese's own recollections, the club's founder, Aurelio Peccei, had visited Santa Barbara to present his plans for establishing the Club of Rome, and it was here that he met Elisabeth Mann Borgese and she introduced him to ocean questions.⁸⁴⁹

Apparently, they had noticed that their missions were related. The Club of Rome published its most famous report, *The Limits to Growth*⁸⁵⁰ in 1972, and this dealt primarily

⁸⁴⁸ Wolfgang Clemens, 'Meereskundliche Weltliteratur. Elisabeth Mann Borgese und der Club of Rome', in *Elisabeth Mann Borgese und das Drama der Meere*, exhibition catalogue, eds. Holger Pils and Karolina Kühn (Hamburg: mareverlag, 2012), 100.

⁸⁴⁹ Cf. Hermann, ed., *Die Meer Frau*, 34.

⁸⁵⁰ Donella H. Meadows, Dennis L. Meadows, Jørgen Randers and William W. Behrens III, *The Limits to Growth* (New York: Universe Books, 1972).

with the increasing scarcity of resources in the face of human expansion. The issue of resource scarcity was tied in with the seabed question, though when Mann Borgese was later asked about her assessment of the report, she stated that she had not considered resource scarcity as the most pressing issue at that time.⁸⁵¹

The Club of Rome's mission was closely related to that of Mann Borgese and her allies in the run-up to UNCLOS III. The club was enquiring into questions that troubled the world, exploring future challenges and possible solutions. Thus, it was not surprising that Mann Borgese was already in contact with the Club of Rome even in the early years of her engagement with the oceans. How important her membership of this organisation was in terms of her ocean engagement is hard to assess. Her first and only report to the Club of Rome would not be published until 1984,⁸⁵² when 'The Future of the Oceans' would discuss future challenges of ocean governance in the light of the New Law of the Sea.⁸⁵³

In 1973, however, Mann Borgese was mostly interested in bringing the Maltese government's ideas of the role it would play during UNCLOS III into line with her own plans for the country's involvement. While she had been able to establish a useful network of contacts through Santa Barbara, the PIM conferences and the IOI on Malta, she would struggle to influence the negotiations at the United Nations without the full support of the Maltese government for a holistic ocean regime. As the first UNCLOS session in New York approached in 1973, the suspense mounted. The Maltese were hesitant about diving head-first into the conference with Arvid Pardo leading the way, and on this occasion it was not due to Dom Mintoff's 'maverick' attitudes. In fact, it reflected a much bigger international conflict.

⁸⁵¹ Cf. Clemens, 'Meereskundliche Weltliteratur', 100. Mare p. 100 citing interview WUlf Gaulitz 1999

⁸⁵² Clemens, 'Meereskundliche Weltliteratur', 100.

⁸⁵³ More about EMB's work with the Club of Rome in Clemens, 'Meereskundliche Weltliteratur', 100.

PART III ACTION 1973–1982

Chapter 7. UNCLOS III – Haves against have-nots

The world order complicates ocean governance negotiations

Some have branded the endeavour to negotiate the Law of the Sea at the United Nations an affair of ‘haves against have-nots’.⁸⁵⁴ Others have used milder language by calling the discussion ‘polarized’.⁸⁵⁵ When the negotiations finally started in 1973,⁸⁵⁶ no one anticipated that the process would take almost a decade. Ahead lay nine years of laborious discussions, negotiation, bickering, shifts in direction, risky trade-offs, disputes, deadlock, alliances, secret group meetings and endless scheming.

We must not forget that the United Nations in the 1970s was a microcosm of world politics. Apart from the disagreements on ocean matters, there were other, larger political animosities to overcome or at least consider. Casting the largest shadow of all was the Cold War. As the symbolic invention of the atomic clock shows, the conflict was about more than just the division between East and West – the atomic threat and destructive potential of the Cold War loomed over the whole world. It would be a challenge to negotiate a common ocean governance policy involving the US and the USSR without poking that particular bear, but surprisingly enough, it was not impossible. In fact, it seemed like the backdrop of the Cold War meant the UNCLOS negotiations sidestepped some of the largest potential obstacles, since states were more willing to seek compromise rather than running the risk of sparking an ever-present threat of conflict that could easily blow up into an atomic world crisis.

The Law of the Sea Convention negotiations would show that there were other issues in play, some even bigger than the conflict between East and West. Ironically, many

⁸⁵⁴ MS-2-744, Box 125, Folder 2, Brucaan Save the Seas and the Oceans for Mankind.

⁸⁵⁵ Mahmoudi calls the discussion at UNCLUS until 1976 ‘polarized’. Cf. Mahmoudi, *The Law of*, 180-181.

⁸⁵⁶ ‘Procedural History’, United Nations Audiovisual Library of International Law, accessed 20. June 2018, <http://legal.un.org/avl/ha/uncls/uncls.html>. See ‘On 18 December 1972, having considered the report on the Committee’s work during its 1972 sessions (A/8721 and Corr.1), the General Assembly requested the Secretary-General to convene the first session of the Third United Nations Conference on the Law of the Sea in 1973 to deal with organizational matters, and a second session in 1974, as well as subsequent sessions if necessary, to deal with substantive work (resolution 3029 (XXVII)). The Committee submitted its final report to the General Assembly at its twenty-eighth session, in 1973 (A/9021 and Corr.1 and 3).’

industrialised coastal states in the geographical north had similar interests concerning the Law of the Sea, whichever side of the ideological divide they lay on. For instance, both the United States and the Soviet Union were equally interested in a narrow territorial zone, ever mindful of the mysterious underwater vehicles with which they might be able to spy on one another. There were other nations, though, who posed new challenges: the newly independent colonies of the third world.

Many former colonies had gained independence after World War II. These young states were eager to shape world politics, and the United Nations was the only platform where they could do so. The reason was simple: at the UN, majority ruled over power. Though the United States and the former European colonists had a unique standing in world affairs, the sheer quantity of new states meant they could simply outnumber them. If these new states were able to form alliances and hunt in packs, they could easily dominate the former imperial states.⁸⁵⁷

It was with good reason that the industrial states feared the rise of the developing countries. These nations had already started forming alliances, and were putting together their own take on the common heritage principle. When the First United Nations Conference on Trade and Development⁸⁵⁸ (UNCTAD I) convened in 1964, there was an informal interest group, comprised of 75 member states, that was working for the interest of developing countries. It had been established in the previous year to prepare for UNCTAD, and had worked on a resolution called 'Joint Declaration of the Developing Countries'.⁸⁵⁹

During UNCTAD I, three states joined the group, New Zealand left it, and the group was henceforth known as the Group of 77.⁸⁶⁰ Although the group had its own mix of differing

⁸⁵⁷ Cf. Edward L. Miles, 'The Structure and Effects of the Decision Process in the Seabed Committee and the Third United Nations Conference on the Law of the Sea', *International Organization* 31, no. 2 (1977): 177, <https://www.jstor.org/stable/2706403>.

⁸⁵⁸ For an overview article about UNCTAD I, II and III (1964 – 1972) see Bernardo P. Nun, 'UNCTAD', *Lawyer of the Americas* 4, no3 (October 1972): 449-459, <http://www.jstor.org/stable/40175626>.

⁸⁵⁹ Carol Geldart and Peter Lyon, 'The Group of 77: A Perspective View', *International Affairs (Royal Institute of International Affairs 1944-)* 57, no. 1 (1980-1981): 85, <http://www.jstor.org/stable/2619360>. For more UNCTAD documents Geldart and Lyon refer to A.G. Moss and Haary N.M. Winton compilers, *A New International Economic Order. Selected Documents 1945-1975* (New York: UNITAR Document Service No. 1, 1976): 16-19.

⁸⁶⁰ Cf. Geldart and Lyon, 'Group of 77', 85.

interests, along with some unstable governments on board and a serious lack of coordination skills,⁸⁶¹ it had the potential to tip the scales based on sheer numbers alone.

The developing nations had also started to use the principle of the common heritage of mankind applied to the seafloor as an instrument in obtaining the so-called New International Economic Order (NIEO).⁸⁶² The argument that spurred this urge to rearrange the 'economic-order' was that decolonisation had not been truly successful in releasing the former colonies from the yokes of their one-time masters. Although the developing countries were now politically independent, the former colonists still possessed all the economic and technological advantages.⁸⁶³

Advocates of the NIEO argued that the principles the international community was built on promoted injustice in the world.⁸⁶⁴ Therefore, they called for cooperation through the exchange of technological knowledge and a new, international law that could help to close the gap between developed and developing countries.⁸⁶⁵

The private, industrial interests of developed countries were clearly on a collision course with the developing countries' hopes to use the ocean governance question to revolutionise not only the economic order of the oceans but also that of the world. As a matter of fact, tensions began to bubble up right from the very first session, as the nations discussed how to shape the decision-making process.

Originally, the first session in New York on 3–5 December 1973 had been scheduled to draw up the rules of procedure. However, even that first session demonstrated the potential for discord among the participants, since the gathering was unable to reach an agreement and had to drag the question of the rules of procedure into the second session that gathered in Caracas in the summer of 1974.⁸⁶⁶ However, the participants at the first session did at least

⁸⁶¹ Some of the Group of 77 issues during UNCLOS, *see* Miles, 'Preparations for UNCLOS IV?', 427.

⁸⁶² Monica Allen discusses this in Allen, 'An Intellectual History', 64. Allen refers to Jagdish N. Bhagwati, ed, *The New international Economic Order: The North south debate* (Cambridge MA: The MIT Press, 1977), 4.

⁸⁶³ *See* Chircop, 'Elisabeth Mann Borgese's humanist conception', 114: 'It is virtually impossible to understand the development of the international law of the sea [...] without an appreciation of the technological forces that shaped and re-shaped ocean policy.'

⁸⁶⁴ *See* U.N. G.A., Res. 3201, quoted in Allen, 'An Intellectual History', 65.

⁸⁶⁵ *Cf.* Allen, 'An Intellectual History', 64-65.

⁸⁶⁶ *See* Miles, 'Structure and Effects', 183.

succeed in electing a president – Hamilton Shirley Amerasinghe from Sri Lanka, who had served as president of the Seabed Committee.⁸⁶⁷

The Canadian journalist and contemporary witness Clyde Sanger described the first president of UNCLOS III in glowing terms, saying that he was a well-respected man of integrity and impartiality.⁸⁶⁸ Sanger reported of Amerasinghe's leadership style that he

[...] never tried to be an expert on all subjects, but instead concentrated on the broad picture and tried to bring pressure at a high level. He was not afraid of taking personal initiatives. When he thought it necessary, he would call delegates, whether from the big powers or the Group of 77, into his office to rap knuckles or to knock heads together.⁸⁶⁹

Two facts about the president were important for Elisabeth Mann Borgese and her involvement with UNCLOS. Not only was he the former president of the Seabed Committee, he was also the president of the board of trustees for the International Ocean Institute on Malta.⁸⁷⁰ Amerasinghe might have been known for 'knocking heads together',⁸⁷¹ but he and Mann Borgese were on first-name terms.⁸⁷² He had come from the Seabed Committee, had partaken in several PIM conferences and had become the president of the convention – a role he would occupy until his sudden death in 1980.⁸⁷³ Apparently, Mann Borgese had managed to mingle with the right kinds of people prior to the conference.⁸⁷⁴

The first and second meetings – in 1973 and 1974 respectively – discussed the rules of procedure for the negotiation process, and the outcome was, in Miles's words, 'convention breaking'.⁸⁷⁵ This was because, after a long struggle, it was decreed that the Law of the Sea would be negotiated by consensus, not voting.⁸⁷⁶

⁸⁶⁷ UN Doc. A/CONF.62/ SR.1. 1st plenary meeting, Monday, 3 December 1973, at 4.15 p.m.

⁸⁶⁸ Cf. Sanger, *Ordering the Oceans*, 41-42.

⁸⁶⁹ Sanger, *Ordering the Oceans*, 41-42.

⁸⁷⁰ MS-2-744, Box 398, Folder 15, International Ocean Institute – Past, Present and Future.

⁸⁷¹ Cf. Sanger, *Ordering the Oceans*, 41-42.

⁸⁷² Cf. MS-2-744, Box 114, Folder 8, Karl Wolf to EMB, 4 December 1980.

⁸⁷³ See MS-2-744, Box 114, Folder 8, Karl Wolf to EMB, 4 December 1980.

⁸⁷⁴ Baker also refers to this in 'Uncommon Heritage'.

⁸⁷⁵ Miles, 'Structure and Effects', 180.

⁸⁷⁶ Cf. Miles, 'Structure and Effects', 183. The rules were adopted 27 June. For a discussion on the relevance of consensus seeking and its role during UNCLOS, see Barry Buzan, 'Negotiating by Consensus: Developments in Technique at the United Nations Conference on the Law of the sea', *The American Journal of International Law* 75, no. 2 (April 1981): 324-348, <http://www.jstor.org/stable/2201255>.

The rules of procedure were later referred to as a ‘Gentlemen’s Agreement’.⁸⁷⁷ This meant that the participating states had to agree on everything, paragraph by paragraph.⁸⁷⁸ Only in the rare case that no consensus could be reached whatsoever were the delegates allowed to vote. Even the question of the necessary majority in the case of such severe disagreements started with discord. The president, Hamilton Shirley Amerasinghe, got the first chance to prove his consensus-seeking skills when he proposed a new rule for these sorts of cases in Caracas in 1974. Rule 64 stated that ‘[...] decisions of the Conference on all matters of substance, including adoption of the final Convention, would be by two-thirds of those present and voting provided this amounted to at least a majority of Conference participants.’⁸⁷⁹

Clearly, agreement by consensus was going to be a time-consuming process, and it tipped the balance once again in favour of the developed states. If the participants of the convention had agreed on a voting system, as had been the case for both UNCLOS I and II, decision-making would have been speedier.⁸⁸⁰ Delegates would have been able to bring their drafts to the negotiation table and the assembly would simply vote for or against them. In such a scenario, though, the Group of 77 would have had a clear advantage, with 77 members (growing number of members during UNCLOS) out of 160 participating states in total.⁸⁸¹

That a consensus system was introduced to tip the balance in favour of the developed states was, of course, no coincidence. There was no willingness among the developed states to let up-and-coming ex-colonies take hold of the power by outnumbering them. To prevent

⁸⁷⁷ Bernaerts, *Bernaerts' Guide*, 8.

⁸⁷⁸ For more details on the discussion on how to reach an agreement, see Miles, ‘Structure and Effects’, 181-183.

⁸⁷⁹ Miles, ‘Structure and Effects’, 183.

⁸⁸⁰ On the decision-making process, see Harrison, *Making the Law*, 40-41. See also Treves, ‘1958 Geneva Conventions’. ‘Attended by 86 States, the Conference organized itself in five main committees and a plenary, and followed rules of procedure similar to those of the United Nations General Assembly, so that while provisions could be adopted in one of the committees by simple majority, a two-thirds majority was required when the provision reached the plenary. This procedural rule made it impossible to agree on the breadth of the territorial sea.’

⁸⁸¹ Cf. Harrison, *Making the Law*, 39. Full list in the Final Act.

this from happening, the developed states made it clear that they would never commit to even discussing a convention that was built on a voting system.⁸⁸²

Of course, the Group of 77 could have insisted, but the outcome would have been devastating. As Miles puts it, this would have been a ‘Pyrrhic victory for the Group of 77.’⁸⁸³ No developed state would have ratified the convention, and if the convention had gone with the voting system, many developed states would probably not even have been willing to sit down at the negotiating table. Since participation in the convention was not compulsory, the only way to get the entire international community on board was to change the procedure.

In fact, there was a distinct sense of bitterness among developed states towards the former colonies and their eagerness to shape decision-making in the international arena. Friedheim and Durch wrote about the general attitude towards developing states:

[...] developing states’ behavior has caused Western observers to question whether the developing [sic: nations] are more concerned with image or ideology than with substance, since they have repeatedly rejected developed states’ initiatives which might well have made a measurable improvement in the welfare of their peoples.⁸⁸⁴

Some industrial states found it downright ungrateful that the developing states wanted to have a say in what was best for them, and perhaps it was easier to label their ambitions ‘ideological’ than to admit that many of their suggestions genuinely had a realistic, political core.

The discussion was an unsettling reminder of a dread that some Americans had harboured as far back as 1949. It was fear of just such internationalism and ‘rabbit systems’⁸⁸⁵ that had rung in the paranoia of the McCarthy era, and had prompted Ely Culbertson to argue in 1949 that the ‘disease of internationalism, such as the Communist internationalism, can be as monstrous as the disease of nationalism.’⁸⁸⁶

⁸⁸² On the issue of consensus seeking, see Sanger, *Ordering the Oceans*, 36-37. See also Buzan, ‘Negotiating by Consensus’, 329: ‘The most likely source of resistance to consensus procedure comes from those states who see advantage in the present form of majority voting. Under present conditions, this logic points towards the Group of 77, many of whose members are weak states reliant on combined voting power as one of their principal sources of influence.’

⁸⁸³ Miles, ‘Structure and Effects’, 183.

⁸⁸⁴ Robert L. Friedheim and William J. Durch, ‘The International Seabed Resources Agency Negotiations and the New International Economic Order’, *International Organization* 32, no. 2 (1977): 330.

⁸⁸⁵ Culbertson, ‘The preliminary Draft’, 481.

⁸⁸⁶ Culbertson, ‘The preliminary Draft’, 474.

What no one could have predicted was that there was another twist to the issue. The biggest obstacle would not be the East-West Cold War or even the North-South tension between developed and developing states, but rather the issues that would arise between coastal and non-coastal states. Which meant that the axes of agreement and disagreement were completely disrupted.⁸⁸⁷ The question of coastal versus non-coastal states even led to disagreement within the Group of 77 itself, and was another reason why the group struggled to coordinate its own interests and actions. As an aside, this also makes it questionable whether a voting system would truly have been so disastrous, since many developing states were coastal states and in fact ended up having similar interests to the superpowers.

The rule of decision-making by consensus – paired with interests that aligned depending on the existence and length of each state's coastline – complicated the negotiation process. Since there were no clear camps, the effectiveness of the convention was very much dependent on good draft papers that were often prepared by loosely gathered interest groups. Never mind the fact that the whole enterprise took nine years to conclude, it is remarkable that the Law of the Sea Treaty was ever actually agreed upon at all.

The structure of the negotiations – Solving a giant jigsaw puzzle through consensus

It was not just the voting process at the convention that was problematic. The content, too, presented the participants with some obstacles to grapple with. The scope of the convention – which was originally intended only to deal with unresolved issues from UNCLOS I and II, like navigation and the area outside of national jurisdiction⁸⁸⁸ – had widened considerably. In November 1973, the General Assembly decided that the conference would deal with 'all matters relating to the Law of the Sea'.⁸⁸⁹ Which resulted in 'a package of such a size and complexity as almost to be beyond human control.'⁸⁹⁰

⁸⁸⁷ See Miles, 'Structure and Effects', 184: 'Ironically no one at that time foresaw that having produced a treaty primarily representing the interests of states with long coastlines, the conflict over acceptance [...] would be shaped by a burgeoning confrontation between coastal states on the one hand and the Landlocked and Geographically Disadvantaged States Group on the other.'

⁸⁸⁸ Cf. Miles, 'Structure and Effects', 168.

⁸⁸⁹ UN Doc. GA RES 3067 (XXVIII), 16 November 1973.

⁸⁹⁰ Miles, 'Structure and Effects', 173

The issues up for negotiation ranged from the territorial sea to the deep oceans. Some of the most important items included: the breadth of the territorial sea, transit passage, archipelagic baselines, the exclusive economic zone, the limits of the continental shelf, governance of the area outside national jurisdiction, the protection of the marine environment, and marine scientific research.⁸⁹¹ All these issues had not only to be defined and discussed, but also to be agreed upon, since voting was not an option.

Another quirk of the convention that complicated negotiations further was that the delegates had no drafted treaty text before the Caracas session in 1974.⁸⁹² This was unusual, and might have compounded the issues presented by the consensus system in drawing out the negotiations.⁸⁹³

Apart from the ‘Gentlemen’s Agreement’ on consensus-seeking, the general structure of the negotiation process still had to be decided on. For that reason, three Main Committees⁸⁹⁴ were set up to discuss content issues separately. Additionally, the participants agreed to set up a General Committee, a Drafting Committee and a Credentials Committee.⁸⁹⁵ All of which meant that the inherent structure of the negotiation process was already fragmented into different areas of competence even before the main discussions began. This might have contributed to what Elisabeth Mann Borgese later called a ‘fractured’⁸⁹⁶ approach towards the Law of the Sea, which complicated the efforts to deal with the issue in a holistic way.

The General Committee was set up to be the Conference Bureau, while the Drafting Committee had the important task of collecting the differing drafts for the treaty text that had been prepared by the various delegates. The Drafting Committee would then bring the drafts together into manageable texts that could be discussed. The committee was necessary

⁸⁹¹ For all terms and principles see Bernaerts, *Bernaerts’ Guide*, 26-99.

⁸⁹² Cf. Sanger, *Ordering the Oceans*, 43.

⁸⁹³ Cf. Mahmoudi, *The Law of*, 45.

⁸⁹⁴ See Bernaerts, *Bernaerts’ Guide*, 8. UN Doc. A/CONF.62/SR.2. The committee under second plenary meeting.

⁸⁹⁵ ‘Procedural History’, United Nations Audiovisual Library of International Law, accessed 20. June 2018, <http://legal.un.org/avl/ha/uncls/uncls.html>. See also: Bernaerts, *Bernaerts’ Guide*, 8-9.

⁸⁹⁶ MS-2-744, Box 139, Folder 16, Lecture on the Ocean Regime by EMB. States that the approach ‘cannot be partial or fractional.’

because of the fact that there was no single draft treaty to negotiate.⁸⁹⁷ The Drafting Committee was not supposed to re-open discussions, instead it was supposed to resolve drafting issues and be a kind of information-assembling and advice-giving body. Delegates could turn to it to get advice on how to formulate their own drafts.⁸⁹⁸

The Drafting Committee's job was to try and bring order to the chaotic process of drafting a treaty collaboratively and by consensus. In the beginning, to single out each applicable suggestion that might later form part of a draft treaty, the delegates at Caracas were faced with semi-organised mountains of paper that they were obliged to sift through and discuss. This meant that from the outset, drafting the treaty was like solving an enormous jigsaw puzzle – one with an indefinite number of pieces that could appear, disappear and reappear, depending on the outcome of discussions in the committees. Even if they could get hold of all the right pieces, there was still the task of putting them together into a single treaty.

Clearly, things were getting complicated before they had even started, despite all the preparation work that had been done in the Seabed Committee. Prior to the gatherings in New York and Caracas, the Seabed Committee had handed in six volumes of papers for the three Main Committees.⁸⁹⁹ The First Committee would deal with the seabed regime, the Second Committee would oversee negotiations around the traditional law of the sea, marine environment protection and technology and research, and the Third Committee would concern itself with dispute resolution and final clauses.⁹⁰⁰

Since the Seabed Committee had been set up in 1971 to discuss issues of how the seabed should be governed, most of their material had focused on the area outside national jurisdiction, also called 'the Area' for short.⁹⁰¹ Therefore, this material was mostly only useful for the First Committee, while the other committees had to draw from the outcomes

⁸⁹⁷ Cf. Sanger, *Ordering the Oceans*, 41.

⁸⁹⁸ Cf. Bernaerts, *Bernaerts' Guide*, 8.

⁸⁹⁹ Cf. Sanger, *Ordering the Oceans*, 43. See also 'Procedural History', United Nations Audiovisual Library of International Law, accessed 20. June 2018, <http://legal.un.org/avl/ha/uncls/uncls.html>. 'the Convention's main bodies (the three main committees, dealing respectively with the deep-seabed regime, the traditional law of the sea, the protection of the marine environment, marine scientific research and transfer of technology and the informal plenary dealing with the settlement of disputes and general and final clauses).'

⁹⁰⁰ Cf. Sanger, *Ordering the Oceans*, 43.

⁹⁰¹ See Miles, 'Structure and Effects', 178.

of UNCLOS I and II. In addition, there were some inherent problems with the Seabed Committee's work, since the committee had mainly focused on how the seabed should be governed from an organisational point of view.

The General Assembly had given the Seabed Committee a brief to work to in preparation for the conference, and it was now up to the First Committee to elaborate on this. The first direction from the General Assembly was that the concept of common heritage should be applied to the seabed outside national jurisdiction. Second, they desired that some sort of 'international machinery' should be established to govern this area.⁹⁰² What the Seabed Committee had done as they sought to achieve these aims was to look at '(1) the nature and scope of the Authority [sic: the international machinery]';⁹⁰³ '(2) the functions and powers of the Assembly';⁹⁰⁴ '(3) the compositions of the Council'; and '(4) the functions and powers of the Enterprises.'⁹⁰⁵

What was lacking in this bulk of paper from the Seabed Committee was the question of how to govern activity on the seabed, like mining, exploitation and exploration.⁹⁰⁶ This was a problematic issue, since international interest in the seabed derived largely from the possibilities that might exist to utilise it in the future.

That the First Committee – which was supposed to discuss the deep seabed regime and mining issues – had the most extensive collection of papers might not have played out in its favour either.⁹⁰⁷ According to Sanger, this fact could have been a disadvantage 'because there was a feeling in Committee I that it could afford to spend time in broad debate, while waiting for the others to catch up.'⁹⁰⁸ Sanger argued that this was why the committee working on the seabed regime was more divided than the other committees. Sanger was correct in his conclusion that the 'seabed mining issues [...] proved the most intractable in the conference',⁹⁰⁹ but more questionable is his suggestion that the seabed issue was the most

⁹⁰² Cf. UN Doc. GA RES 2750 (XXV). B.

⁹⁰³ Miles, 'Structure and Effects', 178.

⁹⁰⁴ Miles, 'Structure and Effects', 178.

⁹⁰⁵ Miles, 'Structure and Effects', 178.

⁹⁰⁶ Cf. Miles, 'Structure and Effects', 178.

⁹⁰⁷ Cf. Sanger, *Ordering the Oceans*, 43.

⁹⁰⁸ Sanger, *Ordering the Oceans*, 43.

⁹⁰⁹ Sanger, *Ordering the Oceans*, 43.

complicated one because the First Committee had too much time on its hands for discussion and disagreement.

Although the mining issue posed the biggest challenge, there were more complicated reasons behind this than a simple over-abundance of time for debate. Unlike other issues, no progress had been made on the question of the area outside national jurisdiction and its governance at UNCLOS I and II.⁹¹⁰ So while the First Committee grappled with fresh problems, many of the issues discussed in the other two committees already had a back-story, and the delegates could navigate them by drawing on discussions and decisions made in UNCLOS I and II. Many of the core decisions and definitions around what ocean space actually comprised of were already made.⁹¹¹ In contrast, the seabed issue still had to go through the whole process.

On top of that, the seabed outside national jurisdiction was the area that evoked most interest among participants at UNCLOS III. While many of the issues discussed – like the limits of the territorial or economic zones – were only of interest to states that actually had a coastline, the area outside national jurisdiction was potentially interesting for every last nation state on Earth. In fact, it was the area of the Law of the Sea that even landlocked states could hope to get something out of. If this area was to be governed under the ‘concept of common heritage of mankind’ – whatever that meant for those interested in it at the time – they had to make sure that they would get a say in attaching meaning to the concept. When the concept of common heritage was applied to the seafloor, it became interesting to just about everyone.

Navigating interests – groups as the unofficial structure of UNCLOS III

Despite the teething troubles of the first session in 1973, the rules of procedure were adopted on 27 June 1974 in Caracas.⁹¹² Finally, the participants could dive into discussing what a treaty for the oceans should actually contain. Since there were so many interest groups, drafts

⁹¹⁰ Apart from what the 1958 Convention on the High Seas says about the freedom of the seas.

⁹¹¹ 1958 Conventions on Fishing and Conservation of the Living Resources of the High Seas; 1958 Convention on the Territorial Sea; 1958 Convention on the Continental Shelf.

⁹¹² Miles, ‘Structure and Effects’, 183. The rules were adopted in 27 June 1974 (UN Doc. A/Conf. 62/SR.16, 27 June 1974).

to draw up and groundwork to lay, the negotiation process was carried out in an unusual way by forming informal working groups. Said Mahmoudi called these groups the ‘inofficial structure’⁹¹³ of the conference. Mahmoudi further explained that ‘A major part of the work of the Main Committees was carried out by these working groups which generally held informal meetings without records.’⁹¹⁴

The lack of even a draft treaty, coupled with differing interests that were usually dictated by geographical circumstances, led to a string of more or less tightly knit negotiation groups and alliances that were forged and broken during UNCLOS III. Some had quite creative names like the ‘Leopard Group’⁹¹⁵ (US delegates and Yankov from Bulgaria, named after a restaurant they met in), ‘Deep Throat’⁹¹⁶ and the ‘Gang of Five’⁹¹⁷ (US, USSR, Britain, France, Japan).

These groups discussed matters in smaller circles, then brought their thoughts to the table when the timing was right.⁹¹⁸ Mahmoudi argued that: ‘The emergence of special interest groups was a spontaneous response to the demand which could not be fulfilled by the traditional groupings inside the United Nations system such as the regional groups.’⁹¹⁹

Regional grouping was not a viable solution, because the issues at the convention affected states in ways that transcended the general North-South or East-West axes. Therefore, new alliances were brokered in place of the regional system. The states in these

⁹¹³ Mahmoudi, *The Law of*, 40.

⁹¹⁴ Mahmoudi, *The Law of*, 41. Mahmoudi explained further ‘The informal for a were established to assist the First Committee included: A working group of 50 States in 1974 under the chairmanship of C. W. Pinto (Sri Lanka); a workshop which was an open-ended working group in 1976; an informal working group of the whole on the system of exploitation under Jens Evensen (Norway) in 1977; three negotiating groups were established by the Conference in 1978 as a part of an effort to tackle hard-core issues before the Conference [...].’

⁹¹⁵ Sanger, *Ordering the Oceans*, 32.

⁹¹⁶ Sanger, *Ordering the Oceans*, 32.

⁹¹⁷ Sanger, *Ordering the Oceans*, 32. See also Beesley, ‘Negotiating Strategy’, 187-188: ‘There were still other important East/West groups. The most interesting, I always thought, was the Group of Five, which I once mistakenly called the Gang of Five in a slip of the tongue, and of course the name stuck [...].’

⁹¹⁸ It would be interesting to look into back-room discussions and alliances together with the official UNCLOS proceedings and discussions at sessions. Alan Beesley (Ambassador of Canada to UNCLOS III) has examined the negotiation structure of UNCLOS in: Alan Beesley, ‘The Negotiating Strategy of UNCLOS III: Developing and Developed Countries as Partners – A Pattern for Future Multilateral International Conferences?’, *Law and Contemporary Problems* 46, no. 2 (1983): 132-194.

⁹¹⁹ Mahmoudi, *The Law of*, 41.

groups generally shared interests that were often connected to their respective proximity to the oceans.⁹²⁰ One of the first groups to form along geographical lines was the ‘Coastal States’,⁹²¹ which was founded as early as 1973.⁹²² It grew over the years and eventually consisted of 75 delegations, which was almost half of all conference participants. Its aim was to ‘outmatch the increasing numbers of the Land Locked group.’⁹²³

The Group of ‘Land Locked States and Geographically Disadvantaged States’ (LL/GDS)⁹²⁴ was the antagonist of the ‘Coastals’.⁹²⁵ ‘The LL/GDS group was chaired by Austria and Singapore, and was led by Karl Wolf and Tommy Koh during its most active period.’⁹²⁶ This group was mostly interested in the seafloor outside national jurisdiction, and among its members it boasted some powerful countries with keen strategic instincts. Among these countries was Austria, which would become an important ally for Mann Borgese.

Another group – which was small but greedy – was that of the ‘broad-margin states or Margineers’.⁹²⁷ Members of this group were known to be secretive, and some of them kept their affiliation with the group quiet for a long time. The reason was that these delegations were working towards setting the limits of national jurisdiction beyond 200 nautical miles. According to Sanger, ‘Early members included Australia, New Zealand, Norway, Brazil, Argentina and Ireland, which took over the leadership from Canada. India, Sri Lanka, Uruguay and Britain joined later.’⁹²⁸

⁹²⁰ Some were political too. Not everything was just decided based on geographical location. Malta, for instance, had been in limbo for a long time and could not decide whether to join the developing nations or the non-aligned group.

⁹²¹ Sanger, *Ordering the Oceans*, 31. More about the coastal group, see Beesley, ‘Negotiating Strategy’, 186-187.

⁹²² Cf. Sanger, *Ordering the Oceans*, 31.

⁹²³ Sanger, *Ordering the Oceans*, 31. For groups and alliances, see also Mahmoudi, *The Law of*, 40-42)

⁹²⁴ Sanger, *Ordering the Oceans*, 32: ‘29 of them took part in UNCLOS-3, of whom 14 were from Africa, five from Asia, two from Latin America and the rest from Europe.’

⁹²⁵ Cf. Beesley, ‘Negotiating Strategy’, 187: ‘[...] it is fair to say that creation of the coastal group led directly to the creation of another very important interest group called the “landlocked and geographically disadvantaged group.”’

⁹²⁶ Sanger, *Ordering the Oceans*, 32.

⁹²⁷ Sanger, *Ordering the Oceans*, 31.

⁹²⁸ Sanger, *Ordering the Oceans*, 31.

The 'Land Based Producers',⁹²⁹ meaning delegations from countries with land-based mineral production, also gathered together, most likely to keep an eye on the possibility of having to put up with competition from future seabed mining by coastal states.

The purpose of all these groups was to draft paragraphs that could be brought to the respective committees for discussion. The groups were loosely knit in order to be able to rearrange themselves depending on different topics. Since a vast variety of issues were covered, not all states in the same group always agreed with one another. Therefore, membership was sometimes interchangeable.⁹³⁰

One example of a fairly influential group that was central in drafting a single negotiating text was the so-called 'Evensen Group'.⁹³¹ It was named after the Norwegian delegate, Jens Evensen – another delegate who had participated in the *Pacem in Maribus* gatherings prior to UNCLOS III.⁹³² The group started forming as early as 1973, and Sanger called the Evensen Group 'semi-official'.⁹³³ Sanger reported an interview in which Evensen told him how the group had first been established back in Geneva in 1973.

I was approached, strangely enough, by the representatives of the two superpowers – Jack Stevenson of the United States, Alex Yankov from Bulgaria and others - who said we will never be able to succeed without a drafting group; would you be willing to form a very informal drafting group consisting of heads of delegations and experienced international lawyers, and we could work as private persons in order to prepare a legal, political document?⁹³⁴

Evensen took on the challenge, and according to Sanger, the group rose to play an important role in the convention. As with several other groups, membership in the Evensen Group was not static. Instead, Evensen invited different delegates to the meetings depending on the topic. Then various drafts were discussed, and Evensen assembled the findings in informal reports

⁹²⁹ Sanger, *Ordering the Oceans*, 32.

⁹³⁰ See Mahmoudi, *The Law of*, 40.

⁹³¹ Ingolf Vislie about Evensen Group in Vislie, *Jens Evensen*, 467-468.

⁹³² Evensen partook in PIM. See MS MS-2-744, Box 125, Folder 2, Participants in the *Pacem in Maribus* Convocation.

⁹³³ Sanger, *Ordering the Oceans*, 29.

⁹³⁴ Sanger, *Ordering the Oceans*, 29-30.

and papers. These papers he finally handed to the president, signed as ‘anonymous documents from “Friends of the President”’.⁹³⁵

Evensen told Sanger that he always invited the delegates in a personal capacity, not as representatives or delegates for their country. Over time, Evensen reported that ‘It [sic.: the group] became so influential that we had some difficulties because people felt insulted if they were not invited. But that would defeat its purpose.’⁹³⁶

Sanger wrote that the Evensen Group was also used as ‘cover group’⁹³⁷ by other delegations. Which meant that Evensen put his group’s signature – ‘Friends of the President’ – under documents that had in fact been prepared by state delegations or groups of delegations.⁹³⁸ Perhaps his intention in doing this was to de-politicise the documents and to remove national conflicts from the equation.

It would be interesting to speculate why the Norwegian delegate, Jens Evensen, was singled out by the United States and Bulgaria to develop draft proposals. Was it because Norway was a ‘Margineer’? Or because Norway was a small but significant coastal state? Maybe it was easier and less obvious for the United States to give this task to a seemingly ‘harmless’ small state with an extensive coastline than to play the role of the drafter themselves? Did they perhaps hope Norway would have the same interests as them, but would be easier to influence than other states?⁹³⁹

The system of using groups made the complex negotiations of the Law of the Sea Treaty just about manageable, but it might have contributed to how fragmented the different topics for agreement became. This was partly since a lot of the discussion was not retractable due to missing records in the unofficial groups, but also because ideas occurred over and over again in different settings without being discussed in a bigger arena. How would the

⁹³⁵ Sanger, *Ordering the Oceans*, 30. The groups importance has been underlined by Beesley, see Beesley, ‘Negotiating Strategy’, 191: ‘Several of the major Conference concepts were developed into agreed treaty language in the Evenson [sic: Evensen] group and Castenada group. This might not have happened but for the existence of these informal groups.’ See also Buzan, ‘Negotiating by Consensus’, 336.

⁹³⁶ Sanger, *Ordering the Oceans*, 30.

⁹³⁷ Sanger, *Ordering the Oceans*, 30.

⁹³⁸ Sanger, *Ordering the Oceans*, 30.

⁹³⁹ How long was the Evensen Group needed? Until a single negotiation text was agreed on? According to Vislie that would have been in 1976. Cf. Vislie, *Jens Evensen*, 468.

international community navigate these issues? And would Elisabeth Mann Borgese be able to find a place for herself and her ideas in this complicated structure of official and unofficial meetings, drafts and proposals?

Entering the conferences – The International Ocean Institute gains non-governmental organisation status

Now that the Law of the Sea Treaty negotiations were getting started, Elisabeth Mann Borgese had to find a way in. By 1973, she was not affiliated with any national delegation, and the Seabed Committee, with which she had enjoyed close ties through Arvid Pardo, had completed its mission and was dissolving.

This was going to be a challenge. Puzzling out a Law of the Sea Treaty – with the endless process of viewing, revising and formulating drafts – was hard enough without having to navigate the complicated unofficial group structure. After all, there was a good possibility that sitting with ‘Deep Throat’ or the ‘Leopard Group’ on a Friday afternoon could change the course of the convention. Which groups to participate in had to be chosen wisely, and Elisabeth Mann Borgese was eager to jump into the fray and make her own contribution to solving the puzzle.

Her big problem was that she still had no affiliation with any nation state delegation, despite her history of close relations with the Maltese government. Arvid Pardo was no longer attending as part of the Maltese delegation, so neither of them could expect to have automatic direct access to the delegates and their policy-making at the conference.

Luckily, the fact that Mann Borgese had established the International Ocean Institute on Malta opened up another possibility, when the IOI obtained the status of a non-governmental organisation (NGO)⁹⁴⁰ and thereby gained the right to participate in UNCLOS III.⁹⁴¹ With the International Ocean Institute in place, Elisabeth Mann Borgese and Arvid Pardo no longer needed to court the goodwill of mercurial governments. As for Arvid Pardo,

⁹⁴⁰ See MS-2-744, Box 398, Folder 15, International Ocean Institute – Past, Present and Future.

⁹⁴¹ NGO's at UNCLOS are discussed in Schmidt, *Common Heritage*, 63-66. See also Levering and Levering, *Citizen Action*. Hannigan, *Geopolitics of Deep*, 65-68.

having been dropped from the Maltese delegation, he was appointed ‘special consultant’⁹⁴² to the president Shirley Hamilton Amerasinghe.⁹⁴³

Obviously, the networks Arvid Pardo and Elisabeth Mann Borgese had built up during the preparation period with the Seabed Committee had paid off. That Pardo was appointed as ‘special consultant’ was proof that Amerasinghe – and most likely other former members of the Seabed Committee – valued Pardo’s insights and his contribution to the discussions, regardless of whether or not he was affiliated with a delegation. This appreciation of Arvid Pardo’s merits was quite at odds with the manner in which Malta had dismissed its former ambassador.

In the aftermath of Caracas in 1974, it was reported that the Amerasinghe spoke highly of Arvid Pardo. In an undated draft written by Mann Borgese about how the Maltese government had fallen out with its former key man, she pointed out ‘that Ambassador Amerasinghe, President of the Conference on the Law of the Sea, in his closing address in Caracas, had hailed Dr. Pardo as “the father and founder of the whole enterprise”’.⁹⁴⁴

For Elisabeth Mann Borgese – who did not have the status of a former ambassador coupled with Pardo’s symbolic role as father of the enterprise – it must have been rather more difficult to keep herself close to the negotiation processes. Therefore, from 1974 until 1976, Elisabeth Mann Borgese used the International Ocean Institute’s status to coordinate NGO activity at UNCLOS III. In a December 1974 exchange with M René Wadlow from ‘The World Association of World Federalists’,⁹⁴⁵ she discussed the possible directions and alliances the NGOs could form together.⁹⁴⁶ In his own letter, Wadlow asked Mann Borgese what the ‘permanently based NGO lobby’⁹⁴⁷ should concentrate on, adding that ‘I would appreciate your views on what topics will be worth stressing.’⁹⁴⁸

⁹⁴² UN Doc. A/CONF.62/INF.3/Rev.1

⁹⁴³ See UN Doc. A/CONF.62/INF.3/Rev.1

⁹⁴⁴ MS-2-744, Box 62, Folder 8, EMB undated draft. Most likely written shortly after 22. April 1975.

⁹⁴⁵ See MS-2-744, Box 101, Folder 1, Wadlow to EMB, 13 December 1974.

⁹⁴⁶ Cf. MS-2-744, Box 101, Folder 1, Wadlow to EMB, 13 December 1974.

⁹⁴⁷ MS-2-744, Box 101, Folder 1, Wadlow to EMB, 13 December 1974.

⁹⁴⁸ MS-2-744, Box 101, Folder 1, Wadlow to EMB, 13 December 1974.

Elisabeth Mann Borgese's reply came in January 1975, in which she explained how she thought the NGOs present at UNCLOS III could influence the convention. She had some suggestions about the issue that interested her most: the common heritage principle. She advised Wadlow that

[...] the NGOs ought to concentrate on getting the real issue, that is, the common heritage of mankind and the establishment of a new type of international organization, to manage it, back into focus at the Conference.⁹⁴⁹

Without a doubt, Mann Borgese was still pursuing her initial idea of working the common heritage principle into the treaty, and she made steady efforts to get other NGOs on board. The world federalists were clearly a suitable target. Her past affiliation with the Committee to Frame a World Constitution in Chicago meant she might have had contacts – even some degree of recognition – in such circles, not just because they shared the same interest in the common heritage principle, but also because they came from the same background as Mann Borgese in drafting a world constitution.⁹⁵⁰

The correspondence with Wadlow demonstrates that Elisabeth Mann Borgese would take any chance to further her idea of common heritage and a new ocean regime. With the International Ocean Institute, she not only established a vehicle that would gain her independent entry into political discussions and forums, but also a place from which she could organise and gather her ideas before they were presented to the world.

Despite the fact that organisations like the International Ocean Institute seemed perfectly suited to her needs, up until 1975 Mann Borgese was still working doggedly towards becoming a member of the Maltese delegation. Apparently, as a member of a delegation she could take part in the discussions in one of the three Main Committees and several of the groups. Her natural place, considering her interest in the common heritage principle and the deep seabed, was the First Committee.

⁹⁴⁹ MS-2-744, Box 101, Folder 1, EMB to Wadlow, 29 January 1975.

⁹⁵⁰ According to Miriam Levering, EMB also contacted the Neptune Group, but did not find the will to cooperate there. See Levering and Levering, *Citizen Action*, 33: 'She [sic: EMB] also amused and spurred on members of the Neptune Group at early conference sessions by telling us that, compared with her, we were amateurs. Although partly true at the time, such comments – as well as her long, prescriptive speech at a plenary meeting in Caracas – were tactless. Having lost much of her effectiveness as an NGO representative by 1975, she sought to influence the negotiation by becoming a delegate from Austria and by asking to publish articles in our publication, *Neptune*.'

A piece for the ocean puzzle – How to design an international machinery to govern the ocean floor?

The First Committee's task was to discuss the governance of the seafloor outside national jurisdiction, and in this, it continued the work of the Seabed Committee. Many states that had delegates on the Seabed Committee moved over to the First Committee at the start of UNCLOS III.⁹⁵¹ The aim of the committee was to define the function of the 'international machinery' responsible for the governance of the Area. Henceforth, this would be called the International Seabed Authority.

AO Adede, a former delegate for Kenya, has examined the early years of the First Committee's work from 1973 until 1975.⁹⁵² According to Adede, the first question the delegates had to tackle was: 'Who may exploit the area',⁹⁵³ and to do this, they used the so-called draft Article 9 as a basis of discussion.⁹⁵⁴

The committee started out with four different alternatives for how to shape the International Seabed Authority (A, B, C and D).⁹⁵⁵ Their first goal was to reduce the four alternatives to a single solution that everyone could agree on.⁹⁵⁶ No one knew at the time, but agreement was a very long way off. There was a good reason for this, and before we examine the four proposals more closely, we need to understand where the delegates were coming from when they sat down at the discussion table.

Adede paints an interesting picture when he describes the two distinct standpoints of the different delegation members. He argues that the four alternatives for how the International Seabed Authority should operate – specifically in respect to the rules and regulations regarding exploration or exploitation of the seafloor – can be broken down into

⁹⁵¹ Cf. Beesley, 'Negotiating Strategy', 189: 'By this time we had not only set up the three separate committees, as in the Seabed Committee, but also we had carried them forward into the Conference – from the time it began.' See also UN Doc. A/CONF.62/C.1/SR.1.

⁹⁵² For the work and tasks of the First Committee, see Andronico O. Adede, 'The System of Exploitation of the "Common Heritage of Mankind" at the Caracas Conference', *The American Journal of International Law* 69, no. 1 (January 1975): 31-49, <http://www.jstor.org/stable/2200190>.

⁹⁵³ Cf. Adede, 'System of Exploitation', 32.

⁹⁵⁴ Cf. Adede, 'System of Exploitation', 32.

⁹⁵⁵ See Adede, 'System of Exploitation', 32-33.

⁹⁵⁶ Cf. Adede, 'System of Exploitation', 33.

two conflicting categories. In general, the developed states wanted to put the International Seabed Authority in a ‘straight jacket [sic: straitjacket]’,⁹⁵⁷ while the developing states hoped it could become a ‘respectable business partner’.⁹⁵⁸ Which meant that the mandate of the International Seabed Authority was either to be ‘weak’ or ‘strong’.

In this example, Adede personifies the international machinery that was supposed to overlook activity in the Area. The International Seabed Authority as a person was either to be restricted and put into a ‘straitjacket’ – as if it was a force that had to be controlled in order not to create chaos the moment it was set free – or it was to be treated as a ‘respectable business partner’ with economic interests and the freedom to play with the rules of the free market economy.

The developed states, among them many of the coastal states, wanted the International Seabed Authority to be put into a ‘straitjacket’ – meaning that they argued for inscribing very detailed rules and regulations into the Law of the Sea Treaty, so that the future International Seabed Authority would have limited capacity to take action by the time it was established.

The reason for this was simple. Since their technological knowledge and experience was already highly advanced, developed states were the most likely to conduct exploration and exploitation ventures. For them, leaving the seafloor outside national jurisdiction as open as possible for exploration and exploitation was favourable. Although all ‘mankind’ was theoretically supposed to be able to conduct activity in the area, it was the industrialised states who could hope for the biggest slice of the cake – so long as the treaty allowed all state parties to just get on with their own business within the limits of the treaty. In their ideal scenario, the International Seabed Authority would just dole out contracts or licence agreements, and would thereafter work with a so-called ‘single system’⁹⁵⁹ of exploration. Apart from that, the authority would not meddle with exploration and exploitation or make any further rules.

⁹⁵⁷ Adede, ‘System of Exploitation’, 47. For the US view on the ‘straitjacket’, see Leigh S. Ratiner, ‘The Cost of American Rigidity’, in in Bernhard H. Oxman, David D. Caron and Charles L.O. Buder, eds., *Law of the Sea U.S. Policy Dilemma* (San Francisco: ICS Press, 1983), 33-38.

⁹⁵⁸ Adede, ‘System of Exploitation’, 47.

⁹⁵⁹ Adede, ‘System of Exploitation’, 34

Those who envisioned the authority as a ‘business partner’ were states that did not have the capacity to conduct any activity on the seafloor outside national jurisdiction by themselves. Many of the states belonging to the Group of 77 fell into this category. For them, it was essential to give the International Seabed Authority a flexible mandate to make rules and regulations according to the needs that might arise over time. Since the developing states possessed neither sufficient technological expertise nor the financial capacity to gain it on their own, they wanted the International Seabed Authority to become a business partner with which they could form coalitions in order to compete with the industrialised states.

The developing states argued for the so called ‘multiple system’⁹⁶⁰ that would open up ‘joint-venture’⁹⁶¹ exploration. Meaning that developed states could club together with the authority to conduct activity in areas specifically designated for that purpose. In this scenario, the International Seabed Authority was equipped with the expertise of the developed states that were applying for exploration or exploitation rights. The developing states argued that only in this way could ‘technology transfer’⁹⁶² be secured and the common heritage principle put into action. If the authority ended up being a restricted administrative organ, the whole purpose of the reservation of the seafloor would be undermined.

According to Adede, the first step the committee took towards solving these issues was to agree on changing the name of draft Article 9 from ‘Who may exploit the Area?’⁹⁶³ to ‘How is the Area to be exploited’.⁹⁶⁴ Then this overarching question was broken into several sub-questions that included the following issues:

The system of Exploration and Exploitation of the Sea-bed Area. Under this fundamental issue came three other sub issues: (1) Who may explore and exploit the area; (2) conditions of exploration and exploitation of the area; and (3) economic aspects of exploration and exploitation in the area.⁹⁶⁵

⁹⁶⁰ Adede, ‘System of Exploitation’, 34

⁹⁶¹ Alan G. Kirton and Stephen C. Vasciannie, ‘Deep Seabed Mining under the Law of the Sea Convention and the Implementation Agreement: Developing Country Perspectives’, *Social and Economic Studies* 51, no. 2 (June 2002): 92, <http://www.jstor.org/stable/27865277>.

⁹⁶² Beesley, ‘Negotiating Strategy’, 198. More about the idea of technology transfer in connection to EMB’s initiatives, see Chircop, ‘Elisabeth Mann Borgese’s humanist conception’, 116.

⁹⁶³ Adede, ‘System of Exploitation’, 35.

⁹⁶⁴ Cf. Adede, ‘System of Exploitation’, 35.

⁹⁶⁵ Adede, ‘System of Exploitation’, 37.

To manage the three sub-issues, a compromise was reached to take up each issue separately, while allowing discussions to draw upon the other issues in cases where there was a close relationship between them.⁹⁶⁶ By 1974, the main disagreements in the First Committee revolved around how to design the power of the International Seabed Authority. The different camps were divided between a 'Single system' (developed countries) and a 'Multiple system' (Group of 77) and the question of rules and regulations written in convention (developed countries) as compared to rules and regulations developed by the ISA itself (Group of 77).⁹⁶⁷

This was the First Committee's contribution to the first two sessions at the end of 1974. The results were incorporated into the 'major trends' paper that was finished by August 1974. The paper was 'both a reference text to the work done at Caracas and a point of departure for future work'.⁹⁶⁸ This paper would provide the groundwork for further discussions on the Law of the Sea.

Together with the uncertainty of the functions, form and rights of the International Seabed Authority, there was also the question of which state should host it. As Elisabeth Mann Borgese had predicted in her various letters to the Maltese prime minister, Dom Mintoff, it would not be long until other states apart from Malta announced their interest.

Malta's failed attempt to regain importance

Elisabeth Mann Borgese pursued her mission to mobilise Malta throughout 1974. In a letter to the prime minister, Dom Mintoff, she reported directly from the second session in Caracas:

Jamaica has put forward its candidacy as host to the headquarters for the ocean authority that should be established by this Conference. Jamaica has already designated land for this purpose, and prepared plans for the buildings. It has already secured the support of the Latin American countries for its candidacy, and is now trying to gain that of the Africans.⁹⁶⁹

The fact that Jamaica was putting itself forward even in 1974 may have alerted the prime minister that time was more limited than he had thought – especially after the impression he had given in the newspaper article of summer 1973, when he had said that 'the Maltese

⁹⁶⁶ Cf. Adede, 'System of Exploitation', 37

⁹⁶⁷ Cf. Adede, 'System of Exploitation', 38, 45.

⁹⁶⁸ Sanger, *Ordering the Oceans*, 43.

⁹⁶⁹ MS-2-744, Box 84, Folder 12, EMB to Mintoff, 8 July 1974.

Government has long ago noted that these developments [sic: about the setting up of a Seabed Authority] are a long way away'.⁹⁷⁰ Mann Borgese's report underlined the urgency of taking a stance. She also used the episode to point out, once again, the importance of obtaining such headquarters for Malta.⁹⁷¹ She was very determined about which country deserved the seat: 'There is only one country that is predestined to play this historical role, and that is Malta.'⁹⁷²

She pleaded that 'If you put forward your candidacy now, the situation can still be saved.'⁹⁷³ Again, Mann Borgese offered her help and a fully formulated plan of action when she wrote: 'What we can do here is to try to postpone a decision—it might be taken next year—and to mobilize the support of the Non-Aligned Nations of which Malta is now one.'⁹⁷⁴

Before the Maltese government could react, Elisabeth Mann Borgese was on the case, and in fact she had already started mobilising support for the Maltese application. She mentioned her first lobbying effort in the same letter, where she reported on a talk she had had with the vice prime minister Vratuša of the Yugoslav delegation. Seemingly concerned about relations between the two countries, she wrote that, 'I understand that he is not at all satisfied with the state in which Yugoslav-Maltese relations were left after your visit to Yugoslavia.'⁹⁷⁵ Apparently, this was an attempt to reconcile Yugoslavian-Maltese relations, and Mann Borgese tried to make sure that this piece of information would stay between her and Mintoff, pointing out '[...] what I am writing is strictly confidential. I know, however, that if you extended an invitation to Dr. Vratuša for a return visit to Malta, he would gladly accept.'⁹⁷⁶ This deft piece of confidential diplomacy was likely an attempt to secure Yugoslavian support for the Maltese application to host the International Seabed Authority.

⁹⁷⁰ MS-2-744, Box 94, Folder 1, Borg Olivier, Malta's interest in Caracas conference on Law of the Sea, *Times of Malta*, 23 July 1973.

⁹⁷¹ See: MS-2-744, Box 84, Folder 12, EMB to Mintoff, 8 July 1974.

⁹⁷² MS-2-744, Box 84, Folder 12, EMB to Mintoff, 8 July 1974.

⁹⁷³ MS-2-744, Box 84, Folder 12, EMB to Mintoff, 8 July 1974.

⁹⁷⁴ MS-2-744, Box 84, Folder 12, EMB to Mintoff, 8 July 1974. The decision of where to place the ISA postponed until 1981. See MS-2-744, Box 210, Folder 14, Malta and the International Seabed Authority, *The Sunday Times*, 31. May 1981. See also MS-2-744, Box 210, Folder 14, Local reaction to Malta's defeat in vote for I.S.A. site, *Sunday Times*, 23 August 81.

⁹⁷⁵ MS-2-744, Box 84, Folder 12, EMB to Mintoff, 8 July 1974.

⁹⁷⁶ MS-2-744, Box 84, Folder 12, EMB to Mintoff, 8 July 1974.

It seems that Elisabeth Mann Borgese's appeal to action, paired with the realisation that Jamaica was already ahead in the race, finally prompted the Maltese to reconsider their hesitant stance. In September 1974,⁹⁷⁷ we find a telegram from Elisabeth Mann Borgese to the deputy prime minister of Malta, Jean Buttigieg, in which she was already discussing the speaking slot in the General Assembly in October where Malta was supposed to announce its application for the International Seabed Authority.⁹⁷⁸ Once again, Elisabeth Mann Borgese had managed to insert herself into the decision-making process. Apart from having reserved the slot, she also wanted to have a say in who would make the announcement, since, 'Malta's cause would be much strengthened by presentation by deputy prime minister. If your decision were positive, consultation with Pardo as indicated in my last cable would be essential'.⁹⁷⁹

In the end, it was another representative who made the announcement in the General Assembly in October 1974 that the Maltese were interested in hosting the International Seabed Authority.⁹⁸⁰ Shortly after Malta had announced this interest, Elisabeth Mann Borgese criticised stridently the manner in which the application had been put forward. She wrote: 'In all frankness, the race got off to a late and bad start. Had the presentation at the U.N. on October 10 been made by a Minister, perhaps it would have gotten more attention. So far, international reactions are very uncertain.'⁹⁸¹

The criticism was followed by a list of strategies and initiatives that Mann Borgese had drafted, starting with the recommendation that the 'Government should stand more visibly behind the efforts of the International Ocean Institute.'⁹⁸² This note was perhaps not entirely free of personal interest. Since the International Ocean Institute was the only channel through which Mann Borgese could participate in the UNCLOS negotiations, some backing from the Maltese government would be most welcome, and not just with regard to hosting the International Seabed Authority. Mann Borgese reported that a representative at UNCLOS

⁹⁷⁷ The year 1974 is likely because this was the year when Malta spoke at the UN in October.

⁹⁷⁸ Cf. MS-2-744, Box 94, Folder 1, Telegram EMB to Jean Buttigieg, 25 September.

⁹⁷⁹ MS-2-744, Box 94, Folder 1, Telegram EMB to Jean Buttigieg, 25 September.

⁹⁸⁰ See UN Doc. A/PV.2263. Speech by Mr. Bellizzi, 9 October 1974.

⁹⁸¹ MS-2-744, Box 84, Folder 12, Memo EMB to Mintoff, 3 October 1974.

⁹⁸² MS-2-744, Box 84, Folder 12, Memo EMB to Mintoff, 3 October 1974.

had said of the Maltese initiative: ‘Why, they don’t even stand behind the IOI. What do they want the headquarters of the Seabed Authority for?’⁹⁸³

To change this perception, Mann Borgese urged that ‘The Maltese Missions in New York and elsewhere must engage in an intensive lobbying campaign.’⁹⁸⁴ She was clear that ‘High-level political activity is needed between now and March [...]’⁹⁸⁵ and that the Maltese government needed to engage in this directly, rather than relying on missions. She finished with the important point that ‘Malta has got to offer something Jamaica has not got.’⁹⁸⁶

In Mann Borgese’s opinion, the one advantage that made Malta stand out from the other applicants was the symbolic key figure from the Maltese initiative of 1967: Arvid Pardo. Once again, Mann Borgese tried to get Pardo back in the picture. She argued:

You have one great expert, who happens to be recognized universally as the greatest expert in the world on ocean affairs. It seems to be awfully wasteful not to use him, at a moment when we have to use everything we have got. Make him the Head of your Delegation to the Conference next March in Geneva.⁹⁸⁷

She also pointed out that it ‘would cost the government very little’⁹⁸⁸ to reinstall Arvid Pardo. However, her initiative was in vain. It is hard to pinpoint exactly why, partly because we have no record of Pardo’s side of the story beyond the fact that he was not given the job. Either he was not interested and declined the role, or the government did not want to call him back. It could have been that they failed to grasp his symbolic importance, or perhaps their political differences with him made it impossible for Pardo to be invited back into the Maltese delegation.

In the course of the years between 1971 and 1974, Malta’s reticence had sown the seeds of doubt about its government’s motives, and done irreparable damage to its image as an initiator in the international community.⁹⁸⁹ Perhaps the last concerted attempt to re-

⁹⁸³ MS-2-744, Box 84, Folder 12, Memo EMB to Mintoff, 3 October 1974. The representative was Maurice Strong, who pointed out how strange it was that Malta was so keen on the Authority but at the same time not too interested in the IOI.

⁹⁸⁴ MS-2-744, Box 84, Folder 12, Memo EMB to Mintoff, 3 October 1974.

⁹⁸⁵ MS-2-744, Box 84, Folder 12, Memo EMB to Mintoff, 3 October 1974.

⁹⁸⁶ MS-2-744, Box 84, Folder 12, Memo EMB to Mintoff, 3 October 1974.

⁹⁸⁷ MS-2-744, Box 84, Folder 12, Memo EMB to Mintoff, 3 October 1974.

⁹⁸⁸ MS-2-744, Box 84, Folder 12, Memo EMB to Mintoff, 3 October 1974.

⁹⁸⁹ See Saviour Borg, ‘30 Years of UNCLOS. Malta’s Contribution to the Process: Past and Present’, speech at *UNCLOS at 30 Seminar* organised by International Ocean Institute and the University of Malta, 23

establish Malta's importance was made by Mann Borgese in January 1975, and she reported this effort to Dom Mintoff. Apparently, the International Ocean Institute had launched a 'Planning Council Seminar' in Oaxtepec – a small town in Mexico⁹⁹⁰ – with the aim of developing a 'new strategy'⁹⁹¹ to put Malta back on the map.⁹⁹²

The outcome of the meeting had been 'The Declaration of Oaxtepec'.⁹⁹³ The group that worked on it had attempted to refine the concept of the seabed authority further, and the three-page document summarised the differing positions at UNCLOS. The participants of the strategy meeting added a 'Diagram of Boundaries' to illustrate the status quo at the conference. The declaration stated that: 'The new strategy would be based upon the assumption that international management of ocean space beyond national jurisdiction is a necessary complement to the exercise of comprehensive powers by coastal states in wide areas.'⁹⁹⁴ At the same time, the declaration stated that the International Seabed Authority should be 'supplemented by other organizational mechanisms dealing with the management and regulation of other uses of international space'.⁹⁹⁵

The participants at Oaxtepec attempted to combine the extensive claims of developing states for a large area of national jurisdiction, while at the same time maintaining calls for an international collaborative administration. Clearly, this was an attempt to reconcile Malta's – or rather, Pardo's – early claims of a holistic ocean space administration with the political realities of developing nations. These were the states upon which Malta had to pin its hopes if it wanted to host the International Seabed Authority, and Elisabeth Mann Borgese must thus have seen it as a necessity to rephrase the Maltese 'vision' in order to gain supporters among the ranks of the developing nations. In this regard, in fact, Dom Mintoff

November 2012. (copy: courtesy of Saviour Borg): 'Yet, perhaps, one of the major issues which Malta also gave the highest priorities during UNCLOS III was the choice of the seat of the International Seabed Authority. The great efforts made by the Delegation of Malta during UNCLOS III to obtain support of the participants for Malta to host the seat of the Authority cannot be underestimated even though at a certain point of time, especially the first years of the Conference, it relinquished its leadership in this regard.'

⁹⁹⁰ EMB could be referring to gathering at Oaxtepec. See *The Law of the Sea, The Declaration of Oaxtepec*, *Water International* 1, no.2. (1976): 4-6, 10.1080/02508067608685704.

⁹⁹¹ See MS-2-744, Box 84, Folder 12, EMB to Mintoff, 16 January 1975.

⁹⁹² See MS-2-744, Box 84, Folder 12, EMB to Mintoff, 16 January 1975.

⁹⁹³ See 1976 Declaration of Oaxtepec.

⁹⁹⁴ 1976 Declaration of Oaxtepec, 5.

⁹⁹⁵ 1976 Declaration of Oaxtepec, 5

might have been more clear-sighted than Mann Borgese in his previous approach. He had understood that there was no support for a holistic approach, and had tried to lay low. It took Mann Borgese until 1975 before she first understood that not all Group of 77 states were eager for a holistic approach to ocean governance. In the aegis of the International Ocean Institute, she took action to redefine Malta's claims. Mann Borgese wrote to Dom Mintoff:

Before coming to Mexico, I discussed the Draft of the declaration with Ambassador Attard Kingswell, Mr. Bellizzi, and Mr. Vella. I explained to them that the 'new strategy' was conceived as part of the strategy to restore to Malta its place of leadership at the Conference on the Law of the Sea, to introduce the element of novelty that is needed to change the position of a number of nations on the question of the headquarters, and to underline the advantage Malta has over Jamaica through the vicinity of the FAO, IOC, and IMCO headquarters, since all of these organizations are going to play an important role in the 'new strategy'.⁹⁹⁶

She also explained that the group intended to distribute the Oaxtepec declaration to gain support from the Group of 77, The Afro-Asian Foreign Minister Meeting and the Evensen Group.⁹⁹⁷ She could not help herself from pointing out the origins and intellectual ownership of the 'new strategy' developed at Oaxtepec, writing that '[...] the whole plan is the International Ocean Institute's, and the International Ocean Institute is Malta's'.⁹⁹⁸

Final fall-out with Malta over the International Seabed Authority

With the Declaration of Oaxtepec, Elisabeth Mann Borgese, together with the participants of the workshop, made a respectable effort to reintegrate the Maltese initiative into the conference. At the same time, Mann Borgese had seized the opportunity to point out the importance of the International Ocean Institute for Malta, and once again she had tried to re-establish Arvid Pardo.

Interestingly, no-one in the Maltese government had appointed Elisabeth Mann Borgese to the task of defending Malta's symbolic key role in the United Nations. Nor did that same government show much interest in inviting Arvid Pardo back into the delegation. On the contrary, by mid-1975 they were publicly opposing him. The fact was that the

⁹⁹⁶ MS-2-744, Box 84, Folder 12, EMB to Mintoff, 16 January 1975.

⁹⁹⁷ Cf. MS-2-744, Box 84, Folder 12, EMB to Mintoff, 16 January 1975.

⁹⁹⁸ MS-2-744, Box 84, Folder 12, EMB to Mintoff, 16 January 1975.

government had been reticent and inconstant on the matter since Elisabeth Mann Borgese had first mentioned the establishment of an authority in Malta.

Although Elisabeth Mann Borgese emphasised in many of her letters to the Prime Minister her love for Malta,⁹⁹⁹ we can assume that she had other reasons for her constant lobbying campaign. Ultimately, Elisabeth Mann Borgese and Arvid Pardo needed a way to present and elaborate the ideas and thoughts they had developed in ‘The Ocean Regime’ and the ‘Draft Ocean Space Treaty’ in the United Nations. The government of Malta was a practical vehicle, not because the country was particularly close to Mann Borgese or Pardo’s hearts, but because Arvid Pardo’s 1967 speech had a symbolic significance that was directly connected with Malta. The issue was that Malta had proved to be a rather stubborn vehicle. In fact, the prime minister, Dom Mintoff, had his own ideas about Malta’s role in the conference.

The issue finally came to a head in the spring of 1975. In April, Elisabeth Mann Borgese had requested to be part of the Maltese delegation, but the government had politely declined.¹⁰⁰⁰ We do not have the rejection letter Mann Borgese received from Mintoff, but we can read her reply. Apparently, apart from rejecting her membership, the prime minister had also criticised her for an introductory piece she had written for a book Arvid Pardo had published, *The Common Heritage*. In her letter, Mann Borgese referred to the problematic passage in order to explain and defend herself:

The sentence in question reads: ‘Thus, when the Law of the Sea Conference opened in December 1973, Pardo was not a member of the Malta delegation which has played no further active role in the law of the sea matters’.¹⁰⁰¹

Clearly, to state that the delegation had ‘played no further active role’ was problematic for the government. Not because it was untrue, but because the Maltese were about to try and re-establish themselves in 1975, and were not pleased to see Elisabeth Mann Borgese pointing out their short-comings in public. Mann Borgese apparently felt she had to correct the Maltese government’s impressions about her ties to Arvid Pardo. Therefore, she reassured

⁹⁹⁹ See MS-2-744, Box 84, Folder 12, EMB draft Mintoff, undated.

¹⁰⁰⁰ Cf. MS-2-744, Box 62, Folder 8, EMB to Mintoff, 19 April 1975.

¹⁰⁰¹ MS-2-744, Box 62, Folder 8, EMB to Mintoff, 19 April 1975.

them that, '[...] what I wanted to say was that the Delegation of Malta did no longer play a leading role. Certainly, no criticism of your Delegation was intended.'¹⁰⁰²

We also learn the real reason why Mann Borgese was not considered as a prospective delegation member. She was too closely connected to Pardo and his philosophies: 'Mr. Bellizzi explained to me, your Government now finds it difficult to include me in the Delegation because of a letter Dr. Pardo just published in the Bulletin.'¹⁰⁰³ Apparently, Arvid Pardo had criticised the government of Malta, and because of their collaboration, Mann Borgese had been tainted by his statements. She therefore added: 'I sincerely hope [...] that you will not condemn me on the basis of guilt by association[...].'¹⁰⁰⁴

What followed presents an interesting record of Mann Borgese's diplomatic strategies. By 1975 it had become obvious that the Maltese government was no longer advocating Arvid Pardo's initial idea. On the contrary, it seems Pardo had already started a campaign of his own, criticising the Maltese for the way they had mishandled the situation and sold out to further international relations.¹⁰⁰⁵ This made it crucial for Mann Borgese, who apparently had not given up on her support for the Maltese just yet, to get back in favour with the government by distancing herself from Arvid Pardo. She did by this making some strategic insinuations in her letter to Mintoff:

In other occasions you made some dark allusions to matters in Dr. Pardo's life which you know about but which you would rather not disclose. Could you, as a personal favor, disclose these facts to me so that we can dispose of them one way or another once for all? Since I consider myself an expert on the Maltese contribution to the Law of the Sea and, therefore, on Dr. Pardo's work and career, I should like to have all my facts straight.¹⁰⁰⁶

With this statement, Mann Borgese insinuated that she took the prime minister's reservations concerning Arvid Pardo seriously. She made it seem like she was taking sides, but at the same time, she offered to clarify the situation by 'disposing' of the 'facts' one way or the other, which created an impression of camaraderie.

¹⁰⁰² MS-2-744, Box 62, Folder 8, EMB to Mintoff, 19 April 1975.

¹⁰⁰³ MS-2-744, Box 62, Folder 8, EMB to Mintoff, 19 April 1975.

¹⁰⁰⁴ MS-2-744, Box 62, Folder 8, EMB to Mintoff, 19 April 1975.

¹⁰⁰⁵ Perhaps the government disliked the Common Heritage publication.

¹⁰⁰⁶ MS-2-744, Box 62, Folder 8, EMB to Mintoff, 19 April 1975.

Unfortunately, her letter came too late. A few days later, we can read in a written draft article by Mann Borgese that the prime minister had published a statement in the *Times of Malta* on 22 April.¹⁰⁰⁷ In this statement, Mann Borgese and the International Ocean Institute were held responsible for the Maltese failure to obtain the International Seabed Authority. In Mann Borgese's draft article concerning the prime minister's allegations, she defended herself, arguing that 'for no apparent reason I have been drawn into a controversy to which I am not a party [...]'¹⁰⁰⁸ and stating that she was 'shocked'.¹⁰⁰⁹

She further explained the background to the International Ocean Institute, and how it had been established for the purpose of obtaining the International Seabed Authority for Malta.

The Prime Minister does not mention that, since 1971, I consistently urged him, with a number of letters and detailed memoranda, to put forward Malta's candidacy for this authority (which I have advocated publicly since 1968). Had he taken these recommendations into consideration and placed his candidacy before Jamaica did, Malta would have had the near-unanimous support of the members of the United Nations.¹⁰¹⁰

Shortly after her reaction was published – apparently in a smaller Maltese daily newspaper – the *Times of Malta* printed a press release from The Department of Information, regarding letters from Arvid Pardo and Elisabeth Mann Borgese in 'some daily newspaper'¹⁰¹¹ in which they had referred to the prime minister's statement. The aim of the article was to correct some of their allegations.

Mrs. Borgese alleges in her article that she had written to the Prime Minister as far back as 1971 to promote Malta's candidature for the Seabed Authority. There is no truth in this allegation. No record exists that at any time between 1971 and mid-1974 Mrs. Borgese, verbally, in writing, or in any other way ever put forward this proposal to the Prime Minister.¹⁰¹²

Finally, the 'maverick' Dom Mintoff had lashed out. Clearly, his accusations were completely untrue, and were most likely an attempt to avoid taking responsibility for having

¹⁰⁰⁷ EMB only refers to a speech that was not available at the archive.

¹⁰⁰⁸ MS-2-744, Box 62, Folder 8, EMB undated draft. (Most likely shortly after 22. April 1975).

¹⁰⁰⁹ MS-2-744, Box 62, Folder 8, EMB undated draft.

¹⁰¹⁰ MS-2-744, Box 62, Folder 8, EMB undated draft.

¹⁰¹¹ MS-2-744, Box 62, Folder 8, Seabed Authority Centre, *Times of Malta*, 29 May 1975. Unfortunately, we do not know in which local newspaper EMB published the draft.

¹⁰¹² MS-2-744, Box 62, Folder 8, Seabed Authority Centre, *Times of Malta*, 29 May 1975.

missed the opportunity to put forward an application for the International Seabed Authority. Stating that ‘no record exists’¹⁰¹³ of the proposal for hosting the authority was a blatant lie. On the contrary, the Prime Minister was inundated with letters and telegrams full of pleas from Elisabeth Mann Borgese to start the application process – some of them from as early as 1971.¹⁰¹⁴

Although this was an irritating episode for Elisabeth Mann Borgese, it also proved that Malta understood that hosting the International Seabed Authority would have been desirable. Otherwise, the prime minister would not have felt the urge to defend himself with outright falsehoods that were difficult to prove.

The government also made clear its attitude towards Arvid Pardo once and for all. Malta would not support Pardo any further. The government stated: ‘The Draft Treaty Article put forward by Dr. Pardo does not represent the position of the Government of Malta and this Dr. Pardo himself admitted in his article. [...]’¹⁰¹⁵ They further undermined his position by letting the newspaper know that: ‘Dr. Pardo’s articles are not corroborated by facts but are merely speculative and politically motivated. Whatever Dr. Pardo might say the Maltese Government’s policy will not be changed.’¹⁰¹⁶ At the same time, the government set forth its own position, stating:

Fortunately, the Maltese Government changed in the nick of time Dr. Pardo’s policy who had hoped to obtain for Malta the Seabed Authority and chose instead to adopt more positive and more realistic measures from which Malta might benefit.¹⁰¹⁷

It remains unclear what this talk of ‘more realistic measures’ referred to. In fact, the government had not given up on hosting the International Seabed Authority, although they had rejected the specific design for that body favoured by Pardo. To state that the government had no more interest in gaining the authority was not true, since we know that the lobbying

¹⁰¹³ MS-2-744, Box 62, Folder 8, Seabed Authority Centre, *Times of Malta*, 29 May 1975.

¹⁰¹⁴ See for the records: MS-2-744, Box 84, Folder 12, EMB to Mintoff, 17 January 1973. In the same letter EMB mentions that Pardo had presented a proposal to Kingswell in 1972. She had probably talked to Mintoff before 1973. The government’s allegations were false and perhaps a whitewash strategy. See also MS-2-744, Box 52, Folder 9, EMB to Mintoff, 13 October 1971.

¹⁰¹⁵ MS-2-744, Box 62, Folder 8, Seabed Authority Centre, *Times of Malta*, 29 May 1975.

¹⁰¹⁶ MS-2-744, Box 62, Folder 8, Seabed Authority Centre, *Times of Malta*, 29 May 1975.

¹⁰¹⁷ MS-2-744, Box 62, Folder 8, Seabed Authority Centre, *Times of Malta*, 29 May 1975.

effort to obtain it started in 1974, and would continue until Malta lost the race against Jamaica in 1981.¹⁰¹⁸

The peculiar developments did not end there. In May 1975, the very next day after the article impugning Pardo and Mann Borgese's motives was published in the *Times of Malta*, V E Ragonesi wrote a letter to Arvid Pardo.¹⁰¹⁹ In the letter, Ragonesi referred to a conversation with Elisabeth Mann Borgese concerning the conflict with the prime minister. Apparently, Mintoff had said to her 'a) there will be no more recriminations; b) the government would like to acquire again your services and those of Elizabeth.'¹⁰²⁰ In the letter, Ragonesi had attached the newspaper article from the day before. Based on this, he offered the following advice to Pardo:

I opined to Elizabeth that you should take time to think it over, that perhaps it would not be in your interest to accept to become again under the services of the Government, and that I was not so sure that the Government meant well. Yesterday the papers carried a reply from the Department of Information, hereto attached, which I consider scurrilous and shows that the Government will not change either its attitude or its policies. How can you form part of its delegation or even help it?¹⁰²¹

Indeed, it seemed unlikely that 'The Government meant well',¹⁰²² considering the slanderous comments in the newspaper. With this in mind, Arvid Pardo finally detached himself from Malta and went onto other projects at Woodrow Wilson College.¹⁰²³ Nevertheless, he always kept an eye on Malta and the Law of the Sea negotiations, and he would be invited several times to join meetings and official gatherings. Even though Arvid Pardo had finally been sidelined by his government, he would keep up with happenings at the United Nations through the International Ocean Institute and his collaboration with Elisabeth Mann

¹⁰¹⁸ See MS-2-744, Box 210, Folder 14, Leo Brincat, Loss of Seabed Authority Site Gross inaccuracies by Opposition, *Daily News*, 25 August 1981. More material on ISA loss and lobbying in the same folder.

¹⁰¹⁹ MS-2-744, Box 62, Folder 8, Ragonesi to Arvid Pardo, 30 May 1975.

¹⁰²⁰ MS-2-744, Box 62, Folder 8, Ragonesi to Arvid Pardo, 30 May 1975.

¹⁰²¹ MS-2-744, Box 62, Folder 8, Ragonesi to Arvid Pardo, 30 May 1975.

¹⁰²² MS-2-744, Box 62, Folder 8, Ragonesi to Arvid Pardo, 30 May 1975.

¹⁰²³ See MS-2-744, Box 108, Folder 1, Curriculum Vitae of Dr. Arvid Pardo.

Borgese.¹⁰²⁴ Occasionally, he would attend the gatherings of UNCLOS, and from time to time he published the occasional article about developments in ocean affairs.¹⁰²⁵

For Elisabeth Mann Borgese, the case was more critical. With Malta in retreat, it became clear that she had planted her seed for the ocean regime headquarters – in the form of the International Ocean Institute – on the wrong island.

According to its own statute, the purpose of the International Ocean Institute when it was established in 1972 was: ‘to “promote research on the peaceful uses of ocean space and its resources, including the regulation of such uses”.’¹⁰²⁶ Mann Borgese’s initial idea had been to make the International Ocean Institute the nucleus of the future ocean regime.¹⁰²⁷ But as those dreams crumbled with Pardo’s withdrawal from the front line, and the Maltese government’s indecision turned to hostility, it became ever clearer that the International Ocean Institute’s purpose would not stretch beyond the description in the statute: to promote research on the peaceful use of the seabed.

If Malta had become the host of the International Seabed Authority, maybe there would have been a chance for the International Ocean Institute to morph into the Authority. But in 1975, that dream vanished into the ether, along with Mann Borgese’s friendly relationship with the Maltese government.

¹⁰²⁴ See UN Doc. A/CONF.62/INF.3/Add.1, 11 July 1974. In the second session in Caracas he was listed under ‘Office of the Special Representative’ as ‘Special Consultant’.

¹⁰²⁵ See Arvid Pardo, ‘An opportunity Lost’, in Bernhard H. Oxman, David D. Caron and Charles L.O. Buder, eds., *Law of the Sea U.S. Policy Dilemma* (San Francisco: ICS Press, 1983), 13-26. See also Arvid Pardo, ‘Before and After’, *Law and Contemporary Problems* 46, no. 2, *The Law of the Sea: Where now?* (1983): 95-105, <http://www.jstore.org/stable/1191516>.

¹⁰²⁶ Baker, ‘Uncommon heritage’, 38, 40. Baker refers to: PIM Statute, Ch. X International Ocean Institute. EMB MS-2-744, Folder 38, Box 40.

¹⁰²⁷ See MS-2-744, Box 52, Folder 9, EMB to Mintoff, 14 August 1971.

Chapter 8. A strong international machinery for the seabed outside national jurisdiction?

Non-governmental organisations struggle at the convention

Having broken with the Maltese government, Elisabeth Mann Borgese now had to fend for herself. Mann Borgese, Pardo and the Maltese government had parted ways over the question of how the International Seabed Authority should be organised, and the conference at large was struggling with the same issue. While agreement on many of the issues in the other two committees was progressing steadily, the First Committee was vacillating back and forth between the ‘straitjacket’ or ‘business partner’ concepts of organising the International Seabed Authority. Developments between 1974 and 1976 indicated that the balance was edging in favour of an authority with more restricted powers.¹⁰²⁸

The 1975¹⁰²⁹ Declaration of Oaxtepec¹⁰³⁰ – which Mann Borgese took ownership of by calling it ‘the International Ocean Institute’s’¹⁰³¹ – illustrated this issue nicely. The strategic meeting at Oaxtepec was not just an (ultimately failed) attempt to find a middle road between Pardo’s ideas and those of the Maltese government, but also to reconcile differing opinions among the developing states, in the hopes of fighting back against the unified front presented by the developed states, who were all in favour of a weak International Seabed Authority.

It was not just the proposed authority that was turning out to be weak. Elisabeth Mann Borgese’s own ‘most influential’ institution, the International Ocean Institute, had been struggling at the convention too. This was partly because it lacked governmental support, especially from Malta, despite Mann Borgese’s concerted efforts to remedy this.¹⁰³² After the 1975 spat with Mintoff in the pages of the Maltese newspapers, any further support was very

¹⁰²⁸ See Sanger Sanger, *Ordering the Oceans*, 45-46.

¹⁰²⁹ Interim between Caracas and Geneva in 1975. EMB reports to Evensen about Oaxtepec, see MS-2-744, Box 89, Folder 18, EMB to Evensen, 25 January 1975.

¹⁰³⁰ 1976 Declaration of Oaxtepec.

¹⁰³¹ MS-2-744, Box 84, Folder 12, EMB to Mintoff, 16 January 1975.

¹⁰³² Most letters on those efforts can be found in: MS-2-744, Box 84, Folder 12.

unlikely. In addition to the loss of governmental support, the conference itself presented some difficulties for NGOs in general.

Betsy Baker singled out an event in a 1974 session that might have marked a turning point in the role of NGOs at UNCLOS, including that of the International Ocean Institute. Baker referred to a written statement that Mann Borgese had presented on behalf of the International Ocean Institute before the First Committee in August 1974. In the statement, Mann Borgese had argued for the preservation of the International Seabed Authority, stating that ‘an ocean space authority is an indispensable outcome of this conference’.¹⁰³³ The Soviet delegation’s reaction to this was to demand that ‘matters not relevant to the subject’¹⁰³⁴ were taken off the record, and that NGOs should be forced to hand in their statements to the chairman, who would then decide whether they were to be considered for further distribution or not.¹⁰³⁵

Elisabeth Mann Borgese’s efforts to advocate for ‘an ocean space authority’ were clearly not very popular among some of the delegations. The incident with the Soviet Union suggests that Mann Borgese’s self-built vessel for entering UNCLOS – namely the International Ocean Institute – was already starting to heel in 1974. However, the International Ocean Institute did succeed in presenting four statements at UNCLOS: three in the early period between 1974 and 1976, and a last one in 1983.¹⁰³⁶ All the same, Mann Borgese knew she would be much more influential if she could get herself affiliated with a national delegation.

In that respect, the 1974 strategic meeting in Oaxtepec was perhaps the International Ocean Institute’s last notable effort to influence decision-making at UNCLOS directly. The

¹⁰³³ Baker, ‘Uncommon Heritage’, 29-39.

¹⁰³⁴ See Baker, ‘Uncommon Heritage’, 29. Baker refers to the record in UN Doc. A/CONF.62/C.1/SR.12., 12 August 1974, 12th meeting, 7 August, paras. 31–37, p. 63.

¹⁰³⁵ Cf. Baker, ‘Uncommon Heritage’, 30.

¹⁰³⁶ Cf. Baker, ‘Uncommon Heritage’, 29: ‘UN Doc A/CONF.62/C.1/SR.3, 12 July 1974, pp.12-13, Statements on the international regime and machinery (continued); and A/CONF.62/C.1/SR.12, 12 August 1974, 12th meeting, Economic implications of sea-bed mineral development (continued). A/CONF.62/SR.63, 12 April 1976, pp. 7, 45-47. A/CONF.62/WS/36.’

new strategy for handling ‘troublesome’ NGOs, as suggested by the Soviet Union, had made it much more difficult to speak to the delegates directly.¹⁰³⁷

During the course of UNCLOS, additional problems would arise for the NGOs. One problem was the unusual structure of informal committee meetings without official records. This made it difficult for NGO delegates to partake in the negotiations, since they were effectively excluded from parts of the decision-making process. In fact, in April 1976, a collective of NGO representatives¹⁰³⁸ – three of them from the International Ocean Institute, including Elisabeth Mann Borgese – made a request to change the rules. The initiator claimed that the practice of informal meetings without records did not ‘appear to be in conformity with the rules of procedure adopted by the Conference on the Law of the Sea’,¹⁰³⁹ and that this situation set a ‘unique and highly unfortunate precedent for the conference’.¹⁰⁴⁰

The reply from the under-secretary general was short. He noted that some signatures were missing on the letter, which was true, since only two out of seven had actually signed it. He further argued that, after having conferred with the president of LOSC and the chairmen of the committees, ‘they do not agree with your interpretation of the Rules of Procedure’.¹⁰⁴¹ Finally, he added:

The Conference has decided that the three Main Committees will conduct informal consultation and negotiations, obviously without summary records, and the Secretariat cannot but comply with this decision taken by Sovereign States, in accordance with the relevant Rules of Procedure.¹⁰⁴²

This unambiguous reply highlighted the importance of becoming part of a national delegation. Since Malta had proven tricky to deal with over the International Seabed Authority question, and the prime minister’s scheming had made it difficult to foresee what

¹⁰³⁷ See Levering and Levering, *Citizen Action*, 30: ‘[...] partly because of the behaviour of some NGO representatives during the sessions in Caracas in 1974 and at Geneva in 1975, many UN officials and delegates disliked NGO representatives as a whole and wanted to limit their participation in the conference.’

¹⁰³⁸ MS-2-744, Box 114, Folder 19, NGOs to Ambassador Bernardo Zuleta, 21 April 1976. The names were: Margaret Mead, world Society for Ekistics; Elizabeth Borgese, International Ocean Institute, Arvid Pardo, International Ocean Institute, Harrison Brown, International Council of Scientific Unions, David Poindexter, Population Institute, Lord Richie-Calder, International Ocean Institute, Luther Evans, World Association of World Federalists

¹⁰³⁹ MS-2-744, Box 114, Folder 19, NGOs to Ambassador Bernardo Zuleta, 21 April 1976.

¹⁰⁴⁰ MS-2-744, Box 114, Folder 19, NGOs to Ambassador Bernardo Zuleta, 21 April 1976.

¹⁰⁴¹ MS-2-744, Box 114, Folder 19, Zuleta to NGOS, 25 April 1976.

¹⁰⁴² MS-2-744, Box 114, Folder 19, Zuleta to NGOS, 25 April 1976.

role – if any – the Maltese would take in the Law of the Sea Convention going forward, Elisabeth Mann Borgese was once again on the lookout for a new ally. This time, she turned to one of the leaders of the group of Landlocked States and Geographically Disadvantaged States: Karl Wolf from Austria.

Moving over to the Austrian delegation

In her Curriculum Vitae, Elisabeth Mann Borgese noted that she had joined the Austrian delegation in 1976.¹⁰⁴³ Austria was a good fit for several reasons. It was a landlocked state, and was a member of the First Committee that was working on the seabed outside national jurisdiction. Also, the head of the delegation from 1975 onwards was ambassador Karl Wolf, who worked for the Austrian embassy in Oslo, giving him close ties to the leader of the Evensen group, the Norwegian delegate Jens Evensen.¹⁰⁴⁴

It is unclear how exactly Elisabeth Mann Borgese ended up in the Austrian delegation. In an interview given in 1993, she was asked why she had joined the Austrian rather than the US delegation, since she still had an American passport at the time. She replied that she was not right for the US delegation, because they were ‘on the other side of the spectra’¹⁰⁴⁵ politically. She also felt that she would have to abide by too many restrictions if she threw in her lot with the United States. Of the Austrian delegation, she said:

The Austrians were colossally generous. I had imagined that I would have to sit quietly and be happy to listen. But that's not how it happened. Instead, a very nice working group had been established. I have been able to work very constructively with the delegation.¹⁰⁴⁶

Hugh Williamson, who later worked with Elisabeth Mann Borgese in Halifax, suggested that her warm welcome from the Austrians might have had something to do with her German origins. The German-speaking delegates were familiar with one another, and they would certainly have known of Elisabeth Mann Borgese as the daughter of Thomas Mann – who

¹⁰⁴³ Cf. MS-2-744, Box 16, Folder 19, EMB CV. See also for her further involvement: In 1977 in the fifth session she was listed as an advisor to the Austrian Delegation in the Conference records. See UN Doc. A/CONF.62/INF.6/Corr.1.

¹⁰⁴⁴ The reason why she ended up in Austria is speculative. Several reasons have been suggested. Maybe it was the ‘German-speaking group’ at the conference, to which she felt a close connection. Probably because of her family background she was already well known and admired, and they were happy to have her on board.

¹⁰⁴⁵ Hermann, ed., *Die Meer Frau*, 87.

¹⁰⁴⁶ Hermann, ed., *Die Meer Frau*, 87.

was very much idolised in German-speaking countries. Hugh Williamson also suggested that she might have been a welcome representative for German-speaking delegations because she did not carry the stigma of World War II. She could speak with an authority about justice and order that other German-speaking delegates could not.¹⁰⁴⁷

Also, Austria was spot-on for Mann Borgese in terms of their priorities and attitudes. The Austrian delegation was known to play a ‘key role’¹⁰⁴⁸ in in the group of Landlocked and Geographically Disadvantaged States. In addition to this high status among the most important alliance of countries interested in the area outside national jurisdiction, they also apparently had no problem letting a quarreller into their ranks, especially since Elisabeth Mann Borgese was fighting for the common heritage principle. Common heritage was just about the only way in which a landlocked state could profit from the convention. All of this made Austria the perfect delegation for Mann Borgese, especially after 1975. It was a much better match than Malta, which had never seriously considered Mann Borgese’s participation in the first place.

Another option for Mann Borgese could have been to join a landlocked developing country. We have no records of any attempts on her part to do this, although she was in contact with many delegates from developing countries. Perhaps advocating for the rights of developing landlocked countries was easier to achieve by joining a ‘respectable’ industrial nation. We must remember that the increasing desire of post-colonial developing countries to partake in international decision-making was regarded with considerable suspicion by some industrial nations.¹⁰⁴⁹

It might, therefore, have been advantageous to join up with a country like Austria, which had key roles in important committees, coupled with a level of international prestige that meant its delegation could speak with more authority than those of developing countries. Austria was part of the informal working group that had been established in the First

¹⁰⁴⁷ In conversation with Hugh Williamson, 29 April 2016.

¹⁰⁴⁸ Baker, ‘Uncommon Heritage’, 31.

¹⁰⁴⁹ See Friedheim and Durch, ‘International Seabed Resources’, 350: ‘[...] developing states behavior has caused Western observers to question whether the developing [sic: nations] are more concerned with image or ideology than with substance, since they have repeatedly rejected developed states initiatives which might well have made a measurable improvement in the welfare of their peoples.’

Committee in 1974 to devise the functions of the International Seabed Authority,¹⁰⁵⁰ and this key role made the Austrian delegation even more perfect for Elisabeth Mann Borgese's purposes.

Even before she entered the delegation, the Austrians had been working on proposals that were similar to Mann Borgese's. For example, the first leader of the delegation, Ambassador Franz Weidinger, had handed in a draft article on 'participation on exploration and exploitation of the living and non-living resources in the area beyond the territorial sea'.¹⁰⁵¹

The year Elisabeth Mann Borgese joined the Austrian delegation was also the year in which UNCLOS held two more sessions, the fourth session in spring 1976 and the fifth in the autumn of that same year. Mann Borgese was actively working towards shaping the International Seabed Authority in a way that would make it possible to implement the common heritage principle, and she was dissatisfied with the developments at the fourth session. In spring 1976, she wrote to her daughter Nica: 'Time is passing rapidly. The Conference is quite lousy'.¹⁰⁵² The conference was 'lousy' because there had been no agreement on how to organise the functions of the International Seabed Authority without discarding the common heritage principle entirely.

How to exploit the seabed?

After Caracas, the First Committee had singled out three key issues that they could not agree on concerning the seabed outside national jurisdiction: 'The system, of exploration and exploitation, [...] the condition of exploration and exploitation, and the economic implications of sea-bed mining.'¹⁰⁵³ Consequently, by the third session in Geneva in 1975, the situation in the First Committee was still overshadowed by the same old contradictory positions on how the International Seabed Authority should be organised.

Sanger wrote about the status of the negotiation process in 1975:

¹⁰⁵⁰ Cf. Adede, 'System of Exploitation', 47. Adede lists all countries in the informal working group.

¹⁰⁵¹ Cf. Baker, 'Uncommon Heritage', 31.

¹⁰⁵² EMB B4 Mann Borgese, Easter Sunday 1976.

¹⁰⁵³ See 1976 Declaration of Oaxtepec, 4.

The Caracas session in 1974 had shown there would be no support from the industrialized countries for the ISA as sole operator, and no support either for the original US idea of the Authority as a 'vehicle license' body with minimal powers.¹⁰⁵⁴

This approach, that either gave the ISA total power or virtually none at all, was called a 'single system' approach. This meant the authority would have one single function: It would either hand out licences/contracts to companies or nation states wishing to conduct seabed activity; or it would conduct all such activity by itself. Since neither version of the single system approach would meet with unanimous approval from the various delegations, the participants had to come up with a compromise. The negotiations at Caracas had made it abundantly clear that neither of the two contradicting proposals for a 'weak' or 'strong' International Seabed Authority could ever hope to reach consensus.

Delegates had to work towards a middle ground. Back in 1971, the Latin American states had made a proposal to introduce something called 'the Enterprise' to the International Seabed Authority's design.¹⁰⁵⁵ The initial idea was that the Enterprise should be a kind of international cooperative venture, with the sole purpose of conducting activity in the Area on behalf of all mankind.¹⁰⁵⁶ Such a vision of the International Seabed Authority's operational arm was clearly right at the far end of the spectrum of a 'strong' Authority in a 'single system', since it would be the only entity with the right to operate in the area outside national jurisdiction. The new idea was to find a way of incorporating both functions: an enterprise that would carry out activity on behalf of 'all mankind', embedded in an authority that would also allocate contracts or licences with which companies or states could conduct exploitation independently.

To help the delegates flesh out this idea, the concept of the Enterprise was rejuvenated in 1975. This time, the Enterprise was not intended to become a sole operator, but an 'operational arm' of the International Seabed Authority.¹⁰⁵⁷ The question now was what kind of company it should be, how much power it should have, and how it should operate.

¹⁰⁵⁴ Sanger, *Ordering the Oceans*, 174.

¹⁰⁵⁵ Cf. Yuwen Li, *Transfer of Technology for Deep Sea-Bed Mining. The 1982 Law of the Sea Convention and Beyond* (Dordrecht: Martinus Nijhoff, 1994), 81. Li refers to UN Doc.A/8421, 93-101.

¹⁰⁵⁶ See Li, *Transfer of Technology*, 81. See also MS-2-744, Box 121, Folder 18.

¹⁰⁵⁷ See Sanger, *Ordering the Oceans*, 167-169.

To incorporate the Enterprise as an operational arm of the International Seabed Authority meant introducing something called a ‘parallel system’.¹⁰⁵⁸ It was called ‘parallel’ because activity in the Area could be conducted in two ways. A nation state or company could apply to the ISA for a contract or a licence to conduct activity in a specific place, or the authority itself could conduct activity in a designated area through its operational arm, the Enterprise.

Employing a ‘parallel system’ would mean that states with the technological means and expertise to conduct deep-sea mining could do so by applying for contracts or licences from the authority. If the application was granted, then an area of the same size would be reserved for exploitation by developing states or by the International Seabed Authority itself through the Enterprise. In the area that was designated to the applicant, states would be free to conduct their activities under their own national laws. In this way, the companies or private entities involved would be entirely free of International Seabed Authority regulation.¹⁰⁵⁹

The developing states opposed the ‘parallel system’, since they feared it would allow the industrialised states to conduct exploration and exploitation, while they themselves would have ‘symbolic’ reserved areas without any means to utilise them. How was the Enterprise going to be able to conduct activity without either the knowledge or the finances to do so? What was the point? Instead, delegates from developing states worked on several proposals that leaned back towards a ‘single system’ by proposing ‘joint venture’. This meant that industrial states and developed states would be forced to cooperate in activities in the Area, making opportunities to conduct exploration and exploitation much more equal.¹⁰⁶⁰

¹⁰⁵⁸ Cf. Mahmoudi, *The Law of*, 47: ‘In 1976 the idea of a parallel system was considered by the Conference. The gist of the Idea was to establish in which both the Authority, through its operational arm – the Enterprise – and the States Parties to the Convention and public or private entities would engage in the activities of exploration for and exploitation of the deep sea-bed resources.’

¹⁰⁵⁹ See Mahmoudi, *The Law of*, 183: ‘The salient character of this ‘parallel’ system was that those activities which were carried out by the States and private entities in their own areas were regulated by the national law, and the Authority had no control over them. The parallel system was meant to give ultimate control to the Authority over the activities in that area which belonged to it, and provide on the other hand, for the unhampered access of other entities to other parts of the area only subject to the legislations of their respective States.’

¹⁰⁶⁰ Cf. Sanger, *Ordering the Oceans*, 171. See also Li, *Transfer of Technology* 63: ‘The Enterprise was to either carry out these functions on its own or through joint ventures with companies sponsored by States.’ See also Mahmoudi, *The Law of*, 256.

By 1976, it became clear that developed states had settled on a parallel system with the Enterprise as an ‘operational arm’ of an authority that would otherwise interfere with their activities as little as possible.¹⁰⁶¹ The developing countries, especially the Group of 77, were still very sceptical towards the ‘parallel system’.¹⁰⁶² For some developed states, agreement on the function of the future International Seabed Authority was so important that they were prepared to go to great lengths to convince the Group of 77 to give up on their ‘joint venture’ proposal that would force industrial states to share expertise and profit. The United States attempted to smooth over the differences by sending statesman Henry Kissinger to UNCLOS in 1976.¹⁰⁶³

The year before, in 1975, Kissinger was reported to have said that ‘[...] the US would be ‘prepared to explore ways of sharing deep seabed technology with other nations’.¹⁰⁶⁴ When he came to the United Nations in 1976, he proposed an arrangement in which the United States would ‘make a financial contribution to the Enterprise’¹⁰⁶⁵ so that it could conduct some activity in order to get started. He also proposed a trial period of 25 years, after which the ‘parallel system’ could be re-assessed and changed if necessary.¹⁰⁶⁶

The Kissinger proposal must have been reasonably effective, since Elisabeth Mann Borgese later said of Kissinger’s visit to the conference: ‘The big, strong United States prevailed. The lure of dollars carried more conviction than a good idea. The perceived short-term advantage defeated the long-term rational solution.’¹⁰⁶⁷

During the first sessions in which Elisabeth Mann Borgese was affiliated with the Austrians, the conference took a new step towards agreement: in the 1976 session, the

¹⁰⁶¹ Cf. Sanger, *Ordering the Oceans*, 171.

¹⁰⁶² Li, *Transfer of Technology*, 72.

¹⁰⁶³ Cf. Sanger, *Ordering the Oceans*, 173. See also Li, *Transfer of Technology* 72.

¹⁰⁶⁴ Li, *Transfer of Technology* 72. See also Schmidt, Schmidt, *Common Heritage*, 85. Apparently, the New York Times had reported about the incident 9 April 1976.

¹⁰⁶⁵ Li, *Transfer of Technology* 72.

¹⁰⁶⁶ Cf. Li, *Transfer of Technology*, 72. Li refers to the Yearbook of the United Nations, 1976, 87, and the Statement by the US representative, in OFF. Rec., Vol. VI, 73-74. See also Sanger, *Ordering the Oceans*, 173.

¹⁰⁶⁷ Sanger, *Ordering the Oceans*, 173, reference to EMB. The conversation likely happened after it was clear that there would only be a parallel system. In 1976 there was still the possibility of creating something that was closer to EMB’s joint venture proposal.

‘Informal Single Negotiation Text’ (ISNT)¹⁰⁶⁸ was revised and turned into the ‘Revised Single Negotiating Text’ (RSNT)^{1069, 1070}. This new RSNT introduced the ‘parallel system’ to the International Seabed Authority.

Though Kissinger might have swayed some delegations, the majority of the Group of 77 still opposed the implementation of the ‘parallel system’ as set out in the Revised Single Negotiating Text. By the end of 1976, the conference ‘faced a stalemate’.¹⁰⁷¹ Sanger wrote that, while the ‘parallel system was gaining ground [...] the proponents of joint ventures were resorting to ingenious, and sometimes frankly odd, proposals to reconcile the two types of scheme.’¹⁰⁷²

Preparing the sixth session in 1977

For Elisabeth Mann Borgese, the ‘long-term rational solution’ was still a ‘joint venture’ system. Mann Borgese held the view that the operational arm of the International Seabed Authority should not have to compete with the independent industry of industrial states, but should rather work hand-in-hand with it.

If we look at the Austrian delegation’s preparations for the sixth session in July 1977, we can see that they were on the same page as Mann Borgese. She had been invited by Jens Evensen to the ‘Intersessional consultation in Geneva, 28 February – 11 March 1977’,¹⁰⁷³ and invitations like these gave her the chance to influence discussion in meetings that she would have been excluded from as an NGO representative. The topic of the meeting was the issue of how the International Seabed Authority should be organised.

Since official records were not kept of what went on at these intersessional meetings, to understand some of the work Mann Borgese did there, we have to rely on the papers that circulated in advance of the meetings. In this case, along with the invitation to the meeting, Jens Evensen had enclosed his own proposal on how to find a compromise for the authority,

¹⁰⁶⁸ For a detailed review of the ISNT, see Miles, ‘Structure and Effects’, 167. Harrison also discusses the various proposals, see Harrison, *Making the Law*, 45–46.

¹⁰⁶⁹ For a detailed review of the RSNT, see Miles, ‘Structure and Effects’, 225.

¹⁰⁷⁰ Sanger, *Ordering the Oceans*, 44.

¹⁰⁷¹ Mahmoudi, *The Law of*, 187.

¹⁰⁷² Sanger, *Ordering the Oceans*, 171.

¹⁰⁷³ MS-2-744, Box 89, Folder 18, Fostervoll to EMB, 5 December 1977.

along with background papers that explained the four competing positions at UNCLOS. The papers were from the US, USSR, The Revised Single Negotiation Text and the Group of 77.¹⁰⁷⁴

The Evensen invitation and its attachments are a great illustration of how the intersessional meetings potentially influenced consensus-seeking at UNCLOS III. The four different papers were all roughly one page long and concentrated on one article – Article 22 – which consisted of three to four bullet points. The differences between the proposals were minor, and sometimes only a couple of words were changed. As an example, Evensen proposed that point 1 of Article 22 (which defined the extent of the ISA’s power) should read: ‘Activities in the Area shall be organized and controlled by the Authority [...]’,¹⁰⁷⁵ while the Group of 77’s working paper proposal read: ‘Activities in the Area shall be conducted exclusively by the Authority’.¹⁰⁷⁶

The difference might seem minor, but actually the impact of the words ‘organized and controlled’ compared to ‘conducted exclusively’ is tremendous. While the first proposal would give the International Seabed Authority a limited amount of influence, the second would give it total power. The example shows the huge ramifications of wording in legal texts, and the difficulties the participants had to overcome at the conference. We have to keep in mind that every single paragraph of the Law of the Sea Convention was discussed in this manner.

Ambassador Wolf submitted a new paper on 9 March 1977,¹⁰⁷⁷ in which he revisited Article 22, the ‘joint venture’ system and the Austrian view on it. Although the proposal is not specifically addressed to the intersessional meeting, it is very likely that the Austrians presented it there, since it was dated around the same time as the meeting took place and Austria was invited.

¹⁰⁷⁴ MS-2-744, Box 89, Folder 18, Fostervoll to EMB, 5 December 1977. MS-2-744, Box 89, Folder 18, Evensen, 14. February 1977.

For information on those different proposals see Evensen attachment to the different articles in folder 18.

¹⁰⁷⁵ MS-2-744, Box 89, Folder 18, Evensen, 14. February 1977. Suggested compromise formula.

¹⁰⁷⁶ MS-2-744, Box 89, Folder 18, Evensen, 14. February 1977. G 77 suggestion.

¹⁰⁷⁷ See MS-2-744, Box 87, Folder 4, paper submitted by ambassador Wolf, 9 March 1977.

In contrast to the main proposals that Evensen had sent out prior to the meeting as a basis for discussion, Austria stubbornly insisted on returning to the ‘single system’ and the ‘joint venture’ concept. Wolf stated that:

Activities in the area shall be conducted by the Enterprises established by the Authority in joint venture with States Parties or States Enterprises, or persons natural or juridical which possess the nationality of States Parties [...].¹⁰⁷⁸

By this, he was advocating for ‘a conceptually unified system of exploitation in which the Authority would have a central and indispensable role in all activities as the Trustee of the Common Heritage.’¹⁰⁷⁹ According to Wolf’s proposal, the authority was ‘meant to provide a framework for cooperation rather than competition with established industry.’¹⁰⁸⁰

The gist of the Austrian proposal was that the International Seabed Authority should always be involved in activity on the seabed outside national jurisdiction, without any exceptions. This would be ensured by establishing enterprises, which would be formed by collaborations with active companies or other actors conducting mining in the Area. In the Austrian proposal, there was no room for activity on the seabed without cooperating with the International Seabed Authority. This was, in essence, a return to the ‘single system’ approach that had been rejected in 1976. The Austrian proposal was similar to the working paper presented in advance by the Group of 77, but even they had moved on from the ‘joint venture’ idea and had started to make concessions towards designing a parallel system. In their proposal, activity in the Area was controlled by the International Seabed Authority, but the authority was not the sole executor of activities in the Area.¹⁰⁸¹

Why was Austria attempting to re-introduce the ‘joint venture’ and ‘single system’ approaches to the International Seabed Authority? Wolf emphasised that the draft paper was ‘intended as an illustration, not as a basis for discussion’.¹⁰⁸² The draft did not dictate any strict rules for the authority, but rather kept things flexible so that the authority could adapt to changing technology and other circumstances.¹⁰⁸³ This was what the developing states had

¹⁰⁷⁸ MS-2-744, Box 87, Folder 4, paper submitted by ambassador Wolf, 9 March 1977.

¹⁰⁷⁹ MS-2-744, Box 87, Folder 4, paper submitted by ambassador Wolf, 9 March 1977.

¹⁰⁸⁰ MS-2-744, Box 87, Folder 4, paper submitted by ambassador Wolf, 9 March 1977.

¹⁰⁸¹ See MS-2-744, Box 89, Folder 18, Evensen, 14. February 1977. G 77 proposal.

¹⁰⁸² MS-2-744, Box 87, Folder 4, paper submitted by ambassador Wolf, 9 March 1977.

¹⁰⁸³ Cf. MS-2-744, Box 87, Folder 4, paper submitted by ambassador Wolf, 9 March 1977.

envisioned for the ‘international machinery’ that had the mandate to govern the Area: It should be flexible in order to shape the rules that would evolve over time depending on new developments and technology.

The Austrian contribution to the intersessional meeting in 1976 seems to have been an attempt to travel back in time to the discussions about a New International Economic Order and the early days of the Seabed Committee. By the time these discussions were happening, there was little hope for the Group of 77 of turning the International Seabed Authority into effectively ‘their’ institution in order to effect some measure of justice in an economically imbalanced world.¹⁰⁸⁴

The conference at large had moved on by this point in 1976, and was busy developing a compromise within the framework of the ‘parallel system’ instead of re-opening the ‘single system’ discussion. Was the Austrian delegation behind the times? Was Elisabeth Mann Borgese holding on to an ideal that would have to be scaled back sooner or later?

Reviving a corpse? – Attempts to reintroduce rejected concepts

In order to understand the Austrian proposal, we should examine its origins. In fact, the proposal was closely related to a draft that Elisabeth Mann Borgese and Arvid Pardo had worked on called ‘the Enterprises’.¹⁰⁸⁵ Mann Borgese sent this draft to Karl Wolf in May 1977.¹⁰⁸⁶

Although the ‘single system’ approach and the ‘joint venture’ idea had been seriously undermined in 1976 by Kissinger’s offer of financial aid, and seemed like they might have had their day, Elisabeth Mann Borgese was still eager to present her Enterprises draft at the sixth UNCLOS session in July 1977.¹⁰⁸⁷

Karl Wolf was concerned, and replied that he had no hopes of getting any agreement in the session in question. It is likely that he had tested the waters at the intersessional meeting, and presumably the reaction to the Austrian proposal had not been very positive.

¹⁰⁸⁴ See Allen, ‘An Intellectual History’. 64. Allen refers to Jagdish N. Bhagwati, ed, *The New international Economic Order: The North south debate* (Cambridge MA: The MIT Press, 1977), 4.

¹⁰⁸⁵ See MS-2-744, Box 87, Folder 4, EMB to Wolf, 9 May 1977.

¹⁰⁸⁶ See MS-2-744, Box 87, Folder 4, EMB to Wolf, 9 May 1977.

¹⁰⁸⁷ See MS-2-744, Box 87, Folder 4, EMB to Wolf, 9 May 1977.

Perhaps this was why he was reluctant to circulate Mann Borgese's 'Enterprises' draft, seeking to avoid prolonging the discussion and the risk of manoeuvring the conference into a 'deadlock'.¹⁰⁸⁸ Instead, Wolf suggested publishing the draft under Mann Borgese's own name and distributing it in the Group of Landlocked and Geographically Disadvantaged States.¹⁰⁸⁹

It is unclear what effect Wolf thought it would have to distribute a paper under Mann Borgese's name. Did he hope it might re-mobilise the Group of 77 to consider taking up the 'joint venture' idea and the 'single system' once again? Was he looking to sound out potential interest? Or did he just want to placate Mann Borgese by allowing her to distribute a paper that he knew was a dead-end? We do not know.

What we do know is that Mann Borgese and Pardo's 'Enterprises' draft was a detailed and well-thought-through attempt to revive a concept that was pretty much dead in the water. By 1976, no industrialised state wanted a 'strong' International Seabed Authority, and since consensus on an agreement was so imminent, there was no real chance of backtracking. The 'parallel system' was pretty much a fact, and the main point of discussion now was how that parallel system would be designed.

The main message of the Pardo-Borgese draft was that whatever principle was introduced at the start would most likely become a permanent foundation. Therefore, they argued that 'by first admitting, and then proceeding to undo, a parallel system, one does not, and cannot, obtain a unitary system. A unitary system has to be set up as such from the beginning.'¹⁰⁹⁰ This remark was an allusion to the Kissinger proposal to test the 'parallel system' and then to review it after 25 years. Mann Borgese and Pardo considered this unlikely, writing that '[...] it is difficult to imagine that the U.S. proposal for financing a first

¹⁰⁸⁸ MS-2-744, Box 87, Folder 4, Wolf to EMB, 19 April 1977.

¹⁰⁸⁹ MS-2-744, Box 87, Folder 4, Wolf to EMB, 19 April 1977: 'Meiner Meinung nach sollte die Arbeit unter Ihrem Namen veröffentlicht werden und sie könnte wahrscheinlich auch an alle Mitglieder unsere Gruppe zur Verteilung gelangen.' Her proposal was published in 1978. See Elisabeth Mann Borgese, 'The Enterprises: A proposal to reconceptualise the operational arm of the International Seabed Authority to manage the common heritage of mankind', *I.O.I Occasional Papers*, no. 6 (November 1978).

¹⁰⁹⁰ Mann Borgese, 'The Enterprises', iv.

project of the Enterprise be matched by other countries.¹⁰⁹¹ Therefore, they argued that ‘the proposed parallel system be discarded and replaced by a single unitary system’.¹⁰⁹²

The idea was that state parties, companies or other entities¹⁰⁹³ could apply to the ISA for permission to conduct resource exploitation. The authority would then direct this entity to form an enterprise ‘controlled by the Authority’.¹⁰⁹⁴ Which meant that for every single activity, a new enterprise would be formed in cooperation with the Authority. For instance, if the US wanted to conduct deep-sea mining in the Area, it would have to send in an application to the International Seabed Authority. If the application was approved, the US would then be obliged to form an enterprise that would be controlled by the authority. The specific investment on the part of each entity was broken down as such:

The Authority must provide 52% of the investment capital, including the value of the nodules in situ, which are the common heritage of mankind. The remaining capital, technology, and managerial skills are to be provided by the participating entities.¹⁰⁹⁵

Among the proposals set out by Mann Borgese and Pardo: ‘One was the direct association of companies from developing countries with enterprises in industrial countries that possessed the necessary technology.’¹⁰⁹⁶ In practice, no country in possession of such technology would be interested in this kind of system. Why would they be? In most proposals of the ‘parallel system’, once the application had been approved, activity in the area would be conducted under the law of the state that the company or state entity was part of.¹⁰⁹⁷

Returning to a single or unitary system was no longer a viable option in 1976. For industrial states, an acceptable compromise was already on the table in the form of the ‘parallel system’, in which a specific part of the Area was designated for activity that would be governed under the International Seabed Authority to enforce the principle of the common

¹⁰⁹¹ Mann Borgese, ‘The Enterprises’, v.

¹⁰⁹² Mann Borgese, ‘The Enterprises’, vi.

¹⁰⁹³ EMB writes: ‘State Party or public or private entity designated by a state party or any combination thereof.’ Cf. Mann Borgese, ‘The Enterprises’, vi.

¹⁰⁹⁴ Mann Borgese, ‘The Enterprises’, vi.

¹⁰⁹⁵ Mann Borgese, ‘The Enterprises’, vii.

¹⁰⁹⁶ Sanger, *Ordering the Oceans*, 171. Sanger did not say this in connection with EMB proposal but joint venture proposals in general.

¹⁰⁹⁷ See Sanger, *Ordering the Oceans*, 172: ‘By 1976 the idea of the ‘parallel system’ was gaining ground, pushed by the industrial countries[...].’

heritage of mankind. Where was the compromise in the Mann Borgese-Pardo proposal that would appeal to the industrial states? There was none.

Secret changes to the draft treaty in favour of the developing countries

Developments in the sixth session provided further proof that the convention was on shaky ground where the International Seabed Authority was concerned.

It was reported that Jens Evensen, through laborious discussions, had finally managed to broker a quasi-compromise between the different approaches that allowed delegates to see an end to the discussion of seabed issues.¹⁰⁹⁸ According to an American delegate: ‘Minister Evensen offered real prospect that the impasse on seabed mining issues could be resolved on terms acceptable to both developed and developing nations.’¹⁰⁹⁹ Evensen’s informal working group was finally presenting the possibility of ‘bridging the gap’¹¹⁰⁰ between the interests of developed and developing countries.

By the end of the 1977 session, the convention had made a breakthrough. Finally, a draft treaty ‘with 17 parts’¹¹⁰¹ that was called ‘Informal Composite Negotiating Text (ICNT)’¹¹⁰² was produced. In the ICNT, the part about the area outside national jurisdiction was given its final name: Part XI. From then on, Part XI incorporated everything that had been discussed as Article 22, and was concerned with the International Seabed Authority and seabed regime.¹¹⁰³ Surprisingly, though, Part XI of the ICNT did not include the Evensen compromise.¹¹⁰⁴

How could this have happened, after the tremendous amount of work that had gone into compromise-seeking in the Evensen group? According to Sanger and Mahmoudi, there had been some scheming behind closed doors that had led to a last minute revision of the draft. The final draft of Article 22, soon to be incorporated in the ICNT, had been drawn up

¹⁰⁹⁸ See Sanger, *Ordering the Oceans*, 44-45. Schmidt writes about the difficulty of agreement that was finally solved by Evensen, see Schmidt, *Common Heritage*, 195.

¹⁰⁹⁹ See Mahmoudi, *The Law of*, 188. Mahmoudi quotes E.L. Richardson, chief of American delegation.

¹¹⁰⁰ Mahmoudi, *The Law of*, 188.

¹¹⁰¹ Sanger, *Ordering the Oceans*, 45.

¹¹⁰² Sanger, *Ordering the Oceans*, 45.

¹¹⁰³ Cf. Mahmoudi, *The Law of*, 189. Numbers 133-192 – UN Doc.A/CONF.62/WP.10.

¹¹⁰⁴ Mahmoudi, *The Law of*, 189. See also Sanger, *Ordering the Oceans*, 45.

by the leader of the First Committee, Paul Engo of Cameroon. Apparently, he had changed the provisions of Article 22 ‘secretly’¹¹⁰⁵ to suit the interests of the developing states. Even the ‘joint venture’ idea was partly reintroduced,¹¹⁰⁶ and this radical change resulted in the US stating that the new Part XI was ‘now fundamentally unacceptable’.¹¹⁰⁷

Two things are interesting here. First, there is the fact that Wolf had been quite right when he warned that re-introducing the ‘joint venture’ idea could potentially lead to a ‘deadlock’ in the Evensen group. Second, apparently Elisabeth Mann Borgese and Arvid Pardo had not been alone in their attempts to re-introduce of the ‘joint venture’ idea. It would be intriguing to know more about whether Mann Borgese had taken any part or had any influence in the ‘secret changes’ to Part XI that were made under Paul Engo’s supervision.¹¹⁰⁸

Regardless of the precise circumstances in which the changes were applied to the final draft, the incident showed that some developing states were not content with the Evensen compromise. Otherwise, the Evensen compromise would have been approved by the First Committee, and would have been incorporated in the ICNT without the leader of the committee incorporating a raft of secret changes. In order to convince these developing states to accept the ‘parallel system’, a new compromise had to be found.

New strategies and alliances for landlocked and geographically disadvantaged states

The Paul Engo incident shone a spotlight on the importance of groups, alliances and back-room negotiations at the conference. On the one hand, the groups were a necessary tool for producing drafts and shaping opinions that could be brought to the session meetings for discussion. Conversely, they made decision processes blurry, and facilitated ‘secret’ changes and scheming.

For the Austrian delegation, the Group of Landlocked and Geographically Disadvantaged States was the most important alliance. In October 1977, Elisabeth Mann

¹¹⁰⁵ Sanger, *Ordering the Oceans*, 45

¹¹⁰⁶ See Mahmoudi, *The Law of*, 188, 189, 190.

¹¹⁰⁷ Mahmoudi, *The Law of*, Mahmoudi, 189.

¹¹⁰⁸ Relevant correspondence might be available in: MS-2-744, Box 54, Folder 25. This issue could not be examined further due to lack of time.

Borgese wrote a letter to Wolf with a new draft of a working paper about the ‘Composite Text’,¹¹⁰⁹ in order to improve the first flawed draft of the ICNT. The letter addressed the question of how the Group of Landlocked and Geographically Disadvantaged States should position themselves in the next UNCLOS session.

Mann Borgese reported that Tommy Koh, the head of delegation for Singapore, had pointed out that alliances should be formed within the three committees to ‘strengthen’¹¹¹⁰ positions. With this in mind, she emphasised that

[...] we [sic: The group of Land Locked and Geographically Disadvantaged States] can safeguard our interests in the oceans only through international organizations; therefore the better organized and the more comprehensive such organizations are, the better it will be for the States of our group. Since, in this respect, the economically disadvantaged States have the same interests as the geographically disadvantaged States[...]¹¹¹¹

In the light of the disagreements over Part XI, Elisabeth Mann Borgese was once again ready to adapt to the situation. Regardless of whether or not she had taken any active part in pushing through the reintroduction of ‘joint venture’ into the ICNT, the reaction from the industrialised states had made one thing clear: they would never submit to an overtly strong international machinery governing the Area. So what options were left to those nations wanting to secure meaningful implementation of the common heritage principle?

In the letter to Wolf, Mann Borgese suggested ‘If our group could decide to endorse the joint-venture alternative to the “parallel system” our group could assume some leadership which would pay back in other areas.’¹¹¹² This was a clever, diplomatic move. Mann Borgese’s strategy would be to look for ways in which a ‘joint venture’ solution could be incorporated into the ‘parallel system’. After the somewhat unrealistic attempts to reintroduce the ‘single system’ with the Mann Borgese-Pardo draft, she had finally understood that the industrial countries would never approve a ‘single system’, and that other alternatives had to be found.

[...] perhaps the strongest arguments now are (a) that we NEED an alternative proposal to break the deadlock on the Evensen [sic: Evensen] compromise; (b) that the LL and GDS need an effective and operational Seabed Authority; (c) that, to be effective, the operational

¹¹⁰⁹ MS-2-744, Box 87, Folder 4, EMB to Wolf, 17 October 1977.

¹¹¹⁰ MS-2-744, Box 87, Folder 4, EMB to Wolf, 17 October 1977.

¹¹¹¹ MS-2-744, Box 87, Folder 4, EMB to Wolf, 17 October 1977.

¹¹¹² MS-2-744, Box 87, Folder 4, EMB to Wolf, 17 October 1977.

system must be such that it can be applied to the international area as well as to areas under national jurisdiction.: that is, it must be flexible.¹¹¹³

Elisabeth Mann Borgese had adjusted to the realisation that the introduction of the ‘parallel system’ was inevitable. Instead of discarding the ‘joint venture’ proposal on the grounds that it had initially been tailored to a ‘single system’, she now proposed to apply it to the ‘parallel system’. Interestingly, point (c) of her proposal was effectively a loophole. By proposing to design the ‘operational system’ in such a way that it could be applied to both the international area and ‘areas under national jurisdiction’,¹¹¹⁴ she was creating the future possibility to apply the functions of the ‘machinery’ to all ocean space.

This was not a new strategy. In fact, Mann Borgese had proposed a similar approach in her draft of ‘The Ocean Regime’, in which she had designed the chambers of the Planning Agency in a way that would allow the ocean regime to expand into a world regime. It is questionable whether Mann Borgese ever truly expected that these in-built possibilities for expansion would eventually be used. Perhaps the approach is more an expression of her long-term, functional and solution-oriented way of thinking – a sort of ‘just in case’ optimism.¹¹¹⁵

Austria loses faith – An era of instability

In the course of 1977, the discussions at the sixth session had revealed the ‘hard core issues’¹¹¹⁶ of the convention. Three of these seven issues were related to the seabed mining propositions. Apart from that, Sanger could report a degree of optimism: ‘By 1978 UNCLOS-3 appeared to be nearing the home stretch. Canadian Officials had been reporting that it might take two more sessions to overcome difficulties over seabed mining.’¹¹¹⁷

The Canadian officials had made a grave miscalculation. In February 1978, the *Washington Post* published an article about the United States’ position in the conference:

¹¹¹³ MS-2-744, Box 87, Folder 4, EMB to Wolf, 17 October 1977.

¹¹¹⁴ MS-2-744, Box 87, Folder 4, EMB to Wolf, 17 October 1977.

¹¹¹⁵ Kerstin Holzer characterized EMB as short-term pessimist, long-term optimist, *see* Holzer, “‘Short-term pessimist’”, 180.

¹¹¹⁶ Sanger, *Ordering the Oceans*, 46.

¹¹¹⁷ Sanger, *Ordering the Oceans*, 46.

‘U.S. Seeks Seabed Mining Showdown’.¹¹¹⁸ Journalist William Claiborne wrote that ‘The United States [...] has begun playing the diplomatic equivalent of “chicken” in the long-running United Nations Law of the Sea Conference.’¹¹¹⁹

The US strategy, according to the article, was to take a ‘hard-line posture’.¹¹²⁰ The essence of the strategy was to question whether the treaty was even needed at all. The journalist pointed out that this was an interesting argument, considering that nearly 10 years of hard work lay behind the conference participants.¹¹²¹ Instead of negotiating international compromise, Congress was about to pass a bill that would ‘authorize and encourage U.S. mining companies to unilaterally begin to mine the trillions of dollars of cobalt, nickel, manganese and copper on the bottom of the oceans.’¹¹²²

Claiborne also mentioned that the US officials were opposed to a ‘treaty that was secretly rewritten by a handful of Third World delegates’,¹¹²³ and this was obviously a reference to Paul Engo’s problematic rewriting of the Evensen compromise in 1977. Apparently, Engo’s actions had complicated international relations and had a negative influence on US willingness to cooperate.

The United States’ negative attitude towards the conference in general did not pass unnoticed. Mann Borgese attached the article to a letter she sent to Karl Wolf. From this same letter, we learn that she had attended a session (probably a working group session) without Wolf, and was now reporting back to him on the general mood and tone of the discussion.

¹¹¹⁸ MS-2-744, Box 87, Folder 4, William Claiborne, U.S. Seeks Seabed Mining Showdown, *Washington Post*, 13 February 1978.

¹¹¹⁹ MS-2-744, Box 87, Folder 4, William Claiborne, U.S. Seeks Seabed Mining Showdown, *Washington Post*, 13 February 1978.

¹¹²⁰ MS-2-744, Box 87, Folder 4, William Claiborne, U.S. Seeks Seabed Mining Showdown, *Washington Post*, 13 February 1978.

¹¹²¹ MS-2-744, Box 87, Folder 4, William Claiborne, U.S. Seeks Seabed Mining Showdown, *Washington Post*, 13 February 1978.

¹¹²² MS-2-744, Box 87, Folder 4, William Claiborne, U.S. Seeks Seabed Mining Showdown, *Washington Post*, 13 February 1978.

¹¹²³ MS-2-744, Box 87, Folder 4, William Claiborne, U.S. Seeks Seabed Mining Showdown, *Washington Post*, 13 February 1978.

Apparently, the situation was complicated, the end of the session ‘a funeral’¹¹²⁴ and the ‘Latinos, more persistent, aggressive and angry than ever’.¹¹²⁵

On the bright side, she could report that the United States had been very ‘mild, seductive and auspicious’,¹¹²⁶ but that she still had the impression that they would never drop the ‘parallel approach’, regardless of the compromises that were offered to them.¹¹²⁷ Elisabeth Mann Borgese assumed that the US’s strategy was to play for time, by disrupting efforts to reach a consensus until the conference fell apart. She wrote ‘That is how time goes by, [...] and then there is no Part XI.’¹¹²⁸ To do something about the ‘desperate’¹¹²⁹ situation, she suggested distributing a working paper at the upcoming seventh session in Geneva.¹¹³⁰

Although Elisabeth Mann Borgese was not ready to give in, Karl Wolf, on the other hand, reported that his government was starting to scale back their involvement.¹¹³¹ In July 1978, he informed Mann Borgese that he was the only delegate who would be attending the resumed seventh session from August to September in New York.¹¹³² This also complicated Mann Borgese’s own role in the Austrian delegation. If Wolf was the only person being sent to New York, would she still be part of the delegation?

For the Geneva session in spring, the Austrians had sent a six-strong delegation with Elisabeth Mann Borgese as an adviser.¹¹³³ Attendance was drastically reduced for the

¹¹²⁴ MS-2-744, Box 87, Folder 4, EMB to Wolf, 28 February 1978. ‘ein Begräbnis.’

¹¹²⁵ MS-2-744, Box 87, Folder 4, EMB to Wolf, 28 February 1978. ‘Die Latinos hartnäckiger, aggressiver, und böser als jeh.’

¹¹²⁶ MS-2-744, Box 87, Folder 4, EMB to Wolf, 28 February 1978. ‘mild, verführerisch, vielversprechend.’

¹¹²⁷ MS-2-744, Box 87, Folder 4, EMB to Wolf, 28 February 1978. ‘Wie sie aus meinem beiliegenden Bericht sehen werden, waren die Amerikaner auf dieser letzten Arbeitssitzung besonders mild, verführerisch, und vielversprechend. Sie werden den parallel approach nie fallen lassen, aber auch nie zu einem wirklichen Kompromiss kommen[...].’

¹¹²⁸ MS-2-744, Box 87, Folder 4, EMB to Wolf, 28 February 1978. ‘[...] und so vergeht die Zeit, und das ist wohl auch die Absicht, und dann ist eben kein Part XI da ...’

¹¹²⁹ MS-2-744, Box 87, Folder 4, EMB to Wolf, 28 February 1978.

¹¹³⁰ See MS-2-744, Box 87, Folder 4, EMB to Wolf, 28 February 1978.

¹¹³¹ MS-2-744, Box 87, Folder 4, Wolf to EMB, 6 June 1978. ‘Der wachsende Widerstand in Regierungskreisen gegen die UN-Seerechtskonferenz hat nunmehr auch Wien erreicht.’

¹¹³² MS-2-744, Box 87, Folder 4, Wolf to EMB, 6 June 1978.

¹¹³³ He was perhaps worried about being the only one to travel to the conference. Still, in 1978, 6 people were listed for the Austrian delegation to UNCLOS. Cf. S-0571-0013.

resumed seventh session in New York, with the government sending only Karl Wolf and two advisers. Mann Borgese was not listed in the document.¹¹³⁴

It is hard to know for sure why the Austrian government had cut down its number of delegates. It may simply have been a cost-cutting measure to avoid flying in delegates from all over the world to a United Nations gathering in New York that seemed unlikely to hold any potential benefit for Austria. Whatever the case, it was apparently not Karl Wolf's wish to exclude Mann Borgese from the delegation. In July 1978, he asked her, in confidentiality, to join the session regardless in an attempt to 'To rescue what is left to rescue'.¹¹³⁵

¹¹³⁴ See S-0571-0013. She would be reinstated as adviser in 1979, see UN Doc. A/CONF.62/INF.11, 4, 14 August 1979. And in 1980, see UN Doc. A/CONF.62/INF.13, 3, 20. August 1980.

¹¹³⁵ MS-2-744, Box 87, Folder 4, Wolf to EMB, 6 June 1978. 'Unter diesen Umständen hoffe ich, dass es Ihnen möglich sein wird, an der New Yorker-Tagung teilzunehmen, um zu retten, was noch zu retten ist.'

Chapter 9. To rescue what is left to rescue

A new headquarters in Halifax

While the Austrian ambassador was feeling lonely with his reduced delegation in the resumed seventh session in New York, Elisabeth Mann Borgese was going through some upheavals in her private life. In the autumn of 1978, she left her position as a fellow at the Center for the Study of Democratic Institutions in Santa Barbara. Since the foundation of the International Ocean Institute on Malta, Mann Borgese had used the initials of the institute in most of her UNCLOS correspondence. It is questionable to what extent she was still involved in the day-to-day business at the crumbling centre, taking into account her hectic itinerary and her commitments to the Austrian delegation and Law of the Sea projects. In 1978, however, a fresh home base appeared on the horizon. Her new position would be at Dalhousie University in Halifax, Canada.

During a memorial lecture held in June 2010. The man who employed her, Gilbert Winham, told the story of how Elisabeth Mann Borgese came to Halifax. It began when the university received a letter from Elisabeth Mann Borgese, who Winham, knew ‘not by person but by reputation’.¹¹³⁶ The political science department had been contacting other institutions in the search for a ‘mid-level research-associate’,¹¹³⁷ and they had asked the Center for the Study of Democratic Institutions whether they had anyone suitable. Elisabeth Mann Borgese replied saying that she did not have any candidates to propose, but ‘would we consider her [own] candidacy’?¹¹³⁸

Later, Winham found out that the centre in Santa Barbara was ‘a dying institution’.¹¹³⁹ As with so many accounts featuring Elisabeth Mann Borgese, Winham’s lecture mentioned her eccentric lifestyle. In the case of Dalhousie University, this became apparent more or less as soon as she got the position, when she asked whether the university could help her find a house with space for her famous English setter kennel, which at the time consisted of about

¹¹³⁶ Gilbert Winham, introductory remarks, 2010.

¹¹³⁷ Gilbert Winham, introductory remarks, 2010.

¹¹³⁸ Gilbert Winham, introductory remarks, 2010.

¹¹³⁹ Gilbert Winham, introductory remarks, 2010.

six dogs.¹¹⁴⁰ The university found a house in Sambro Head, a fishing village some miles outside of Halifax, and Mann Borgese was able to move to Canada in autumn 1978.¹¹⁴¹ She would spend the rest of her life and career there.

1978 was also the year in which the first volume of *The Ocean Yearbook* was published. The publication was branded ‘a flagship IOI publication’,¹¹⁴² and was produced out of the International Ocean Institute in Malta. Elisabeth Mann Borgese described the purpose of the yearbook in the preface of the first volume: ‘Besides assembling economic and ecological data related to the exploration and exploitation of the oceans, the Ocean Yearbook attempts to analyse trends and to present them in their interaction.’¹¹⁴³ The first issue was very much concerned with recent UNCLOS issues, and Arvid Pardo contributed to the publication with a commentary of the Informal Composite Negotiating Text (ICNT) that had been developed by the participants at the conference.¹¹⁴⁴

The headquarters of the International Ocean Institute would remain on Malta, and Mann Borgese used it to actively promote her ocean governance ideas, despite her fall-out with the Maltese government. The International Ocean Institute in Malta continued to organise the *Pacem in Maribus* conferences, focusing on relevant topics and issues from UNCLOS. In 1976, for instance, the PIM topic was ‘The Law of the Sea and Latin America’ (Mexico), in 1977 it was ‘The Law of the Sea and the New International and Economic Order’ (Algeria), and in 1978 the topic of the convocation was ‘Africa and the Law of the Sea’ (Cameroon).¹¹⁴⁵

From 1978 onwards, though, Mann Borgese’s home base would be Halifax. Many years later, she was asked how she had decided to end up in Halifax. She answered

¹¹⁴⁰ Cf. Gilbert Winham, introductory remarks, 2010.

¹¹⁴¹ Cf. B-III.17-MANN-144, 09.10.1978.

¹¹⁴² Sunli M. Shastri, ‘Elisabeth Mann Borgese: A Life Dedicated to Pacem in Maribus’, *Ocean Yearbook*, 18 (2004): 81.

¹¹⁴³ Elisabeth Mann Borgese, ‘Man and the Oceans’, *Ocean Yearbook* 1 (1978): 1.

¹¹⁴⁴ See Elisabeth Mann Borgese, et al, eds, *Ocean Yearbook* 1 (1978).

¹¹⁴⁵ See the full list of PIM conference at: International Ocean Institute, *Pacem in Maribus*, <https://www.ioinst.org/about-1/ioi-story/pacem-in-maribus-pim-conferences/>.

pragmatically that she had not made the decision herself, but that it had been chance or fate that had brought her there.¹¹⁴⁶ And she had stayed because she liked it.

There were, perhaps, certain things that made Dalhousie University attractive. The campus was small and the university was relatively unknown, but it had all the facilities a university needed. Maybe she hoped she could create something there that had not been possible in Santa Barbara. Then again, perhaps she was just looking for a job, and the position suited her. In addition, Halifax was largely anglophone, and it was closer to New York and Europe than the west coast of the United States had been. What is more, a position in Canada was Mann Borgese's chance to leave the United States. She had been vocal about her disdain for much of the United States' politics, and was perhaps happy to get away from it.¹¹⁴⁷ While Mann Borgese began to settle into life in Halifax, preparations for the eighth UNCLOS session scheduled for March 1979 were taking shape.

Austria's report on Jens Evensen's intersessional meeting – visions falling apart

From the letters Elisabeth Mann Borgese and Karl Wolf exchanged in the last four years of the conference, we learn that Elisabeth Mann Borgese, though reinstated as adviser for Austria in 1979, was not attending all intersessional meetings.¹¹⁴⁸ Wolf often mentioned the reduced Austrian delegation, but also informed Mann Borgese about important intersessional meetings, in order to invite her.¹¹⁴⁹

Her exact official role in the increasingly pessimistic Austrian delegation during the last four years of the conference is not quite clear and would need some further investigation. She was invited to several intersessional meetings organised by Jens Evensen, though this may have been in a personal capacity.¹¹⁵⁰ In her own Curriculum Vitae from 1982, she continues to list herself as 'Member of Austrian Delegation'.¹¹⁵¹

¹¹⁴⁶ Cf. Elisabeth Mann Borgese and Eberhard Görner, "'Für mich ist Politik, an eine bessere Zukunft zu denken'" - Ein Gespräch', in *Elisabeth Mann Borgese und das Drama der Meere*, exhibition catalogue, eds. Holger Pils and Karolina Kühn (Hamburg: mareverlag, 2012), 226.

¹¹⁴⁷ See Hermann, ed., *Die Meer Frau*, 87. The US was 'on the other side of the political spectra'.

¹¹⁴⁸ EMB back as adviser, see UN Doc. A/CONF.62/INF.11, 4, 14 August 1979.

¹¹⁴⁹ MS-2-744, Box 114, Folder 7, Wolf to EMB, 16 January 1979.

¹¹⁵⁰ MS-2-744, Box 114, Folder 7, Wolf to EMB, 16 January 1979.

¹¹⁵¹ MS-2-744, Box 16, Folder 19, EMB CV.

Why she had not had this position in 1979 is unclear. Perhaps, while the delegation was reduced on paper in 1978, Mann Borgese was still a member in practice and continued her work for Austria until she was reinstated officially in 1979. The fact that she was very active during the last years of the conference support this view.¹¹⁵² The letters that passed between Wolf and Mann Borgese during this period show that she was well informed about UNCLOS, and that she attended meetings and wrote reports. Clearly, she was able to attend the ‘back-room meetings’ in which a lot of the decision-making happened. Her detailed overviews, reviews and reports on several core issues of the negotiations are testament to her detailed knowledge on the matters in question.¹¹⁵³

Meanwhile, Austria’s pessimistic attitude became increasingly pronounced. In January 1979, Wolf wrote a letter to Mann Borgese from Oslo, in which he voiced his concerns about Austria’s further participation in UNCLOS, recounting that ‘The mood in Vienna is still not the best.’¹¹⁵⁴ It seemed that several other states in the Landlocked and Geographically Disadvantaged Group were beginning to retreat too. Even on a personal level, Karl Wolf admitted that he was starting to doubt whether the outcome of the convention could be favourable for states without a coastline.¹¹⁵⁵

By the end of 1979, the conference was facing the same fundamental problems as in 1977 and 1978.¹¹⁵⁶ The whole issue could be boiled down to the conflict between developing and developed countries. Karl Wolf forwarded a report about an ‘intersessional meeting’¹¹⁵⁷ in Geneva, in which this interpretation was reflected in a summary of outstanding issues by Jens Evensen.

¹¹⁵² She would be a member of the Prep Com Seabed Authority with Austria from 1982 onwards, see MS-2-744, Box 16, Folder 19, EMB CV.

¹¹⁵³ We will come back to various proposals in this chapter.

¹¹⁵⁴ MS-2-744, Box 114, Folder 7, Wolf to EMB, 16 January 1979. ‘Die Stimmung in Wien für die Seerechtskonferenz ist nach wie vor nicht die beste.’

¹¹⁵⁵ MS-2-744, Box 114, Folder 7, Wolf to EMB, 16 January 1979. ‘Man ist auch in Wien mehr und mehr der Ansicht, dass für uns, also die LL-GDS überhaupt nichts herauszuschauen wird und es fällt mir selbst immer schwerer, nicht dieser Auffassung zu sein.’

¹¹⁵⁶ See Sanger, *Ordering the Oceans*, 45-46.

¹¹⁵⁷ MS-2-744, Box 114, Folder 7, Wolf to EMB, 12 December 1979. ‘3. UN-Seerechtskonferenz: Bericht über das Interessionelle Meeting über die Schlussklauseln (Genf, 19.-28. November 1979) vom 31. Oktober 1979.’

The report outlined the difficulties in coming to an agreement, despite the ‘factual atmosphere’¹¹⁵⁸ and the ‘obviously maximal will’¹¹⁵⁹ to reach agreement. This desire for final resolution is hardly surprising, since after so many years, most delegates must have been keen to see an end to the convention. The biggest issue remained the divide between the developing and industrial states, especially the USA.¹¹⁶⁰ The developing countries were still eager to create a strong International Seabed Authority that they could influence,¹¹⁶¹ while the US was clear that Congress would never ratify such a system.¹¹⁶²

At least the intersessional meeting succeeded in illuminating some crucial points of discussion: There was disagreement over how far amendments could or should be made to the convention – meaning whether it should be permissible to change parts of the Law of the Sea after it came into force, or whether the treaty should be treated like constitutional law that could not be amended.¹¹⁶³

Directly related to the issue of potential amendments was the worry from developing countries that the main Law of the Sea Treaty might be detached from the disputed Part XI dealing with seafloor issues. This would make the International Seabed Authority ineffective, and would render redundant the whole idea of reserving the seafloor for the common heritage of mankind, since the industrial countries could then pick and choose which paragraphs they wanted to obey.¹¹⁶⁴ Another issue was the fear that some industrial countries would reject the

¹¹⁵⁸ MS-2-744, Box 114, Folder 7, Wolf to EMB, 12 December 1979.

¹¹⁵⁹ MS-2-744, Box 114, Folder 7, Wolf to EMB, 12 December 1979.

¹¹⁶⁰ MS-2-744, Box 114, Folder 7, Wolf to EMB, 12 December 1979. ‘Trotz des sehr sachlichen Klimas und des offensichtlichen maximalen Bemühens der Teilnehmer, zu Ergebnissen zu kommen, liess sich doch nicht verbergen, welche grundsätzlichen Schwierigkeiten noch vor allem zwischen den Entwicklungsländern und den Industriestaaten und hier vor allem den USA bestehen.’

¹¹⁶¹ MS-2-744, Box 114, Folder 7, Wolf to EMB, 12 December 1979. ‘[...] bemüht, ein System der International Seabed Authority zu erreichen, welches aufgrund der Mehrheitsverhältnisse in den Vereinten Nationen dann von ihnen gehandhabt werden kann [...].’

¹¹⁶² MS-2-744, Box 114, Folder 7, Wolf to EMB, 12 December 1979. ‘[...] die USA betont nach wie vor, dass ein so organisiertes System nicht die leiseste Chance habe, vom Kongress ratifiziert zu werden.’

¹¹⁶³ MS-2-744, Box 114, Folder 7, Wolf to EMB, 12 December 1979. Points of discussions were: ‘„Amendment (Art. B)”, “Zusätzlich zur Revisionskonferenz nach 20 oder 25 Jahren, möchten die Entwicklungsländer eine Möglichkeit schaffen, ihre diesbezüglichen Wünsche schon vorher durch amendments durchsetzen zu können.’

¹¹⁶⁴ MS-2-744, Box 114, Folder 7, Wolf to EMB, 12 December 1979. ‘Relation to Part XI (art. D) In der Debatte zu diesem Punkt zeigt sich das unterschwellige Befürchten der Entwicklungsländer, es könne zu einer Trennung zwischen der Kovention und ihres Teiles XI (International Seabed Authority) kommen.’

convention.¹¹⁶⁵ At least one issue was agreed upon: the convention would be put into force if at least 60 states ratified it.¹¹⁶⁶

The intersessional meeting in autumn 1979 reflected the overarching mood at the conference. Although there was a strong will among the delegates to finalise the convention, certain issues were proving difficult to agree on, and the United States delegation was particularly stubborn in its demands about how the International Seabed Authority would function. These were the issues that burdened the negotiation process.

That the report was sent to Elisabeth Mann Borgese is an indication of how heavily she was still involved in the discussion and negotiations at UNCLOS, despite her move to Halifax and several new commitments. She had to get used to a new work environment, teach courses and carve out a position for herself in the department. By the time she had been in her position in Halifax a year, she had already managed to establish a branch of the International Ocean Institute at Dalhousie University,¹¹⁶⁷ and had also started to develop and organise an ‘International Ocean Institute Training Programme for Third World Participants’.¹¹⁶⁸

In January 1980, Mann Borgese replied to Wolf’s report about the intersessional meeting. She wrote that she had heard about a ‘Russian proposal’¹¹⁶⁹ to make ‘accession to Part XI optional’,¹¹⁷⁰ which she found ‘somewhat alarming’.¹¹⁷¹ Taken as a whole, her letter reflected Wolf’s earlier pessimism. She even wrote that she had no hope there would be any progress made at the next meeting – which was scheduled for March and April of 1980 – especially when she considered what she called the ‘devastating’¹¹⁷² state of the world.

¹¹⁶⁵ MS-2-744, Box 114, Folder 7, Wolf to EMB, 12 December 1979. ‘Denunciation (Art. G) [...] Die Hauptsorge ist offenbar, dass ein grosser Industriestaat die Konvention aufkündigt und dann unilateral an die Ausbeutung des Meeresbodens schreitet. Nach Darstellung des US-Vertreters ist jedoch eine relativ einfache Aufkündigung Grundlage für die Ratifikation des Vertragswerkes durch den Kongress.’

¹¹⁶⁶ MS-2-744, Box 114, Folder 7, Wolf to EMB, 12 December 1979. ‘Inkrafttreten der Konvention (Art. 301 des ICNT) 60 Ratifikationen.’

¹¹⁶⁷ Cf. Shastri, ‘Elisabeth Mann Borgese’, 81.

¹¹⁶⁸ MS-2-744, Box 16, Folder 19, EMB CV.

¹¹⁶⁹ MS-2-744, Box 114, Folder 7, EMB to Wolf, 15 January 1980.

¹¹⁷⁰ MS-2-744, Box 114, Folder 7, EMB to Wolf, 15 January 1980.

¹¹⁷¹ MS-2-744, Box 114, Folder 7, EMB to Wolf, 15 January 1980.

¹¹⁷² MS-2-744, Box 114, Folder 7, EMB to Wolf, 15 January 1980. ‘Nun bin ich wieder zuhause in Halifax, und find hier Deinen hoch interessanten Bericht. Ich hatte schon von einem Russischen Vorschlag, accession

The state of the world was that Soviet Russia had invaded Afghanistan in December 1979, and antagonism between the United States and the Soviet Union was heating up.¹¹⁷³ Although Elisabeth Mann Borgese did not mention the conflict directly, this must have been the ‘devastating’ world situation she referred to in her letter. It was not unthinkable that the deteriorating international relations between the two superpowers would threaten the progress of the convention.

Wolf replied in January 1980, confirming Mann Borgese’s worries. He wrote that, ‘The proceeding of the Law of the Sea Conference and how it will be influenced in a negative way by the currently prevailing frosty climate is a completely open question.’¹¹⁷⁴

Losing the president of the Law of the Sea Convention causes a crisis

Over the course of 1980–1981, several incidents would prove Elisabeth Mann Borgese and Karl Wolf correct in their concerns about the progress of the Law of the Sea Convention. The reasons, however, were rather more complex than the Soviet-US conflict and the deteriorating political world situation that surrounded it.

First of all, though, came a breakthrough and some optimistic developments that were in stark contrast to Mann Borgese and Wolf’s dire predictions. By 1980, the delegates had managed to move past the informal negotiation text and to agree on a so called ‘draft convention’.¹¹⁷⁵ This breakthrough occurred in the ninth session of UNCLOS in 1980,¹¹⁷⁶ and it left the delegates hopeful for the future. It seemed like the end of the interminable discussions might just be within reach. In a review of the draft convention,¹¹⁷⁷ Mann Borgese

to Part XI optional zu machen, gehört, und das ist natürlich einigermaßen besorgniserregend. Im übrigen ist die Weltlage nun dermaßen verheerend, dass man sich kaum vorstellen kann, dass irgendwelche Fortschritte gemacht werden können, auf unserer nächsten Sitzung.’

¹¹⁷⁴ MS-2-744, Box 114, Folder 7, Wolf to EMB, 25 January 1980. ‘Wie es mit unserer Seerechtskonferenz weitergehen wird und inwieweit sie durch das derzeit herrschende frostige Klima im negative Sinn beeinflusst werden wird, ist eine vollkommen offene Frage.’

¹¹⁷⁵ Sanger, *Ordering the Oceans*, 48.

¹¹⁷⁶ Sanger, *Ordering the Oceans*, 48.

¹¹⁷⁷ See MS-2-744, Box 176, Folder 13, EMB, The Draft Convention on the Law of the Sea: An Appeal for action now. Harrison about the draft convention, see Harrison, *Making the Law*, 46.

‘At the close of the ninth session in 1980, the title of the document was changed to “draft convention,” although its status as a negotiating text remained unaffected until its final adoption in 1982.’

wrote: '[...] the world wide optimism at the end of the Ninth Session appeared justified. All major issues that had defied the skills and will of the diplomats for years, had been solved.'¹¹⁷⁸ Sanger wrote about the outcome of the ninth session that:

[...] it was still a negotiating text, and the hope was to turn it into an official draft in time for adoption by consensus, if possible rather than by vote – 1981. In fact, delegations had unanimously agreed in Geneva in August 1980 that, after nearly seven years of negotiations, they would make the New York meeting in March-April the last negotiating round.¹¹⁷⁹

The New York meeting in March–April 1981 would be the tenth session. But before the new year rolled around, there was a tragic development that threatened to destabilise the optimistically scheduled 'last' negotiation round.

On 4 December, Wolf wrote to Mann Borgese bearing sad news. Her well-liked, universally popular ally and the president of the convention, Shirley H Amerasinghe, had suffered a stroke and died.¹¹⁸⁰ This sudden death of a friend and ally was not just a shock for the two members of the Austrian delegation on a personal level, but the tragedy also confronted the delegates with a new issue: who would lead the tenth session? Wolf proposed discussing this in an intersessional meeting.¹¹⁸¹ He was concerned that Amerasinghe's death could delay – or even prevent – the convention from reaching the finish line. Elisabeth Mann Borgese replied to Wolf's letter on 26 December 1980:

This was a bad shock. Poor Shirley. In Vienna he was still so funny and literally sang and danced. He was an old good faithful friend. Anyone who does not want the convention to be finished will seize the opportunity to take advantage of this tragedy.¹¹⁸²

She then quickly moved on to damage limitation. To be able to finalise the convention, a replacement for the lost president had to be found, and fast. Mann Borgese outlined two available options: Either they could elect a new president or they could appoint the current

¹¹⁷⁸ MS-2-744, Box 176, Folder 13, EMB, The Draft Convention on the Law of the Sea: An Appeal for action now. Concerning the remaining issues, *see* '[...] the question of the delimitation between States with adjacent or opposite coasts and the settlement of dispute thereon; an American proposal for a provision regarding preparatory investment protection; and details concerning the preparatory Commission.'

¹¹⁷⁹ Sanger, *Ordering the Oceans*, 48.

¹¹⁸⁰ Cf. MS-2-744, Box 114, Folder 8, Wolf to EMB, 4 December 1980.

¹¹⁸¹ Cf. MS-2-744, Box 114, Folder 8, Wolf to EMB, 4 December 1980.

¹¹⁸² MS-2-744, Box 114, Folder 8, EMB to Wolf, 26 December 1980. 'Das war ein arger Schock, mit dem armen Shirley. In Wien war er noch so lustig und hat, buchstäblich gesunden und getanzt. Er war auch ein alter guter treuer Freund. Wer nun nicht will, dass die Convention fertig wird, wird diese tragische Gelegenheit schön ausnutzen.'

vice-president. Mann Borgese favoured the ‘vice-president solution’,¹¹⁸³ because it would avoid wasting time on the procedures necessary to elect a new president.¹¹⁸⁴ The disadvantage would be that there would be no leader in ‘difficult moments’.¹¹⁸⁵

According to Elisabeth Mann Borgese, the two candidates who came to mind for the new president role were Tommy Koh of Singapore and Chris Pinto of Sri Lanka. Mann Borgese weighed up the advantages and disadvantages of Koh and concluded: ‘Tommy has gained great prestige through his excellent work and has the trust of the US. Singapore is not popular with the 77.’¹¹⁸⁶ As it turned out, the delegates at the convention decided that the deceased president should be replaced by a new candidate, and Tommy Koh from Singapore was picked for the job.¹¹⁸⁷

Appointing a new president so late in the convention was a challenge for the president himself, but it also caused some more general changes. The delegate who would take over Amerasinghe’s position was different in both character and diplomatic style. Clyde Sanger compared Tommy Koh’s presidential style at the convention to that of Amerasinghe, noting that Koh was ‘[...] of a quite different temperament, eager to master the detailed subject and quick to plunge into issues with articulate argument.’¹¹⁸⁸

Tommy Koh stepped up to become president at a difficult moment. He was soon faced with trying to sort out a dramatic US withdrawal, alongside finding compromises to resolve the outstanding seabed issues. For the few remaining years of the convention, it was Koh’s job to reconcile the differing opinions and find practical solutions that were acceptable for every delegation, in the face of dwindling time and motivation.

¹¹⁸³ MS-2-744, Box 114, Folder 8, EMB to Wolf, 26 December 1980. ‘Die Vice-President Lösung hätte den Vorteil von weniger Prozedur-Quälerei und Zeitverlust.’

¹¹⁸⁴ MS-2-744, Box 114, Folder 8, EMB to Wolf, 26 December 1980.

¹¹⁸⁵ MS-2-744, Box 114, Folder 8, EMB to Wolf, 26 December 1980. ‘[...] und den Nachteil, dass in schwierigen Momenten, die sicherlich bevorstehen, keine Führung da ist.’

¹¹⁸⁶ MS-2-744, Box 114, Folder 8, EMB to Wolf, 26 December 1980. ‘Tommy hat sich durch seine ausgezeichnete Arbeit grosses Prestige erworben, und hat das Vertrauen der US. Singapore ist aber bei den 77 nicht beliebt.’

¹¹⁸⁷ Cf. Sanger, *Ordering the Oceans*, 42. See also Sebenius and Green, *Tommy Koh*.

¹¹⁸⁸ Cf. Sanger, *Ordering the Oceans*, 42.

United States retreat stalls the negotiations

This was not the only change in presidency to put a strain on the conference. Shortly after the delegates had settled down to continue the negotiations, Ronald Reagan was elected as the next president of the United States. With his election in 1981, the attitude of the US regarding the Law of the Sea Treaty changed for the worse.¹¹⁸⁹

Among the vast heaps of Elisabeth Mann Borgese's documents at the Dalhousie University Archives, there is a little collage that perfectly represents Mann Borgese's attitude towards the Reagan administration. In a folder labelled 'Arvid Pardo',¹¹⁹⁰ three photographs are glued to a yellowed piece of card. On the left hand side are two polaroid pictures of Arvid Pardo. From the collection of books in the background, he is perhaps in a library or study of some sort. He looks friendly behind his enormous black-framed glasses, with his hands in his pockets and his tie loose around his neck. On the right hand side of the card, there is a picture of Ronald Reagan saluting in an open airplane door. Above the pictures, an anonymous hand has written in crooked letters: 'Who would you trust with the future??'¹¹⁹¹

Perhaps the collage was an inside joke, made by one of Mann Borgese's students on an ocean governance course and stuck on a wall somewhere. Whatever its origins, it is a neat illustration of how Mann Borgese and probably other participants at the conference saw Reagan as a disruptive force. Instead of holding a steady course – like Arvid Pardo, who remained true to his common heritage principles – Reagan radically changed the tack of US policy. He swapped out his whole delegation and took a policy line that was almost hostile towards everything the convention had achieved. By openly questioning the whole endeavour, Reagan was taking the 'hard-line posture' that the *Washington Post* journalist, Claiborne, had reported on in 1978.¹¹⁹²

¹¹⁸⁹ For US problematique, see Ratiner, 'American Rigidity', 27.

¹¹⁹⁰ MS-2-744, Box 235, Folder 4, Which man do you trust with the future?

¹¹⁹¹ MS-2-744, Box 235, Folder 4, Which man do you trust with the future?

¹¹⁹² See Sanger, *Ordering the Oceans*, 49: 'As a result of the virtual withdrawal of the United States, negotiations at UNCLOS-3 during 1981.' EMB said in her appeal that the US left the convention, see MS-2-744, Box 176, Folder 13, EMB, The Draft Convention on the Law of the Sea: An Appeal for action now.

In 1980, the former leader of the delegation for the US, Elliot Richardson,¹¹⁹³ had announced that, as far as the US was concerned, there were just three points of contention left:

[...] participating in the treaty by entities that were not sovereign states (including regional organizations, like the EEC, and liberation movements); the power of the Preparatory Commission in writing the rules and regulations for the Seabed Authority; and – a newly raised concern of the United States. ‘preparatory investment protection’ (or PIP) for those private enterprises that had already invested millions in the exploration of manganese nodule deposits [...]¹¹⁹⁴

Fast-forward to 1981, and Malone, the new delegation leader under Reagan, turned the negotiation draft upside down.¹¹⁹⁵ Clyde Sanger reported on the new course of the US during the tenth session:

Malone told the tenth session that the US Government had ‘serious problems’ with the negotiating text and in August, at the ‘resumed tenth session in Geneva, he named eight particular concerns to do with seabed mining but did not mention any other article.¹¹⁹⁶

According to Sanger, Malone’s actions at the tenth session brought the negotiations to a ‘crawl’.¹¹⁹⁷ The US was an essential part of the convention, and without their cooperation, there was a serious risk that the Law of the Sea Treaty would turn into an ineffectual, symbolic international convention on the oceans. Additionally, the US withdrawal in 1981 could ‘inspire’ other industrial states to re-consider their willingness to collaborate. When the US announced that it would not attend any more meetings in 1981, the outcome of the convention was suddenly thrown into doubt.¹¹⁹⁸

Elisabeth Mann Borgese’s appeal to act without the United States

The situation must have inspired Mann Borgese and others to throw themselves into damage limitation efforts. Various reports, appeals and speeches from among Elisabeth Mann Borgese’s papers demonstrate that she had detailed knowledge and insight into the various

¹¹⁹³ Richardson left in October 1980. See Sanger, *Ordering the Oceans*, 49.

¹¹⁹⁴ Sanger, *Ordering the Oceans*, 49.

¹¹⁹⁵ Reagan administration sets up a new delegation to UNCLOS. See Schmidt, *Common Heritage*, 218-219.

¹¹⁹⁶ Sanger, *Ordering the Oceans*, 49.

¹¹⁹⁷ Sanger, *Ordering the Oceans*, 49.

¹¹⁹⁸ See MS-2-744, Box 176, Folder 13, EMB, The Draft Convention on the Law of the Sea: An Appeal for action now.

ongoing conflicts at UNCLOS, both small and large, and this was especially true of the tenth session in 1981, at which the US under Reagan and Malone announced they would have to review the draft treaty.

Elisabeth Mann Borgese addressed this issue in a document with the title 'The Draft Convention on the Law of the Sea – An Appeal for Action Now'.¹¹⁹⁹ The date of the document is uncertain, but since it addresses the incidents at the tenth session in April 1981, we can assume it must have been written sometime after that. Unfortunately, we also do not know where or even if it was published, making it difficult to gauge her influence through this kind of document. Nevertheless, the document gives us valuable insights into Mann Borgese's view on the crisis with the US and her ideas on how to overcome the issues and proceed with the negotiations.

Mann Borgese started her appeal for action by saying that the conference's tenth session had 'marked a most regrettable set-back'¹²⁰⁰ because it had been 'paralysed by the U.S. announcement that the Reagan Administration was undertaking an extensive, comprehensive review of the Draft Convention and would not be in a position to negotiate this year.'¹²⁰¹ She then reported on the four different options that the new president of UNCLOS, Tommy Koh, had presented on how the conference might unfold in the light of the United States' withdrawal.

Case one: the US would change their mind and return to the bargaining table speedily. The convention might then be able to close in 1981. Case two: the US would ask for changes that were insignificant enough to be incorporated into the convention without major negotiation. In this case too, finalising things in 1981 would still be possible. Case three: the US would demand extensive changes, which would delay the negotiations significantly and make it impossible to see an end to the convention in the upcoming years. And the fourth and

¹¹⁹⁹ MS-2-744, Box 176, Folder 13, EMB, The Draft Convention on the Law of the Sea: An Appeal for action now.

¹²⁰⁰ MS-2-744, Box 176, Folder 13, EMB, The Draft Convention on the Law of the Sea: An Appeal for action now.

¹²⁰¹ MS-2-744, Box 176, Folder 13, EMB, The Draft Convention on the Law of the Sea: An Appeal for action now.

last case: the US would decide to refuse the treaty, meaning that the remaining countries would have to try and finish the treaty without the US.¹²⁰²

These, then, were the possible scenarios for the future. Mann Borgese feared that the US would chose the third option, and would demand major changes to the convention, especially the seabed mining sections in Part XI. She worried that US would exert serious influence on the fate of the convention, because their eventual participation in the treaty was of major importance for many states. Therefore, the US was effectively in a position from which it could demand such sweeping changes to the paragraphs on seabed mining that the common heritage principle could end up being practically removed.¹²⁰³

Mann Borgese's outlook for the future was bleak. She predicted that '[...] unless the Convention is adopted this year it will not be adopted at all.'¹²⁰⁴ In her view, any re-negotiation of basic issues of the convention would 'break up the Conference'.¹²⁰⁵

To prevent this from happening, she proposed to resort to voting for the adoption of the convention, instead of seeking consensus.¹²⁰⁶ As we might recall, this was a last-resort option, and only the president of the convention could approve it. It was also a favourable option for those who found themselves in diplomatically difficult positions, but who would outnumber rival industrial states in certain cases.

The danger with this strategy would be the effect it might have on those who lost out in the voting, and whether they would end up adopting the convention. In essence, to introduce voting was to risk losing the support of important industrial states, and the consensus model had been followed precisely to prevent this from happening. Why would Mann Borgese want to re-consider voting at this stage?

¹²⁰² MS-2-744, Box 176, Folder 13, EMB, The Draft Convention on the Law of the Sea: An Appeal for action now.

¹²⁰³ Cf. MS-2-744, Box 176, Folder 13, EMB, The Draft Convention on the Law of the Sea: An Appeal for action now.

¹²⁰⁴ MS-2-744, Box 176, Folder 13, EMB, The Draft Convention on the Law of the Sea: An Appeal for action now.

¹²⁰⁵ MS-2-744, Box 176, Folder 13, EMB, The Draft Convention on the Law of the Sea: An Appeal for action now.

¹²⁰⁶ Cf. MS-2-744, Box 176, Folder 13, EMB, The Draft Convention on the Law of the Sea: An Appeal for action now.

Naturally, Elisabeth Mann Borgese had thought of this too. In her appeal to action, she argued as to why voting might be a decent last resort solution, even though ‘the losses, already now, would be heavy’.¹²⁰⁷ The losses would be the US, Japan and many of the European states. Mann Borgese still hoped that pushing through the adoption without the US could put pressure on it – given that the US was still, in principle, interested in a functioning Law of the Sea. If enough other states were to demonstrate that they would see the convention through with or without the US, Mann Borgese even saw the possibility that the US might return to the negotiating table, since: ‘The strong posture adopted now pays only so long as it appears to reach results.’¹²⁰⁸

Apparently, Tommy Koh’s assessment of the situation was not so different from Mann Borgese’s. According to her, he had said that he was willing to go through with the convention in the absence of the US, but the difference between their two proposed approaches was in the timing. Koh wanted to wait and see whether the US would return to the bargaining table, and what kind of demands they might bring with them. Mann Borgese, on the other hand, urged that time was short and they had to act. Therefore, the ‘appeal [was] to act now’.¹²⁰⁹

‘Acting now’, in Elisabeth Mann Borgese’s plan, would mean voting to adopt the Draft Convention that had been revised in the 9th session the year before and that had fuelled so many hopes. Mann Borgese was positive that ‘all socialist states and China’,¹²¹⁰ along with a reasonable proportion of the Group of 77, would vote for the treaty.¹²¹¹

For this to happen, Mann Borgese pointed out three crucial things that had to be in place prior to the voting. In essence, it was important to ensure that Part XI would not be abolished or damaged by renegotiations and amendments. Mann Borgese suggested that,

¹²⁰⁷ MS-2-744, Box 176, Folder 13, EMB, The Draft Convention on the Law of the Sea: An Appeal for action now.

¹²⁰⁸ MS-2-744, Box 176, Folder 13, EMB, The Draft Convention on the Law of the Sea: An Appeal for action now.

¹²⁰⁹ Cf. MS-2-744, Box 176, Folder 13, EMB, The Draft Convention on the Law of the Sea: An Appeal for action now.

¹²¹⁰ Cf. MS-2-744, Box 176, Folder 13, EMB, The Draft Convention on the Law of the Sea: An Appeal for action now.

¹²¹¹ Cf. MS-2-744, Box 176, Folder 13, EMB, The Draft Convention on the Law of the Sea: An Appeal for action now.

first, a ‘Preparatory Commission’ would have to be established, which would be responsible for shaping and organising ‘The Authority’ after the Treaty was adopted.¹²¹²

Mann Borgese argued that such a commission was essential, otherwise the International Seabed Authority would turn into an ethereal institution that only existed on paper.¹²¹³ Mann Borgese explained this as such:

To be functional, the Authority has to adjust its activities to the reality that is emerging in the 80s, which is very different from the perceptions of the 70s. This can be done without changing the Convention. The Preparatory Commission is the body most suited to this task.¹²¹⁴

This led to the second point she found necessary to agree on prior to voting: that no amendments should be allowed to the convention once it was adopted.¹²¹⁵ This would prevent opening up new discussions around core issues that had been agreed upon in laborious discussion over the course of many years.

We have to remember that during the negotiations, participants had worried several times that re-opening issues could cause a kind of chain reaction of new negotiations that would open up all kinds of old conflicts and feuds. If amending the convention was forbidden, then they could avoid re-opening ‘Pandora’s box’ or – to return to an old metaphor – destroying the jigsaw puzzle. The US’s announcement that they wanted to review several parts concerning the seabed had already proven that re-opening issues could be a serious threat to the eventual goal of finalising the convention.

Third, since changes over time were unavoidable, Mann Borgese proposed that there should be a ‘Review Conference’¹²¹⁶ five or ten years after the convention was adopted, to discuss disputed articles.¹²¹⁷ Elisabeth Mann Borgese closed her appeal for action by stating

¹²¹² Cf. MS-2-744, Box 176, Folder 13, EMB, The Draft Convention on the Law of the Sea: An Appeal for action now.

¹²¹³ Cf. MS-2-744, Box 176, Folder 13, EMB, The Draft Convention on the Law of the Sea: An Appeal for action now.

¹²¹⁴ MS-2-744, Box 176, Folder 13, EMB, The Draft Convention on the Law of the Sea: An Appeal for action now.

¹²¹⁵ Cf. MS-2-744, Box 176, Folder 13, EMB, The Draft Convention on the Law of the Sea: An Appeal for action now.

¹²¹⁶ MS-2-744, Box 176, Folder 13, EMB, The Draft Convention on the Law of the Sea: An Appeal for action now.

¹²¹⁷ Cf. MS-2-744, Box 176, Folder 13, EMB, The Draft Convention on the Law of the Sea: An Appeal for action now.

that: ‘If we force action now, we may, or we may not, succeed. If we accept US pressure for stalling, the cause is lost. We may get a Convention now. We certainly will not get one in 1982 or later.’¹²¹⁸

Apparently, Mann Borgese was in favour of passing the Draft Negotiation Treaty without the US, rather than risking serious changes to it. What made this version of the draft treaty so important to Elisabeth Mann Borgese and her allies that they would risk pushing it through it without the US’s support?

Why the rush to finalise the convention in 1980?

There are two possible interpretations of Elisabeth Mann Borgese’s appeal to save the treaty through immediate and drastic action. The first one is the explanation she herself laid out in the ‘appeal to act now’. Namely, that there would either be a treaty passed through by voting – without the US – or there would be no treaty at all. If we take this to be the genuine reason, then the motivation was that of necessity. It was an all-or-nothing approach, in which Mann Borgese was willing to face whatever losses needed to be incurred to rescue what was left.

However, another interpretation is possible. Namely, that the draft treaty that was agreed upon in 1980 favoured Mann Borgese’s aims for Part XI. It contained provisions for a reasonably strong and flexible International Seabed Authority, it was set up to prevent amendments (and thereby preserve the common heritage principle), and it involved the establishment of a preparatory commission (prep com)¹²¹⁹ that would be responsible for breathing life into the International Seabed Authority after the treaty was finished.

The folder with the ‘Appeal to Act Now’ contains another document: ‘The Draft Convention by Elisabeth Mann Borgese’.¹²²⁰ Perhaps this document was presented together with ‘the appeal to act now’, since it discusses the draft convention in the light of the ‘failed’ tenth session. In the document, we learn what Mann Borgese thought of the 1980 draft treaty.

¹²¹⁸ MS-2-744, Box 176, Folder 13, EMB, The Draft Convention on the Law of the Sea: An Appeal for action now.

¹²¹⁹ MS-2-744, Box 176, Folder 13, EMB, The Draft Convention on the Law of the Sea: An Appeal for action now.

¹²²⁰ MS-2-744, Box 176, Folder 13, The Draft Convention by Elisabeth Mann Borgese.

It quickly becomes clear that Elisabeth Mann Borgese was content with many of the compromises that had been reached on some of Part XI's core problems during the eighth and ninth sessions. The issue of voting in the council of the International Seabed Authority had been resolved, and this particular dispute had been a reflection of the problems in the conference at large, since how the authority council was organised presented yet another potential power struggle. The delegates had also deliberated for a long time about how much power the International Seabed Authority should get, and in the draft treaty from 1980, its council was to have substantial decision-making powers.¹²²¹

Mann Borgese was also content with the decision that amendments to Part XI would 'require consensus'¹²²² and that there could be 'no amendments to the basic principle relating to the Common Heritage of Mankind'.¹²²³ Finally, she praised the 'Preamble to the Convention', that had been written by the late president Amerasinghe. She explained that the preamble

[...] sets the new Law of the Sea into its full historic context. [...] It recognizes the unity of ocean space; it highlights the importance of U.N. Resolution 2749 (XXV) which declares the seabed and its resources to be a Common Heritage of Mankind; and it inserts the making of the new Law of the Sea into the broader U.N. effort to create a more equitable international economic order.¹²²⁴

All in all, Mann Borgese expressed hope that the convention, with the 1980s draft intact, could be finalised without the US and still be effective. Her hope was that enough states would ratify it that they would eventually pressure hesitant industrial countries into becoming treaty parties. Apparently, Mann Borgese was more willing to accept a possibly ineffective treaty with Part XI intact, than an effective treaty with a non-existent Part XI.

Although the draft convention in many ways carried through the ideas that the Austrian delegation, together with many of the landlocked and geographically disadvantaged states, had fought for, Karl Wolf did not share Mann Borgese's cautious optimism. He wrote

¹²²¹ See MS-2-744, Box 176, Folder 13, The Draft Convention by Elisabeth Mann Borgese.

¹²²² MS MS-2-744, Box 176, Folder 13, The Draft Convention by Elisabeth Mann Borgese.

¹²²³ MS MS-2-744, Box 176, Folder 13, The Draft Convention by Elisabeth Mann Borgese. 'As set forth in article 136.'

¹²²⁴ MS MS-2-744, Box 176, Folder 13, The Draft Convention by Elisabeth Mann Borgese.

in a letter to her in July 1981: ‘Unfortunately, I do not share your hope that single states could decide to finalize the convention without the US.’¹²²⁵

He pointed out several reasons for his pessimism to Mann Borgese. For instance, even though the Norwegians were obviously interested in finalising the convention due to their ‘enormous gains’,¹²²⁶ they would ‘be wary of’¹²²⁷ pushing through the convention unilaterally.¹²²⁸ Wolf based his gloomy outlook not only on the difficult negotiation situation caused by the US, but also on general developments in the world.

For even if we had concluded the convention, nothing would have happened for years, since the economic world situation does not require marine mining, because the raw materials are cheaper on land and initially for the next decades the 200 miles zone and then the Continental shelf share of the individual coastal states will be sufficient. No one needs the area.¹²²⁹

The last sentence is a harsh statement. The original term he used in German is even harsher: ‘Kein Mensch, braucht die Area’, which means that no human being needs the Area. This is interesting in that Part XI was the part of the Law of the Sea that Elisabeth Mann Borgese and Wolf had shaped in the course of their work for Austrian delegation. Why was Wolf being so negative about the situation? Why would he dismiss a part of the treaty – concerned with the seabed outside national jurisdiction– that had essentially been the whole reason the Austrian delegation had been interested in negotiations on ocean governance in the first place?

In many ways, Wolf’s statement is self-explanatory. The parameters of the world situation had changed. The confident predictions of rapidly advancing technology that could bring the harvesting of deep sea minerals within reach had proved overly optimistic. This

¹²²⁵ MS-2-744, Box 87, Folder 4, MS 87-4 Wolf to EMB, 4 July 1981. ‘Deine Hoffnungen, dass die einzelnen Länder sich auch ohne die USA entschliessen könnten, die Konvention abzuschliessen und dann auch zu signieren, teile ich leider nicht.’

¹²²⁶ MS-2-744, Box 87, Folder 4, MS 87-4 Wolf to EMB, 4 July 1981. ‘enormen Gewinne.’

¹²²⁷ MS-2-744, Box 87, Folder 4, MS 87-4 Wolf to EMB, 4 July 1981. ‘sich hüten.’

¹²²⁸ Cf. MS-2-744, Box 87, Folder 4, MS 87-4 Wolf to EMB, 4 July 1981. ‘So gerne beispielsweise die Norweger die Konvention hätten, um ihre enormen Gewinne auch in einem internationalen Papier festzuschreiben, so sehr werden sie sich hüten es im Alleingang zu versuche.’

¹²²⁹ MS-2-744, Box 87, Folder 4, MS 87-4 Wolf to EMB, 4 July 1981. ‘Denn auch wenn wir die Konvention abgeschlossen hätten, wäre ja zunächst auf Jahre hinaus überhaupt nichts passiert, da die ökonomische Weltlage keinen Meeresbergbau benötigt, da die Rohstoffe an Land gefördert billiger kommen und zunächst ja auf die nächsten Jahrzehnte die 200 Meilen Zone und dann noch der Kontinentalsockelanteil der einzelnen Küstenstaaten vollkommen ausreichen wird. Kein Mensch braucht die Area.’

meant the anticipated ‘race to the seafloor’, had slowed down to a ‘crawl’, much like the pace of the negotiations.

What had seemed extremely likely in the 60s and 70s, when the core principle of the common heritage had kicked off negotiations, seemed much further off by the start of the 1980s. Instead, other political considerations had gained ground that were much more future-oriented, more capitalist and more market-driven. For instance, the US and other industrial states wanted to make sure that the future regime for the Area would be shaped in a way that allowed them to exploit it without much regard for the principle of common heritage, rather than the way delegates had looked to shape the regime in the 60s and 70s.

Wolf closed his bleak prediction by writing:

And when the Americans come with their change requests, that will be the end. Everyone will then shed crocodile tears, especially the big states of the 77, but secretly they will be very happy that the US pulled these chestnuts out of the fire for them and stained itself with the blame of the whole world.¹²³⁰

The remark that the US would pull chestnuts out of the fire for some states in the Group of 77 was an accurate illustration of how divided the developing countries were over Part XI of the convention. Apparently, by 1981, not all of the Group of 77 were in agreement on Part XI and the common heritage approach. Wolf’s assessment of the situation within the Group of 77 proves that the conflict clearly transcended the north-south axis, and that it had come to revolve mainly around the opposing interests of coastal and landlocked states.

A number of developing states had large coastlines and thus had an inherent interest in an extensive continental shelf. Since any kind of deep sea activity remained far out of reach, for those countries the shallow waters of the continental shelf held much more promise for the accumulation of wealth than some far-off deep seabed that had crippled negotiations and had morphed from being a beacon of hope for under-developed third-world economies to becoming a stumbling block that threatened the very existence of the convention.

¹²³⁰ MS-2-744, Box 87, Folder 4, MS 87-4 Wolf to EMB, 4 July 1981. ‘Und wenn dann die Amerikaner mit ihren Änderungswünschen kommen, wir erst recht alles zu Ende sein. Jeder wird dann Krokodilstränen vergiessen, insbesondere die grossen Staaten der 77, aber insgeheim werden sie sehr froh sein, dass ihnen die USA diese Kastanien aus dem Feure geholt und sich dafür noch mit dem Tadel der ganzen Welt belastet haben.’

There was not much the delegates could do other than to bide their time and see whether the Reagan administration would return to the negotiations. Elisabeth Mann Borgese's plea to go ahead and agree on the Law of the Sea without the US went unheard. Instead, the international community waited for the US to come back with their list of proposed changes.

Moving on in Halifax – The second International Ocean Institute

While things looked grave at the United Nations, at least Elisabeth Mann Borgese's work at the university and with the International Ocean Institute was going well. In November 1981, she wrote a letter to Wolf about her day-to-day life in Halifax. She could report that she had just finished a book on ocean mining,¹²³¹ and that she already had too much 'to be lumbered with'.¹²³² She had 28 students, 'pretty much work',¹²³³ and she had started to be a consultant for the United Nations Industrial Development Organization (UNIDO) and the world bank.¹²³⁴ This last job was 'Mostly to get money for our training programs'.¹²³⁵

The training programmes were courses that Elisabeth Mann Borgese had started holding in 1979. They probably started out as short courses on ocean governance, along with things that were relevant to Mann Borgese's work with the United Nations but that could also be interesting for students in her department. They were organised by the International Ocean Institute, and the courses were most likely held in both Malta and Halifax.¹²³⁶ To finance them, Elisabeth Mann Borgese had to find funding.

She also told Wolf about her plans to turn the International Ocean Institute into a United Nations University Campus so that it would be 'easier financially. If it is at all possible

¹²³¹ Wolfgang Graf Vitzthum, ed., *Die Plünderung der Meere. Ein gemeinsames Erbe wird zerstückelt* (Frankfurt am Main: Fischer Taschenbuch Verlag, 1981).

¹²³² MS-2-744, Box 87, Folder 4, EMB to Wolf, 2 November 1981. 'Nun ist mein ocean mining Buch fertig - und ich hab schon wieder viel zu viel anderes auf dem Hals. Erstens ist es nun wirklich ernst mit der Universität - - ich habe 28 Studenten, mit Doktoranden und Master Thesis Kandidaten: hübsch viel Arbeit. Dazu bin ich jetzt auch noch consultant für UNIDO und für die Weltbank - - alles hauptsächlich, um Geld für unser Training Programme aufzutreiben.'

¹²³³ MS-2-744, Box 87, Folder 4, EMB to Wolf, 2 November 1981.

¹²³⁴ Cf. MS 87-4 MS-2-744, Box 87, Folder 4, EMB to Wolf, 2 November 1981.

¹²³⁵ MS-2-744, Box 87, Folder 4, EMB to Wolf, 2 November 1981.

¹²³⁶ See Chircop, 'Elisabeth Mann Borgese's humanist conception', 216-217.

to make plans in this crazy world.¹²³⁷ Though Mann Borgese seemed somewhat sobered by the developments – or lack of them – in the Law of the Sea negotiations, she was still very much involved.

She told Wolf that she had recently been at a meeting at the International Law Academy in the Hague with people like Yankov, Warrioba, Njenga, Pinto and Arvid Pardo – all key figures in the negotiations and all on the side of the developing countries. She reported that overall one heard a lot of criticism towards the draft convention, but that she ‘came away with the feeling that it must be signed.’¹²³⁸ She did, however, recommend that there should be an overall revision article, since: ‘it makes no sense that only Part XI should be revised, and the rest should last for eternity’.¹²³⁹

She also chimed in on a worry that Wolf had expressed early in 1981, namely that ‘there was a broad consensus that the Seabed Authority would have nothing to do’¹²⁴⁰ because there was little likelihood that seabed mining would be conducted before the turn of the century, and even when it was, it would happen in the exclusive economic zones of coastal states.¹²⁴¹

Despite the unpromising outlook, Mann Borgese was positive that the International Seabed Authority could be saved, since it was an ‘ingenious idea’.¹²⁴² Within the parameters of a revised draft convention, she still saw the chance to ‘rethink its functions’.¹²⁴³ Obviously, Mann Borgese was not going to give up on her vision for the International Seabed Authority,

¹²³⁷ MS-2-744, Box 87, Folder 4, EMB to Wolf, 2 November 1981. ‘Ausserdem werden wir die IOI in einen Campus der United Nations University umwandeln - dann wird auch finanziell alles etwas leichter gehen - - wenn man überhaupt Pläne machen kann, in dieser verrückten Welt.’

¹²³⁸ MS-2-744, Box 87, Folder 4, EMB to Wolf, 2 November 1981. ‘Alles in allem, hört man sehr viel Kritik an der Draft Convention, kam aber trotzdem mit dem Gefühl weg, sie muss unterzeichnet werden. Nur sollte man wirklich einen Revisions Artikel einfügen: es hat keinen Sinn, dass nur Part XI revidiert werden soll, und der Rest soll für die Ewigkeit bestehen.’

¹²³⁹ MS-2-744, Box 87, Folder 4, EMB to Wolf, 2 November 1981.

¹²⁴⁰ MS-2-744, Box 87, Folder 4, EMB to Wolf, 2 November 1981.

¹²⁴¹ Cf. MS-2-744, Box 87, Folder 4, EMB to Wolf, 2 November 1981. ‘[...] auch darüber, dass die Seabed Authority nichts zu tun haben wird, war man sich weitgehend einig: erstens, weil es kein seabed mining geben wird vor Ende des Jahrhunderts, und zweitens, wenn es kommt, kommt es in EEZ’s.’

¹²⁴² MS-2-744, Box 87, Folder 4, EMB to Wolf, 2 November 1981. ‘Da wir sie aber nicht verloren gehen lassen wollen, die Seabed Authority - - es war doch eine geniale Idee - - so müssen wir eben ihre Funktionen umdenken lernen: Das lässt sich machen, im Rahmen der Convention.’

¹²⁴³ MS-2-744, Box 87, Folder 4, EMB to Wolf, 2 November 1981.

although she could tell that the new head of the US delegation, Leigh Ratiner, was ‘up to mischief’.¹²⁴⁴

Elisabeth Mann Borgese predicted that the US would hold off until spring 1982, then they would submit some points of change, ‘pro forma’.¹²⁴⁵ Maybe they would not even do that. Instead, she suspected that the US might prolong its silence so as to sow confusion among the other delegations. Therefore, in her view the main question remained whether the participating states were willing to finalise the treaty without the US or not.¹²⁴⁶

Shedding crocodile tears? – A Law of the Sea without the United States

Eventually, those crocodile tears had to be shed. Contrary to Mann Borgese’s predictions about the US strategy, in January 1982, Reagan returned to the bargaining table with a six-point programme in hand.¹²⁴⁷ Not surprisingly, all six points concerned Part XI of the convention, meaning the seafloor and its resources outside national jurisdiction.

Others have discussed the US policy regarding the Law of the Sea negotiation at length and in detail.¹²⁴⁸ Two things were important for Elisabeth Mann Borgese and the overall outcome of the convention. Firstly, the US claims were concerned with the powers of the International Seabed Authority and especially its council, which would hold the decision-making power. The US wanted this power to be as limited as possible. And secondly, as a consequence of the first point, the US wanted the future seabed mining industry to be restricted by as few rules and regulations made by the council as possible.¹²⁴⁹

¹²⁴⁴ MS-2-744, Box 87, Folder 4, EMB to Wolf, 2 November 1981. ‘Unwesen’.

¹²⁴⁵ MS-2-744, Box 87, Folder 4, EMB to Wolf, 2 November 1981.

¹²⁴⁶ MS-2-744, Box 87, Folder 4, EMB to Wolf, 2 November 1981. ‘Das Pentagon will den Vertrag. Was ich für das Wahrscheinlichste halte ist, dass bis Frühjahr gar nichts geschieht. Dann werden vielleicht, wenn überhaupt, pro forma ein paar Punkte eingereicht, von denen man genau weiss, dass die 77 sie ablehnen. Im übrigen, halte ich es für einen Fehler, solche Punkte einzureichen, da dies die Entschlossenheit der 77, die nicht so sehr stark ist, stärken würde. Viel besser, aus amerikanischer Sicht, weiter zu zaudern und zu zögern, und damit Konfusion anrichten. Wie dem auch sei, die Frage bleibt: werden die anderen Länder nun ohne USA abschliessen.’

¹²⁴⁷ Cf. Sanger, *Ordering the Oceans*, 51. See also MS-2-744, Box 87, Folder 4, Wolf to EMB, 10 February 1982.

¹²⁴⁸ Schmidt, *Common Heritage*; Ratiner, ‘American Rigidity’.

¹²⁴⁹ Sanger, *Ordering the Oceans*, 52.

The head of the US delegation, Leigh Ratiner, handed in these points first in January and again in March as part of a larger document called the ‘Green Book’, and this US strategy caused several delegates to question the United States’ overall aims.¹²⁵⁰ Mann Borgese had predicted that the US would submit claims ‘pro forma’,¹²⁵¹ which implied that she doubted the US’s objections were aimed at actually finding solutions to problems within the draft convention. After perusing the ‘Green Book’, several other delegates uttered similar concerns.

Alvaro de Soto of Peru, who had often led the Group of 77 in negotiations, said that the US opposition ‘was more of an ideological than a practical nature [...] there was no way to make the ends meet – time would not have helped the United States scale down its demands.’¹²⁵²

Sanger also reported assessments from other delegates. The Australian delegate Keith Brennan, noted that,

It’s [sic: the green book] is an intolerably burdensome document’; while on behalf of the Group of 77 Iman Ul Haque of Pakistan declared that the US proposals ‘would set the negotiations back to the early seventies.’¹²⁵³

Despite the negative reception of the ‘Green Book’, several attempts were made to reconcile the US with Part XI by making concessions to some of their claims. A working group called ‘The Good Samaritans’¹²⁵⁴ (the name speaks for itself) was set up. It was officially called the Group of 12, because it consisted of 12 delegation leaders, who worked in a personal capacity for a feasible solution.¹²⁵⁵ The group worked through the six-point criticism from the Reagan administration to see whether concessions could be made, for instance as regarded the power of the council of the International Seabed Authority, or on the question of seabed mining

¹²⁵⁰ Sanger, *Ordering the Oceans*, 52.

¹²⁵¹ MS-2-744, Box 87, Folder 4, EMB to Wolf, 2 November 1981.

¹²⁵² Sanger, *Ordering the Oceans*, 53.

¹²⁵³ Sanger, *Ordering the Oceans*, 52.

¹²⁵⁴ Sanger, *Ordering the Oceans*, 52.

¹²⁵⁵ Cf. Beesley, ‘Negotiating Strategy’, 190: ‘Initially, the Group of 12 consisted of heads of delegations acting in their purely personal capacity. We were all interested in the Convention. We had put a lot into it. [...] We failed, and we deeply regret it, but we still remain convinced that we were very near success, in spite of the differences.’

provisions.¹²⁵⁶ Although some of the Samaritans' proposals were incorporated as amendments, the attempts to satisfy the US regime ultimately failed.¹²⁵⁷

In the end, despite opposition from the president, Tommy Koh, the US delegates called for a vote. 130 delegates voted for the draft convention.¹²⁵⁸ Among them were many of the Group of 77, along with Canada, France, Japan, the Nordic countries and New Zealand.¹²⁵⁹ The US, Israel, Venezuela and Turkey voted against, and 17 countries abstained from the vote, which were: Britain, West Germany, Belgium, the Netherlands, Luxembourg, Italy, Spain, Thailand, and nine socialist countries.¹²⁶⁰

Although Elisabeth Mann Borgese's words about the United States' unwillingness to participate had been prophetic, at least she was wrong about the prediction made in her 1981 'Appeal to Act Now'¹²⁶¹ document that the convention would be lost unless it was voted for in that same year. In December 1982, the final act was opened for signature and signed by 140 states.¹²⁶² 'The convention now took on a life of its own, waiting for the acceptance of all states in order to become an unrivalled and comprehensive Law of the Sea for the international community.'¹²⁶³

¹²⁵⁶ The proposal can be found in: UN Doc. A/CONF.62/L.104, 13 April 1982.

¹²⁵⁷ Cf. Sanger, *Ordering the Oceans*, 52. See also Beesley, 'Negotiating Strategy', 190.

¹²⁵⁸ Cf. Sanger, *Ordering the Oceans*, 53: 'And the conference president, Tommy Koh, refused various pleas [...] to extend the session beyond 29 April when he learnt word that, apparently unknown to Ratiner, other US diplomats, led by Ken Adleman (then deputy head of the US Mission to the United Nations) were busy throughout the last week lobbying Western European countries with mining interests – and even Thailand – to vote against the convention, or at least to abstain. So, although both Koh and Beesley appealed to Malone not to insist on a vote [...] the United States called for a vote on the whole draft Convention.'

¹²⁵⁹ Cf. Sanger, *Ordering the Oceans*, 53.

¹²⁶⁰ Cf. Sanger, *Ordering the Oceans*, 53. See also Harrison Harrison, *Making the Law*, 47 (102): 'The principle objection of the USA was to the provisions of the International Seabed Area in Part IX of the Convention. Turkey, Israel and Venezuela also voted against the Convention, albeit for different reasons. Turkey and Venezuela both objected to the methods outlined in the Convention for delimiting the continental shelf and the EEZ. Israel, on the other hand, principally opposed the provisions on straits contained in Part II of the Convention.'

¹²⁶¹ See MS-2-744, Box 176, Folder 13, EMB, The Draft Convention on the Law of the Sea: An Appeal for action now.

¹²⁶² *United Nations Convention on the Law of the Sea (with annexes, final act and procès-verbeaux of rectification of the final act dated 3 March 1986 and 26 July 1993)*, Montego Bay, 10 December 1982, *United Nations Treaty Series*, vol 1833. No. 31363, p.3, available at <https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280043ad5>.

¹²⁶³ Bernaerts, *Bernaerts' Guide*, 9.

Elisabeth Mann Borgese's work, however, did not end there. Together with the final act, the conference also passed a resolution¹²⁶⁴ to set up the 'Preparatory Commission' for the International Seabed Authority.¹²⁶⁵ The so called 'Prep Com' had a very clear mandate to breathe life into an otherwise hollow international institution for the governance of the seafloor outside national jurisdiction, within the parameters set out by the convention. Mann Borgese hoped for enough room to shape the institution in a way that would best serve her own wish (and that of her allies) to incorporate the concept of common heritage of mankind, within the limits of the treaty.¹²⁶⁶

Several articles of Part XI of the 1982 Law of the Sea Convention represented victories for Mann Borgese and her allies. Article 136 declared 'The Area and its resources are the common heritage of mankind'.¹²⁶⁷ In Article 140, meanwhile, the International Seabed Authority was given the mandate to govern the Area according to principle of benefit-sharing. The article runs: 'Benefit of mankind: The Authority shall provide for the equitable sharing of financial and other economic benefits derived from activities in the Area through an appropriate mechanism, on a non-discriminator basis [...]'.¹²⁶⁸

Also, the power of the authority in connection with underprivileged treaty parties was taken care of in Article 152, 1 and 2: 'The Authority shall avoid discrimination in the exercise of its powers and functions including the granting of opportunities for activity in the Area. 2. Nevertheless, special consideration for developing states [...] shall be permitted.'¹²⁶⁹

The system of an enterprise within the authority was set out in Article 153,¹²⁷⁰ which granted developing countries a degree of participation in future seabed ventures. Finally, a

¹²⁶⁴ Three resolutions were passed, see Bernearts, *Bernaerts' Guide*, 9.

¹²⁶⁵ Cf. Bernearts, *Bernaerts' Guide*, 9: 'Resolution I: Establishment of a Preparatory Commission for the International Sea-Bed Authority and for the International Tribunal for the Law of the Sea:[...]'

¹²⁶⁶ MS-2-744, Box 176, Folder 12, EMB, the Law of the Sea: Ratification, Implementation, and Progressive Development.

¹²⁶⁷ Article 136, printed in *Bernaerts' Guide*, 194.

¹²⁶⁸ Article 140, printed in *Bernaerts' Guide*, 195.

¹²⁶⁹ Article 152, 1.2., printed in *Bernaerts' Guide*, 202.

¹²⁷⁰ See Article 152, printed in *Bernaerts' Guide*, 202.

review conference ‘fifteen years from now’,¹²⁷¹ was put in place to renegotiate or revise the system of exploration and exploitation (laid out in article 153) if necessary.¹²⁷²

From 1982 onwards, the convention ‘took on a life of its own’.¹²⁷³ This ethereal ‘life’ was, of course, not entirely unsupervised by further discussions at the United Nations. The Prep Com – of which Elisabeth Mann Borgese was a member on behalf of the Austrian delegation¹²⁷⁴ – played a role in this future life of the convention, as did other committees. Opening for signatures was just the start. It would take another 12 years until the required 60 ratifications were reached and the treaty could come into force. In the meantime, the life of the convention continued to unfold with Elisabeth Mann Borgese in the midst of it.

¹²⁷¹ Article 155 printed in *Bernaerts' Guide*, 203.

¹²⁷² Article 155 printed in *Bernaerts' Guide*, 203.

¹²⁷³ Bernaerts, *Bernaerts' Guide*, 9.

¹²⁷⁴ See MS-2-744, Box 16, Folder 19, EMB CV.

PART IV REPARATION 1982–1994

Chapter 10. 1994 Agreement and the mysterious Boat Paper crises

The life of the convention after 1982

The most fascinating aspect of the life of the Law of the Sea Convention is that, although it formally reached the finish line in 1982, in reality it was nowhere near. In the immediate aftermath of UNCLOS, the Preparatory Commission started its work on organising the International Seabed Authority as per the specifications of the treaty. Elisabeth Mann Borgese's work in the Prep Com could provide enough material for a whole separate study, and is unfortunately beyond the scope of this work.¹²⁷⁵

In order to understand the level of Mann Borgese's commitment to applying her internationalist ideas to UNCLOS through Part XI, it is worth providing an overview of the last 12 years of her work with the convention. Elisabeth Mann Borgese's involvement with international law-making had started with the Committee to Frame a World Constitution, and would come full circle when the permanent fate of the convention was decided with the 1994 Implementation Agreement.¹²⁷⁶

There is a vast amount of material in Mann Borgese's archive that could be used to illustrate what exactly happened during the Prep Com period, but above all, one document will be central to reviewing the last 12 years of her work with the convention. In the document, Mann Borgese explained to a wider audience the work of the Prep Com and the problems the committee had encountered. The document is dated 4 June 1991 and has the title 'The Law of the Sea: Ratification, Implementation, and Progressive Development'.¹²⁷⁷

¹²⁷⁵ For an overview of the first years, see Elisabeth Mann Borgese, 'Notes on the Work of the Preparatory Commission', *Ocean Yearbook* 5 (1985): 1-9, <https://doi.org/10.1163/221160085X00023>. See also Lee Kimball, 'Conference reports- Heated exchange in Geneva', *Marine Policy* 10, no. 1 (January 1986): 60-62. For archive materials, see MS-2-744, Box 208, Folder 2, The preparatory commission: [report]. MS-2-744, Box 132, Folder 32, The Preparatory Commission for the International Sea-bed Authority (ISBA) and the International Tribunal for the Law of the Sea (ITLS).

¹²⁷⁶ General Assembly Resolution, see UN Doc. A/RES/48/263, 17 August 1994.

¹²⁷⁷ MS-2-744, Box 176, Folder 12,

EMB, the Law of the Sea: Ratification, Implementation, and Progressive Development.

It is a speech, likely delivered to Canadian government officials at a ‘symposium’¹²⁷⁸ that is not more clearly defined.

We learn that Mann Borgese was the first speaker at the symposium, because she began her speech by apologising for setting a tone that was ‘going to be somewhat shrill.’¹²⁷⁹ She continued by saying that her ‘position on the future Law of the Sea [...] is quite controversial.’¹²⁸⁰ Mann Borgese then proceeded to lay out this controversial position, along with an assessment of the previous nine years.

When the fate of the draft convention was at stake in 1981, Mann Borgese had taken action in the form of her ‘appeal to act now’.¹²⁸¹ Now, ten years later, she would do something quite similar. The purpose of the speech was to give the audience ‘Ten reasons why this Convention is so important and why it is important to bring it into force now: this year.’¹²⁸²

There is no need to go into detail about why Mann Borgese was convinced that the convention was important. Ten years after the convention had opened for signature, her reasons for supporting the convention were the same as they had been during the storm of voting in 1982. The convention had preserved the common heritage of mankind, and would provide the opportunity for developing countries to gain wealth and partake in important industrial operations through the establishment of the International Seabed Authority in Part XI.¹²⁸³

The interesting aspect of the speech is that Mann Borgese went on to assess the work of the Prep Com, which had been holding annual meetings since 1983.¹²⁸⁴ According to Mann

¹²⁷⁸ MS-2-744, Box 176, Folder 12, EMB, the Law of the Sea: Ratification, Implementation, and Progressive Development.

¹²⁷⁹ MS-2-744, Box 176, Folder 12, EMB, the Law of the Sea: Ratification, Implementation, and Progressive Development.

¹²⁸⁰ MS-2-744, Box 176, Folder 12, EMB, the Law of the Sea: Ratification, Implementation, and Progressive Development.

¹²⁸¹ Cf. Bernaerts, *Bernaerts' Guide*, 9: ‘Resolution I: Establishment of a Preparatory Commission for the International Sea-Bed Authority and for the International Tribunal for the Law of the Sea;[...].’

¹²⁸² MS-2-744, Box 176, Folder 12, EMB, the Law of the Sea: Ratification, Implementation, and Progressive Development.

¹²⁸³ Cf. MS-2-744, Box 176, Folder 12, EMB, the Law of the Sea: Ratification, Implementation, and Progressive Development.

¹²⁸⁴ Cf. MS-2-744, Box 176, Folder 12, EMB, the Law of the Sea: Ratification, Implementation, and Progressive Development.

Borgese, the Prep Com had two official written mandates and one unofficial mandate.¹²⁸⁵ The first mandate (resolution I)¹²⁸⁶ was to establish ‘the Commission and task it with paper work, the drafting of rules and regulations headquarter agreements, studies etc.’¹²⁸⁷ In other words, the Prep Com was to take care of the administrative side of establishing international institutions. According to Mann Borgese, this task had gone fairly well.

The second mandate (resolution II)¹²⁸⁸ was to create ‘an interim regime for deep-seabed mining, to protect the interest of those States which have made considerable investments in seabed mining technology and exploration.’¹²⁸⁹ This task was of a practical nature: to create rules and parameters for future deep seabed mining ventures and to reach agreement with ‘Pioneer investors’.¹²⁹⁰ According to Mann Borgese, this part too was going well. She could report to her audience that ‘amazing developments have taken place’,¹²⁹¹ and that she was hopeful that seabed mining would occur ‘under the Convention regime’.¹²⁹²

The real head-scratcher was the ‘unwritten’ mandate. In Mann Borgese’s words this was, ‘to adjust and adapt the ideas and ideals of the Seventies to the economic and political realities of the Nineties [...]’.¹²⁹³ And Mann Borgese feared that this element of the Prep Com’s work had not gone well at all.

There are several possible explanations as to why – at least in Mann Borgese’s view – things for the Prep Com had not gone as planned. The most obvious explanation would be that the ‘unwritten mandate’ was not actually a mandate at all. To ‘adjust and adapt’ was not

¹²⁸⁵ Cf. MS-2-744, Box 176, Folder 12, EMB, the Law of the Sea: Ratification, Implementation, and Progressive Development.

¹²⁸⁶ See, Article 308, 4&5, in *Bernaerts’ Guide*, 258.

¹²⁸⁷ MS-2-744, Box 176, Folder 12, EMB, the Law of the Sea: Ratification, Implementation, and Progressive Development.

¹²⁸⁸ See, Article 308, 4&5, in *Bernaerts’ Guide*, 258.

¹²⁸⁹ MS-2-744, Box 176, Folder 12, EMB, the Law of the Sea: Ratification, Implementation, and Progressive Development.

¹²⁹⁰ MS-2-744, Box 176, Folder 12, EMB, the Law of the Sea: Ratification, Implementation, and Progressive Development.

¹²⁹¹ MS-2-744, Box 176, Folder 12, EMB, the Law of the Sea: Ratification, Implementation, and Progressive Development.

¹²⁹² MS-2-744, Box 176, Folder 12, EMB, the Law of the Sea: Ratification, Implementation, and Progressive Development.

¹²⁹³ MS-2-744, Box 176, Folder 12, EMB, the Law of the Sea: Ratification, Implementation, and Progressive Development.

one of the Prep Com's designated tasks.¹²⁹⁴ While it was clearly something Mann Borgese wished to allocate to the Prep Com (and it is likely that other Prep Com participants supported and shared her view), officially the Prep Com had no such mandate. So why did Mann Borgese single it out at the symposium?

Most likely, the work of the Prep Com had shown that the International Seabed Authority – along with its various purposes and tasks – was no longer a feasible entity in the light of technological but also political developments that had taken place by the beginning of the 90s. Therefore, the United Nations Secretariat had called for a

‘dialogue,’ ‘to make the Convention universally acceptable,’ which frustrates and invalidates the work of the Preparatory Commission, manifestly paralyses the ratification process and leads us headlong towards the disintegration of the Convention and the calling for a Fourth Conference on the Law of the Sea [...].¹²⁹⁵

What this meant was that Part XI of the convention – the part that the Prep Com was working with because it contained all the provisions on the International Seabed Authority and the seafloor – was going to be renegotiated. Elisabeth Mann Borgese felt that the Prep Com was becoming superfluous or even meaningless thanks to the Secretariat's desire to engage in a new dialogue.¹²⁹⁶ She predicted that this would lead to the ‘pick and choose’¹²⁹⁷ approach that the participants of the convention had worked so hard to avoid.

The underlying issue was the US's persistent refusal to sign the convention. Other industrialised states had followed its lead, and unless these major industrialised countries became state parties to the treaty, the consensus strategy that had made the convention such a laborious undertaking would not have paid off. Only if the majority of states joined would the consensus model have been worth the effort – otherwise the convention would end up being a symbolic treaty, binding developing nations to a contract that did not make sense

¹²⁹⁴ MS-2-744, Box 176, Folder 12, EMB, the Law of the Sea: Ratification, Implementation, and Progressive Development.

¹²⁹⁵ MS-2-744, Box 176, Folder 12, EMB, the Law of the Sea: Ratification, Implementation, and Progressive Development.

¹²⁹⁶ *Cf.* MS-2-744, Box 176, Folder 12, EMB, the Law of the Sea: Ratification, Implementation, and Progressive Development.

¹²⁹⁷ MS-2-744, Box 176, Folder 12, EMB, the Law of the Sea: Ratification, Implementation, and Progressive Development.

without the backing of the developed states. Since Part XI remained the largest obstacle, the international community had reacted. Hence the Secretariat's action in engaging in dialogue.

In principle, Elisabeth Mann Borgese agreed with the Secretariat that something had to be done. However, she disagreed with the form of action they had suggested. She wanted the Prep Com to have the power to adapt the convention to the changing situation. In essence, Mann Borgese wanted more definitive power over rules and regulations for the Prep Com.

In order to reach this goal, she proposed a three-point plan of action, which she believed could rescue Part XI and prevent it from floundering in re-opened discussions. First, she proposed to freeze all articles that were concerned with finances and any specific provisions on how deep sea mining was to be conducted, since they were 'totally meaningless and unreal in the present situation'.¹²⁹⁸ Instead, Mann Borgese proposed renegotiating these provisions in 10–15 years.¹²⁹⁹

Second, she recommended encouraging ratification, stating that she was 'dedicating all my [sic: her] energy to mobilizing the needed 15 ratifications [...]'.¹³⁰⁰ Third, she proposed that the Enterprise – meaning the operational arm of the International Seabed Authority – should be 'merged with what now is called "the nuclear enterprise" which is quite unrealistic'.¹³⁰¹ The 'nuclear enterprise' was what was left of the original idea of Enterprises through 'joint ventures', which consisted of an administration that did not have any technical expertise to conduct activity.

What officials had observed in the development of the convention in the years running up to 1991 was that it was those same core issues in Part XI that were still stopping states from ratifying it. Therefore, United Nations officials were looking for other solutions. Clearly, the convention itself could not be re-written, but parts of it could. Elisabeth Mann Borgese was opposed to this solution, and with good reason.

¹²⁹⁸ MS-2-744, Box 176, Folder 12, EMB, the Law of the Sea: Ratification, Implementation, and Progressive Development.

¹²⁹⁹ Cf. MS-2-744, Box 176, Folder 12, EMB, the Law of the Sea: Ratification, Implementation, and Progressive Development.

¹³⁰⁰ MS-2-744, Box 176, Folder 12, EMB, the Law of the Sea: Ratification, Implementation, and Progressive Development.)

¹³⁰¹ MS-2-744, Box 176, Folder 12, EMB, the Law of the Sea: Ratification, Implementation, and Progressive Development.

She probably suspected that if the United States and other industrial states got their way with Part XI of the convention, the common heritage principle would be in real danger. The US strategy in the 'Green Book' from 1982 had shown that US officials were mostly interested in a free market approach to the area outside national jurisdiction, and many of the other industrial states felt the same way.

As long as the provisions of Part XI were frozen, they were still in existence and could not be changed. Freezing the provisions could have two advantages. First, the freezing period would enable developing countries to catch up to the industrial states in the technological sphere. Second, technological progress (and thereby the possibility and form of future seabed mining) would be easier to assess the closer that development came to actual mining activity.

All those rules and regulations formulated in the 70s and 80s had been developed without any clear idea of the future realities of such technological activity. Perhaps Mann Borgese hoped that freezing the provisions of Part XI would give her more time to prepare a defence of the common heritage elements, while also giving the international community time to make more accurate predictions about future technological progress. We must remember that Arvid Pardo's speech in 1967 had accelerated negotiations because he had emphasised the imminent possibility of gaining wealth through mining seabed minerals on the seafloor outside national jurisdiction. When it began to dawn on developing states that this abundance of minerals would be out of reach for the foreseeable future, they had lost interest. Even Karl Wolf had said 'no one needs the area'.¹³⁰²

Elisabeth Mann Borgese argued for keeping the mandate of adapting Part XI within the Prep Com for one simple reason: it would ensure that the committee retained its decision-making power for the future form and shape of the International Seabed Authority. Unfortunately, since this particular mandate was 'unwritten', others had different plans.

¹³⁰² See MS-2-744, Box 87, Folder 4, MS 87-4 Wolf to EMB, 4 July 1981.

The Boat Paper – Changes inflicted on the treaty by first-class rackets?

Developments between 1991 and 1994 showed that Elisabeth Mann Borgese faced a number of obstacles during the attempt to convince others to follow her plan. Her initial actions were twofold: she engaged in an active ratification campaign,¹³⁰³ and sent out letters to key figures in the Law of the Sea negotiations who were rooting for adapting the convention. Given the limited space of this thesis, we will focus on one case that would cause an almighty headache for Elisabeth Mann Borgese: The Boat Paper¹³⁰⁴ incident.

The Boat Paper was an anonymous document (although many knew who was behind it)¹³⁰⁵ that put forward a number of changes to Part XI of the convention, essentially to make it acceptable to the United States. The paper first surfaced at the start of the 90s, and a revised version was handed in in 1993.¹³⁰⁶ Its content flew in the face of everything Elisabeth Mann Borgese had worked for since 1967.

The Boat Paper case would lead to a fully-fledged quarrel between Elisabeth Mann Borgese and Satya Nandan of Fiji¹³⁰⁷ – one of the officials responsible for the Boat Paper, and a man who would later become the first secretary-general of the International Seabed Authority.¹³⁰⁸ Nandan had initiated the ‘dialogue’ proposed by the secretary general, a course of action that would ring in the creation of the 1994 Implementation Agreement.¹³⁰⁹

The conflict started rather tentatively with a letter Elisabeth Mann Borgese wrote to her colleague in June 1991.¹³¹⁰ She opened her letter very cordially by stating that she was writing to him in ‘a very personal way’,¹³¹¹ and that she hoped he would ‘receive it in a spirit of friendship’.¹³¹²

¹³⁰³ For ratification efforts, see MS-2-744, Box 276, Folder 1.

¹³⁰⁴ For the 1993 version of the Boat Paper, see MS-2-744, Box 323, Folder 18, Boat Paper. Draft Resolution for Adoption by the General Assembly, 3 August 1993.

¹³⁰⁵ MS-2-744, Box 276, Folder 1, EMB to Colombo, 30 December 1993.

¹³⁰⁶ Boat paper version 1993

¹³⁰⁷ See MS-2-744, Box 236, Folder 11, Satya Nandan, biographical note.

¹³⁰⁸ EMB commented on this in a letter to Wolf. See MS-2-744- Box 355, Folder 24, EMB to Wolf, 7 May 1994.

¹³⁰⁹ See MS-2-744, Box 236, Folder 11, Satya Nandan, biographical note.

¹³¹⁰ MS-2-744, Box 236, Folder 11, EMB to Satya, 13 June 1991.

¹³¹¹ MS-2-744, Box 236, Folder 11, EMB to Satya, 13 June 1991.

¹³¹² MS-2-744, Box 236, Folder 11, EMB to Satya, 13 June 1991.

The mysterious ‘it’ was the critique Mann Borgese was about to deliver to Nandan concerning his strategy to adapt and even change the Law of the Sea. She started by saying she had been ‘very sceptical’ towards his ‘idea of “making the Convention universally acceptable”’.¹³¹³ And further, that: ‘I see in this a sort of betrayal of our task, which is to get the Convention ratified and into force’.¹³¹⁴

To others, she spoke much more plainly. Back in January 1990, she had already written to another colleague, Frank Njenga of Kenya, about Nandan’s new strategy: ‘You may be interested in seeing my letter to Jean-Pierre Levy. I really think what he and Nandan are doing is totally unacceptable from every point of view.’¹³¹⁵

Njenga answered in February 1990, and was very much in agreement with Mann Borgese’s assessment. He replied that it seemed like ‘Mr. Nandan and Dr. Levy are continuing their pet project of destroying the Convention to please the big powers.’¹³¹⁶ And further that it was ‘necessary that all efforts be made to unmask this conspiracy [...]’.¹³¹⁷ He even aired the suggestion that some of the leaders of the Secretariat should be shifted out to ‘prevent the perpetration of irreparable damage by individuals who seem to have become partisans for the point of view of some powerful nations at the expense of common heritage of mankind.’¹³¹⁸

Needless to say, as the Kenyan representative, Frank Njenga¹³¹⁹ was very much on the side of the developing countries, and therefore on Mann Borgese’s too. Together with Njenga, Elisabeth Mann Borgese embarked on a ratification campaign, in which she reached out to many state officials and encouraged Njenga to reach out to others to collect the missing ratifications needed for the convention to come into force.¹³²⁰

¹³¹³ MS-2-744, Box 236, Folder 11, EMB to Satya, 13 June 1991.

¹³¹⁴ MS-2-744, Box 236, Folder 11, EMB to Satya, 13 June 1991.

¹³¹⁵ MS-2-744, Box 276, Folder 1 EMB to Njenga, 31 January 1990.

¹³¹⁶ MS-2-744, Box 276, Folder 1, Njenga to EMB, 19 February 1990.

¹³¹⁷ MS-2-744, Box 276, Folder 1, Njenga to EMB, 19 February 1990.

¹³¹⁸ MS-2-744, Box 276, Folder 1, Njenga to EMB, 19 February 1990.

¹³¹⁹ MS-2-744, Box 276, Folder 1, Biography Njenga.

¹³²⁰ Ratification efforts with Njenga in: MS-2-744, Box 276, Folder 1.

In January 1991, she wrote in a frank letter to her former Austrian colleague and friend Karl Wolf (with whom she had kept up a steady correspondence since their collaboration in the Austrian delegation)¹³²¹ about her frustration with the Fijian delegate:

I am very angry with Nandan, who wants to change our convention before it comes into force. He has no right to do that. Aside from that, it's stupid, and Baker has already made it very clear that the US is not interested in amendments, and still wants nothing to do with the convention¹³²²

In July 1994 she wrote to Gianni De Michelis of Italy about the ratification progress, most likely in order to update the Italian government on the situation. But her report also had a more subtle agenda:

The Seychelles have just ratified, and thus we have reached 48. All we need is 12 more. I have started very active campaigns in India, and in Germany, whose accession is merely a question of time; I have reasons to hope that Bulgaria may ratify very soon. Portugal may ratify after the elections this fall. Even Canada is beginning to change its mind. I hope and pray that Italy will be a leader in Europe.¹³²³

The letter to Italy shows that Mann Borgese was strategic with her ratification campaign. She knew that if she could get one European nation on board, others might follow. Hence this plea to Italy in 1991, heavy with claims about the state of ratification plans in other European nations – which were likely exaggerated in an attempt to get Italy to take the bait.

The strategy did not really pay off. Come 1993, she was still working on Italy. This time the recipient of her appeal was Umberto Colombo, who she knew in person and addressed by his first name. The letter was sent in December 1993, in the wake of the ‘Boat Paper’ crisis.¹³²⁴ In the letter she urged Colombo to convince the Italian government to ratify the convention.

She also voiced her concern about the fate of the convention, saying that ‘The “Consultations” are at a cross-roads.’¹³²⁵ She reported about the ‘infamous, anonymous

¹³²¹ See folder Ms 355-24

¹³²² MS-2-744- Box 355, Folder 24, EMB to Wolf, 13 January 1991. ‚Ich bin sehr zornig auf Nandan, der da unsere Convention ändern will noch eh sie in Kraft tritt. Dazu hat er kein Recht. Abgesehen Davon ist es dumm, und Baker hat bereits ganz klar gesagt, die USA ist an amendments nicht interessiert, und will nach wie vor von der Konvention nichts wissen.‘

¹³²³ MS-2-744, Box 276, Folder 1, EMB to Michelis, 4 July 1991.

¹³²⁴ MS-2-744, Box 276, Folder 1, EMB to Colombo, 30 December 1993.

¹³²⁵ MS-2-744, Box 276, Folder 1, EMB to Colombo, 30 December 1993.

“Boat Paper” (called “Boat Paper” because it has a boat on the front cover).¹³²⁶ She was very clear about her view of this paper, which she called a ‘gratuitous humiliation of the developing countries [...]’.

Without going too deep into a detailed review of the actual document, Mann Borgese’s letter to Colombo gives us a good summary of everything that was problematic with it: ‘[...] No Enterprise; no money for it; and it is the Council that is to decide if and when the Enterprise is to be established’.¹³²⁷ Apparently, the power of the council was weakened too, since ‘the voting system has been so rigged (“Chamber voting”) as to give a veto to the industrialised countries; no technology transfer, no production control. Everything the developing countries had achieved at UNCLOS III is gone.’¹³²⁸

Elisabeth Mann Borgese did not hold back on naming those she held responsible for the ‘infamous’ paper: ‘Satya Nanda of Fiji; Anderson of the U.K., Scholtz of the State Department, and French of Australia.’¹³²⁹

Unfortunately, for her, Colombo could not help. When he replied in January 1994, he wrote that he had not seen the ‘Boat Paper’, adding ‘I do note, however, that though you describe it as “anonymous” on page one, on page two of the letter four reputed authors.’¹³³⁰ Of these, he noted that, ‘at least, they do seem representative of key players.’¹³³¹ Although he shared Mann Borgese’s assessment of the situation to some degree, he also noted that the current US government under Clinton could be the one most inclined to renegotiate Part XI.¹³³²

During the course of 1994, others obviously felt the same way, and not long after this exchange with Colombo, moves were made to pass the ‘Boat Paper’ through the General Assembly as a resolution.¹³³³

¹³²⁶ MS-2-744, Box 276, Folder 1, EMB to Colombo, 30 December 1993.

¹³²⁷ MS-2-744, Box 276, Folder 1, EMB to Colombo, 30 December 1993.

¹³²⁸ MS-2-744, Box 276, Folder 1, EMB to Colombo, 30 December 1993.

¹³²⁹ MS-2-744, Box 276, Folder 1, EMB to Colombo, 30 December 1993.

¹³³⁰ MS-2-744, Box 276, Folder 1, Colombo to EMB, 21 January 1994.

¹³³¹ MS-2-744, Box 276, Folder 1, Colombo to EMB, 21 January 1994.

¹³³² Cf. MS-2-744, Box 276, Folder 1, Colombo to EMB, 21 January 1994.

¹³³³ Cf. MS-2-744, Box 355, Folder 24, EMB to Wolf, 7 May 1994.

In May 1994, Elisabeth Mann Borgese wrote a pessimistic letter to her old friend and former ally, Karl Wolf. Wolf was no longer involved in the Law of the Sea Convention and its aftermath, having resigned in 1986.¹³³⁴ For a long time, he and Mann Borgese had fought side-by-side for the same cause, but he was now outside the negotiation processes at the United Nations. Therefore, her letter to him about the deconstruction of Part XI that had started with the Boat Paper initiative is perhaps the most honest and frank assessment available.

I am very worried about our convention because it is in the process of dissolution. The so-called Secretary-General's Consultations are first-class rackets. Nandan has done this to us. He is paid for it by the Australians. Five villains did all the damage: Nandan, Scholtz (USA), Anderson (UK), French (Australia), and Rattray. The latter because he wants the Authority so badly in Jamaica that he does not care if he gets it alive or dead. Well, he gets it dead.

The so-called "Boat Paper", which is now to pass as a resolution by the General Assembly, is a real shame. The Authority and our poor Enterprise [sic: Enterprise] are just there to do NOTHING. Nandan will be appointed Secretary General of the Authority, he too, to do NOTHING, but becomes the highest paid official in the U.N. System. Worse than the content is the procedure that scoffs description, slaps the Vienna Convention on Treaties in the face and generally does not concern itself with international law. A bad precedent case.¹³³⁵

The not-so-anonymous Boat Paper finally passed through the General Assembly and morphed into the 'Agreement relating to the Implementation of Part XI'.¹³³⁶ While Mann

¹³³⁴ MS-2-744, Box 355, Folder 24, Wolf to EMB, 5 February 1989. 'Die schönen Tage von Aranjuez sind vorüber – mit anderen Worten, meine Tätigkeit als österreichischer Delegierter zur Seerechts- nunmehr Vorbereitungskonferenz sind zu Ende gegangen.'

¹³³⁵ MS-2-744, Box 355, Folder 24, EMB to Wolf, 7 May 1994. 'Über unsere Konvention mache ich mir grösste Sorgen, denn sie ist in der Auflösung. Die so-gennanten Secretary-General's Consultations sind ein Racket erster Klasse. Das hat uns der Nandan angetan, der dafür von den Australiern bezahlt wird. Fünf Gauner haben den ganzen Schaden angerichtet: Nandan, Scholtz (USA), Anderson (UK), French (Australia), und Rattray. Der letztere, weil er die Authority so dringend in Jamaica haben will, dass es ihm egal ist, ob er sie lebendig oder tot bekommt. Nun, er bekommt sie tot. Das so genannte "Boat Paper", das nun als Resolution durch die General Assembly passieren soll, ist eine wirkliche Schande. Die Authority und unser armes Enterprise [sic: Enterprise] sind nur dazu da, NICHTS tun zu können. Nandan wird Secretary-General der Authority, auch er, um NICHTS zu tun, wird aber der höchst bezahlte Beamte im U.N. System. Schlimmer noch als die Substanz ist die Procedure, die jeder Beschreibung spottet, der Vienna Convention on Treaties ins Gesicht schlägt und sich im Allgemeinen um Völkerrecht nicht bekümmert. Ein arger Präcedenzfall.'

¹³³⁶ See UN Doc. A/RES/48/263, 17 August 1994.

Borgese called it a slap in the face for the Vienna Treaty on Contracts, others have described it as a triumph of international law-making.¹³³⁷

We cannot go into detail on why exactly the process with which the Boat Paper passed through the United Nations system could have been problematic. In fact, it was not very different from the general practice of working in semi-official groups that was practised during the negotiation period between 1973 and 1982. Perhaps it was perceived as a personal ‘slap in the face’ for Mann Borgese because it had such a devastating impact on the provisions of Part XI.

What had the ‘villains’ changed? What ‘damage’ had they inflicted to Part XI and thus to the core of what Elisabeth Mann Borgese had worked for at the United Nations? Elisabeth Mann Borgese was very clear on the effect of the changes to Part XI through the Boat Paper. At the end of May 1994, she wrote to Njenga: ‘Our poor Law of the Sea Convention has been kidnapped!’¹³³⁸

The Law of the Sea kidnapped by villains in 1994

On 22 July 1994, ‘The 1994 Agreement on Implementation of the Seabed Provisions of the Convention on the Law of the Sea’¹³³⁹ was voted for and adopted in the General Assembly. 121 voted in favour, 7 abstained and no one voted against it.¹³⁴⁰ The purpose of the agreement was exactly as Nandan and his entourage had advertised, which was to

[...] enhance the prospect for widespread ratification of the Convention by responding to problems with the deep seabed mining regime in Part XI, particularly those that troubled industrial states, including the United States.¹³⁴¹

¹³³⁷ Discussed in: E.D. Brown, ‘The 1994 Agreement on the Implementation of Part XI of the UN Convention on the Law of the Sea: breakthrough to universality?’, *Marine Policy* 19, no. 1 (January 1995): 5-20, [https://doi.org/10.1016/0308-597X\(95\)92569-S](https://doi.org/10.1016/0308-597X(95)92569-S). For the US position, see Louis B. Sohn, ‘International Law Implications of the 1994 Agreement’, *The American Journal of International Law* 88, no. 4 (October 1994): 696-705, <http://www.jstor.org/stable/2204137>.

¹³³⁸ MS-2-744, Box 276, Folder 1, EMB to Njenga, 26 May 1994.

¹³³⁹ GA Res 48/263, July 28, 1994.

¹³⁴⁰ Cf. Bernhard H. Oxman, ‘The 1994 Agreement and the Convention’, *The American Journal of International Law* 88, no. 4 (October 1994): 687, <http://www.jstor.org/stable/2204136>.

¹³⁴¹ Oxman, ‘1994 Agreement’, 688.

The initiative was effective. The United States, together with almost all other industrial states, signed the agreement the next day.¹³⁴² However, the US still did not sign the convention itself, and other industrialised states remained reluctant. Others have discussed whether the agreement did indeed realise its promise of more widespread support from industrialised states,¹³⁴³ but what is most important in connection to Elisabeth Mann Borgese's work are the changes it inflicted on Part XI.

If Mann Borgese's assessment is to be believed, these changes so drastically altered the core of the common heritage principle that it was more or less dead in the water, together with the authority that was supposed to safeguard and govern it.¹³⁴⁴ Working through the whole agreement point-by-point would exceed the scope of this thesis, but we can look into some of the core elements of the mining provisions and the International Seabed Authority to see what was changed and how.

To do this, we will go through the concerns Elisabeth Mann Borgese had expressed in her letter to Colombo in 1993, when she had feared the impact that the Boat Paper would have on Part XI. Had these things genuinely become reality in 1994?

Elisabeth Mann Borgese had reported that the Boat Paper proposal planned to weaken the council of the International Seabed Authority. This was true in that the agreement provided for 'a seat on the council for 'the State, on the day of entry into forces of the Convention, having the largest economy in terms of gross domestic product'¹³⁴⁵.¹³⁴⁶ This was obviously the United States.¹³⁴⁷ Furthermore, the 'one nation, one-vote assembly' was also changed to a chamber system. This meant that the developing states could not use their

¹³⁴² Oxman, '1994 Agreement', 687.

¹³⁴³ Cf. D. H. Anderson, 'Resolution and Agreement Relating to the Implementation of Part XI of the UN Convention on the Law of the Sea: a General Assessment', *ZaöRV* 55 (1995): 275-289.
<https://www.sciencedirect.com/science/article/pii/0308597X9592569S?via%3Dihub>

¹³⁴⁴ In fairness, not everyone holds Nandan to be a 'first class racket'. See Michael J. Lodge, 'Satya Nandan's Legacy for the Common Heritage of Mankind', in *Peaceful Order in the World's Oceans. Essay in Honor of Satya N. Nandan* edited by Michael W. Lodge and Myron H. Nordquist, 282-300. Leiden/Boston: Brill Nijhoff, 2014).

¹³⁴⁵ Cf. Oxman, '1994 Agreement', 690: Agreement, annex, sec. 3, para. 15.

¹³⁴⁶ Oxman, '1994 Agreement', 690.

¹³⁴⁷ Cf. Oxman, '1994 Agreement', 690.

superior numbers to overpower the industrialised states when it came to important decision-making.¹³⁴⁸

Another point of Part XI that had been of outmost importance for Mann Borgese's idea of a more just distribution of opportunity and wealth was the provision for technology transfer. In the 1982 convention, it was inscribed that 'Private deep seabed miners would be subject to a mandatory requirement for the transfer of technology to the Enterprise and to developing countries.'¹³⁴⁹

This technology transfer was of paramount importance for a well-functioning future Enterprise under the International Seabed Authority that would mine on behalf of the developing countries. Without technology transfer, the Enterprise would be in danger of becoming a hollow institution, lacking the necessary knowledge to be active in exploration or exploitation operations on behalf of 'mankind'. The Implementation Agreement abolished the mandatory transfer of technology, saying it 'shall not apply'.¹³⁵⁰

The agreement also weakened the overall ability of the Enterprise to enter into joint ventures with private investors, since any investor could now prevent themselves from being drawn into a joint venture arrangement. The investor or miner also had 'priority rights to the reserved area if the Enterprise itself does not apply for exploration or exploitation rights to the reserved area within a specified period.'¹³⁵¹

Concerning access to mining sites outside national jurisdiction, the agreement granted the US so-called 'grandfather rights', and decreed that general access to promising mining sights would be 'on a first-come, first-served basis.'¹³⁵² This tore down the idea of equal chances for access, since industrial states like the US with the necessary technology could easily reach these promising sites faster than developing countries who would have to acquire

¹³⁴⁸ Cf. Oxman, '1994 Agreement', 689.

¹³⁴⁹ Cf. Oxman, '1994 Agreement', 689. Oxman refers to White House Fact Sheet Jan. 29, 1982.

¹³⁵⁰ Agreement, annex, sec. 5 para 2, quoted in Oxman, '1994 Agreement', 689.

¹³⁵¹ Agreement, annex, sec. 2, para. 5, quoted in Oxman, '1994 Agreement', 693.

¹³⁵² Oxman, '1994 Agreement', 692.

the technological knowledge and skill first. Finally, the review conference was abolished,¹³⁵³ since it could ‘impose treaty amendments on the United States without its consent’.¹³⁵⁴

The bottom line was that the Implementation Agreement pretty much destroyed everything Elisabeth Mann Borgese and her allies had worked for during the UNCLOS negotiations. It is hardly surprising, then, that she was furious when the Boat Paper surfaced and disrupted the promising provisions of Part XI as set out in the 1982 convention.

However, in theory, the common heritage of mankind is permanently written into the Law of the Sea Convention, since the delegates had agreed that the Law of the Sea Treaty should not be amended. The Implementation Agreement is a paper outside of the convention that gives instructions on how to read Part XI, but it does not change or amend what is written in the 1982 convention.

This means that the principle of common heritage of mankind remains inscribed in the convention, although its practical implications for activity in the Area are questionable. Some would argue that it has in effect been abolished altogether,¹³⁵⁵ while others maintain that it is still an important part of the convention with a reasonable amount of influence on the Law of the Sea.¹³⁵⁶

Whatever the case, in 1994, one of the main advocates of the common heritage principle, Elisabeth Mann Borgese, wrote to her old ally Karl Wolf that the International Seabed Authority was practically ‘dead’,¹³⁵⁷ and that the common heritage was ‘a joke’. ‘What was left?’¹³⁵⁸ she asked.

¹³⁵³ Oxman, ‘1994 Agreement’, 695.

¹³⁵⁴ Oxman, ‘1994 Agreement’, 695.

¹³⁵⁵ See Taylor, ‘The Common Heritage’. Taylor illuminates the shortcomings of the principle. See also Sabine Höhler, ‘Exterritoriale Ressourcen: Die Diskussion um die Tiefsee, die Pole und das Weltall um 1970’, *Jahrbuch für Europäische Geschichte* 15, (2014): 53-82. Höhler that the CHM principle introduced to UNCLOS did not revolutionise territorial thinking through introducing global commons.

¹³⁵⁶ Payoyo discusses the possibilities for developing states in connection with the CHM applied to the Area. See Payoyo, *Cries of the Sea*, 237. See also Annica Carlsson, ‘The US and UNCLOS III – The Death of the Common Heritage of Humankind Concept?’ *Maritime Studies* 95 (1997): 27-35, <https://doi.org/10.1080/07266472.1997.10878492>.

¹³⁵⁷ MS-2-744, Box 355, Folder 24, EMB to Wolf, 7 May 1994.

¹³⁵⁸ MS-2-744, Box 355, Folder 24, EMB to Wolf, 7 May 1994. ‘Also, Teil XI (man muss ja zugeben, dass er nicht besonders gut war!) ist hin. [...] Wenn die EEZ weg ist, und das Common Heritage, ein Spott - - was bleibt?’

Elisabeth Mann Borgese, however, did not give up on her bigger mission to achieve some tiny portion of her ideal of internationalism just because the villains had kidnapped the convention. She closed to letter to Karl Wolf, by stating: ‘We will have to pick up the pieces and see what we can do with them.’¹³⁵⁹

We know that her career did not end until her death in 2002. Right to the last, she continued working for the Law of the Sea. She held annual training programmes at the International Ocean Institute in Halifax and in the other institutes around the world, to which she invited scholars, entrepreneurs and government officials from developing countries to educate them in ocean governance and share technological expertise.

On a small scale, Elisabeth Mann Borgese put into action what the technology transfer provision was supposed to provide: Technology transfer by education. The International Ocean Institute, though downscaled and slightly differently governed than in its heyday, is still up and running in 2018, putting on at least one training class each year.

¹³⁵⁹ MS-2-744, Box 355, Folder 24, EMB to Wolf, 7 May 1994.

Conclusion: Formation – Preparation – Action – Reparation

Elisabeth Mann Borgese's ideal, ideas and strategies

The Third United Nations Law of the Sea Convention was finalised in 1994, when the Law of the Sea Treaty together with the 1994 Implementation Agreement gained the required 60 ratifications. By then, Elisabeth Mann Borgese had spent 27 years of her life, from 1967 to 1994, working to influence the design of the Law of the Sea.

Those 27 years had been preceded by a period of intense mind shaping, during which her ideal of internationalism was formed. Early influences were her marriage at age 21, and her husband's involvement with the Committee to Frame a World Constitution in Chicago, the draft of which laid the intellectual groundwork for her later interest in seabed governance.

The involvement with the Chicago committee put her in contact with an important academic, Robert Maynard Hutchins, who would invite her to join a new research facility in Santa Barbara and resume her work with the world constitution after her husband's death. Mann Borgese was a fellow at the Center for the Study of Democratic Institutions in Santa Barbara from 1964–1978, and she used the position to deepen and clarify her stance on world governance. Inspired by Arvid Pardo's speech at the United Nations in 1967, she began to focus increasingly on how her ideas could be transferred to ocean governance.

The centre in Santa Barbara not only provided a platform from which she could deepen her academic training and develop proposals for ocean governance drawn from world governance, but it also gave her an example of how research and policy-shaping institutions could be organised as think tanks to influence decision-makers. From 1967 onwards, Elisabeth Mann Borgese would become directly involved in shaping the Law of the Sea.

Mann Borgese attempted to influence decision-making at the United Nations through various channels, starting with her collaboration with the Maltese ambassador, Arvid Pardo, in 1967. Together, they organised the first of many *Pacem in Maribus* conferences that would directly target diplomats and key actors at the United Nations.

In the preparation phase before UNCLOS III commenced, from 1967–1973, she would develop a detailed draft treaty proposal for the ocean, called 'The Ocean Regime'. In

this, she laid out her idea of a holistic ocean treaty, in which an ‘ocean assembly’ would supervise all activities in the oceans. Her proposal was based on the principle of participation, and the decision-making processes of her ocean assembly would involve representatives from the fields of industry, science and politics.

The foundation of ‘The Ocean Regime’ was the principle of common heritage of mankind applied to the seabed and the high seas. This principle, together with the ideal of a holistic approach to ocean governance, was the thread that would run through all Elisabeth Mann Borgese’s future proposals at the United Nations. It was not, however, brought to the negotiation table at UNCLOS III; instead, it was presented at a *Pacem in Maribus* conference. Arvid Pardo had developed a similar proposal, the ‘Draft Ocean Space Treaty’, that was brought to UNCLOS III but was quickly dismissed.

In 1972, Elisabeth Mann Borgese founded the International Ocean Institute on Malta. This institution would change in both shape and function over the years. In 1972, it started out as a think tank and an administrative facility for organising the *Pacem in Maribus* conferences prior to UNCLOS III. In the first years of ‘action’ during UNCLOS III, from 1973–1975, Elisabeth Mann Borgese used the International Ocean Institute as a means of gaining access to the negotiations. For that purpose, the International Ocean Institute obtained the status of a non-governmental organisation. Simultaneously, Mann Borgese tried to convince the Maltese government to take on a bigger role in the negotiations, in the hopes of becoming the host country for the International Seabed Authority.

Until 1975, Mann Borgese hoped that the International Ocean Institute could slowly morph into the future ‘international machinery’ of the International Seabed Authority if the United Nations agreed to base this organisation in Malta, as she anticipated. Unfortunately for her plans, the Maltese government under prime minister Dom Mintoff was hesitant, and failed apply itself to the task of gaining the ISA in due time. Instead, it degraded and sidelined Arvid Pardo.

By 1975, non-governmental organisations were banned from speaking in UNCLOS meetings. Therefore, the International Ocean Institute was no longer an adequate vehicle to get Mann Borgese into the negotiations. From 1976 until 1982, she managed to become a

member of the Austrian delegation, which was leader of the group of Landlocked and Geographically Disadvantaged States at UNCLOS III. By then, it was clear that the principle of common heritage would be restricted to the seafloor outside national jurisdiction and that a great majority of states did not want a holistic approach to ocean governance.

During the last phase of the negotiations, from 1975–1982, Elisabeth Mann Borgese worked on proposals for how to shape the International Seabed Authority that would administer the seafloor outside national jurisdiction. Together with the Austrian Ambassador Karl Wolf, Mann Borgese proposed several suggestions for shaping the operational arm of the authority – the Enterprise – in a way that would enable developing states to partake in seabed activity in the area outside national jurisdiction.

In 1982, the Law of the Sea Treaty was voted for and adopted by the United Nations, and with it Part XI that was concerned with the seafloor outside national jurisdiction and the application of the common heritage principle to the seafloor. In the Law of the Sea, the common heritage stands as a core principle for the governance of the ocean floor outside national jurisdiction. The functions of the Enterprise were designed to enhance the ability of developing nations to undertake exploration and exploitation activities, and through this, the treaty partly secured the common heritage principle in connection to the seabed. Mann Borgese's ultimate goal was to provide fair access to resources for all humanity, regardless of their nationality, geographical position or state of technological advancement.

Between 1982 and 1994, a small number of states developed the 1994 agreement on the Implementation of Part XI, in order to get the United States and other industrialised states on board. During this period, Elisabeth Mann Borgese contacted politicians and state leaders to collect the 60 ratifications necessary to secure the treaty. She warned that the 'Implementation Agreement' would unpick many of the principles that were embedded in Part XI, and would adversely affect the power, rights and design of the International Seabed Authority.

The aim of this study was to examine the origins of Elisabeth Mann Borgese's ideals of internationalism and world governance. Further, to enquire into how she envisioned achieving these ideals through using the common heritage of mankind as a vehicle for her

ideal of internationalism, and how she wished to apply this concept to the seafloor. Finally, the study has examined how she attempted to affect and influence the negotiations with the aim of putting the common heritage into action, thereby coming a step closer to her ideals of internationalism and world governance.

The origins of Mann Borgese's intellectual heritage – Formation of the ideal of internationalism

Elisabeth Mann Borgese's way into academia was unusual, although not unheard of. What was unique about her career was that she was a woman working with men in the 1950s. This fact in itself could serve as the basis for another extensive study, but it is not the focus here.

All the same, we must acknowledge the importance of her relationships with older men, which she repeatedly described as having had an enormous impact on her. One of those men was her husband, Giuseppe Antonio Borgese, whose influence was crucial for her further career. In a letter to him, she once wrote: 'Concerning Lehr- und Wanderjahre I am not yet content. My opinions is one has to lernen und zu wander all one's life.'

There is no doubt that what Elisabeth Mann Borgese asserted in her twenties was the way she went on to live her own life: she learned and wandered for the rest of her days. When she started working as a secretary in Chicago, which was perhaps one of the few jobs a newlywed housewife could get, it was also her way into the world of academic work. Her daughter, Nica Borgese, said in an interview in November 2015, 'I think she was just quick to learn and ambitious and idealistic and she just became... I mean, she was not going to remain a secretary.'¹³⁶⁰

Clearly, self-confidence and trust in her own abilities were vital ingredients for Mann Borgese's success. Though almost as important were the opportunities to demonstrate her capabilities that presented themselves. As a case in point, Mann Borgese's work with the Committee to Frame a World Constitution in Chicago was central to her further career. It opened the door to a world where she could prove that her abilities to tackle complicated tasks far exceeded the requirements of secretarial work.

¹³⁶⁰ Interview with the Author, 26 October 2015.

Another vital step was the topic the Chicago committee introduced her to: designing a constitution for the world. This laid the groundwork for the internationalist ideals that she later attempted to apply to ocean governance. Questions of governance, whether for the world or the ocean, were closely related. The committee had already stated in 1948 that ‘the four elements of life – earth, water, air, energy – are the common property of the human race’. Clearly, the concept of the common heritage of mankind was nothing alien to Mann Borgese, and it must have seemed a natural next step for her to translate the concept into ocean governance.

The connections Mann Borgese had made in Chicago would ultimately lead her to Santa Barbara and her fellowship at the Center for the Study of Democratic Institutions. Robert M Hutchins’s discussion-based style of working, and the centre’s huge *Pacem in Terris* conferences, inspired Mann Borgese to organise her work with ocean governance in a similar fashion. Some fellows said of Santa Barbara that it was ‘Hutchins’s Center’. The same could be said about the institution Mann Borgese built in 1972. The International Ocean Institute was Borgese’s institute. Hutchins’s work was motivated by a deep-rooted belief in international cooperation, and Mann Borgese transferred this ideal to the sphere of ocean governance. But to make the leap from world governance to ocean governance, Mann Borgese had to be introduced to the oceans.

Arvid Pardo’s role in Mann Borgese’s idea-shaping process – Preparing the idea

Arvid Pardo had a central role in the development of Mann Borgese’s ideas on how ocean governance could lead the way to a more holistic form of world governance. Mann Borgese and Pardo connected over the common heritage proposal. She had first been introduced to the ongoing renegotiations of ocean governance in the United Nations through a letter from Aubrey H Whitelaw in the autumn of 1967, and Arvid Pardo’s famous speech that followed in November of the same year introduced her to a specific concept that could be applied to ocean governance: the common heritage of mankind.

In the narrative about the starting point of UNCLOS III, Arvid Pardo is usually referred to as ‘the Father of the Law of the Sea’. It is less recognised how much Mann Borgese contributed to the various proposals and suggestions through her collaboration with

Arvid Pardo in the preparation period leading up to UNCLOS III. The broad recognition of his role is certainly due to the official position he held in 1967. As Malta's new ambassador, he had access to the political arena in a way Mann Borgese never did.

Arvid Pardo's role before and during UNCLOS is important since it can serve as a useful comparison to the part played by Mann Borgese herself. Arvid Pardo was a career diplomat, while Mann Borgese was much more of an activist. This is reinforced by the way Arvid Pardo's influence dwindled when he lost of his position as a representative for Malta. The material viewed in the course of this study suggests that his own efforts to regain an influential position at the negotiations never came close to Mann Borgese's unstinting work to keep herself engaged with the convention. In fact, it seems like Mann Borgese tried harder to re-affiliate Pardo with a delegation or NGO than he did himself.

Despite Pardo's recognition for having 'kick-started' UNCLOS with his 1967 speech, Arvid Pardo was not content with the outcome of the Law of the Sea. Regardless of his personal feelings, Arvid Pardo held a central position at UNCLOS III without ever regaining his prominent role in the negotiations. This was likely due to his symbolic status as the man who had given the right speech at the right point in time.

Although Arvid Pardo was opinionated about the Law of the Sea also in later years, in the material that was viewed for this study he does not appear to have taken much direct action after the Seabed Committee's work commenced in 1973. Due to the limited source material available about Pardo, this study cannot make an accurate assessment of his participation, but the research suggests that his ongoing role was more symbolic than proactive. The part played by Pardo after 'kick-starting' the negotiations and leaving the Seabed Committee remains to be studied more thoroughly.

Based on the material viewed for this study, Pardo's withdrawal might be explained by a lack of willingness to adapt to changing political realities during UNCLOS III. The outcome of the Law of the Sea Convention was not what Arvid Pardo had envisioned in his iconic speech at the United Nations and in the 'Draft Ocean Space Treaty'. He was less willing to adapt his vision to the political circumstances, so although he is widely recognised as the 'Father of the Law of the Sea', he disliked if not abandoned his 'child'.

For others, though, Arvid Pardo's iconic status could be capitalised on, and Mann Borgese attempted to utilise his symbolic value several times during the course of the negotiations. This was especially obvious when she tried to convince Dom Mintoff to invite her and Arvid Pardo into the Maltese delegation, or when she cited the International Ocean Institute on Malta in the hopes that it might become the starting point of an 'international machinery' to govern the oceans. Mann Borgese had understood that Malta – because of Arvid Pardo's role – could be a likely candidate to host a United Nations institution for ocean governance. The United Nations officials and delegations who worked to design a new Law of the Sea recognised Arvid Pardo's symbolic value too. He was invited to give a speech at the closing ceremony when the convention was voted for in 1982 – apparently to underline the finalisation of the convention by letting the 'kick-starter' of the whole endeavour close it.

Apart from comparing Pardo's role in the convention to that of Mann Borgese, another aspect of his biography is of interest. World War II had affected him deeply. Unlike Mann Borgese, who left Europe before the outbreak of war, Arvid Pardo was directly involved. This is essential to understanding the personal motivations behind his idealistic goals. Pardo's idealism was best summed up in a small biographical note about him, where the author stated, 'The diverse experiences of Arvid Pardo has been his willingness to act upon his opposition to war in the pursuit of peace.'¹³⁶¹

The personal backgrounds of both Elisabeth Mann Borgese and Arvid Pardo played a part in their visions for ocean governance. Both wanted to incorporate a new approach to international justice and resource distribution, and this was rooted in the conviction that collaboration was better than conflict, and that justice was necessary to prevent war.

The time was ripe – Political and technological development in the mid-20th century

Elisabeth Mann Borgese's vision for the way that the common heritage of mankind could be applied to the seafloor did not appear from nowhere. With its enthusiasm for new

¹³⁶¹ MS-2-744, Box 186, Folder 4, Ambassador Arvid Pardo.

technologies, for progress and for the possibilities of the uncharted territory on the seafloor, the mid-20th century provided the perfect breeding ground for the evolution of ideas around different forms of governance.

Mann Borgese wrote in 1991 about the role of technology in society and politics: ‘[t]echnology is a tool which simply reinforces and magnifies the consequences of the existing social and economic order’.¹³⁶² This retrospective assessment of the role of technology in society was especially true of the forces that accelerated the need for new negotiations at UNCLOS III. Though this notion precipitated the negotiations, it was not necessarily correct. The relationship between technological progress and society goes both ways. Technology shapes society and society shapes technology.

The driving force in the 1960s was a strong, sometimes overestimated belief in technological progress. This was especially true of deep-sea mining technology. Until the 1970s, discussions about the governance of the area outside national jurisdiction were fuelled largely by the notion that deep-sea mining technology was just around the corner. When it became apparent that underwater mining technology for the deep seabed was more futuristic than realistic, interest in the Area declined, which led Karl Wolf to write to Mann Borgese ‘Kein Mensch interessiert sich für die Area’. In the 1960s, enthusiasm for new technologies was the driving force for proposing the application of the common heritage principle to the seafloor. With the seabed minerals largely out of reach, the concept lost its initial intention.

Another force that drove the UNCLOS negotiations was the general re-establishment of world orders. After World War II, the world in general was on the verge of rethinking governance on a grand scale. None of the people involved with the radical developments in ocean or world governance at that time possessed an unusual amount of visionary power, it was just that the discussions evolving around the Law of the Sea – and international law-making in general – were a consequence of the social and political developments during the first half of the 20th century.

This is especially apparent when we consider several attempts to re-shape world governance that emerged after World War II. The World Federalist movement is just one

¹³⁶² Chircop, ‘Elisabeth Mann Borgese’s humanist conception’, 114.

example, and we might recall that one of Mann Borgese's tasks in her early years in Chicago was to review all kinds of proposals for world constitutions. These initiatives emerged independently of one another, but all had a similar goal: to propose a new order for a world that obviously needed rearranging, especially in the light of humanity's latest and most deadly technological development.

This is particularly obvious in the case of the Chicago Committee to Frame a World Constitution, which was founded as a direct response to the atomic threat. Not only was it set up to address the challenges that arose for the world community due to the atomic bomb, but it was the brainchild of someone who had participated in creating the atomic threat in the first place. The technological development that ultimately led to humanity's ability to split atoms made the need for a more united world abundantly apparent. Such a weapon meant it was necessary to rethink conflict and conflict management on a global scale

The atomic threat was also responsible for the seemingly sudden need in 1967 to reserve the seafloor for peaceful purposes. Pardo's speech is often pinpointed as a starting point for a completely new way of dealing with international law-making, because he introduced the principle of the common heritage of mankind. In reality, the codification of the Law of the Sea had been a long, ongoing and creeping process that was tightly bound up with the fact that humanity had started to travel further and deeper in to the sea than ever before. With this continuing exploration, weaponry stations on the seafloor were beginning to become a potential tool of warfare.

In this atmosphere of future possibilities and a growing need for legislation, the Maltese ambassador played a role, but not necessarily as initiator. He was more like a piece of the puzzle, or another step on the way towards the Law of the Sea. His suggestion was a response to the need to define governance of an area that could become important in the future.

Even the principle Pardo introduced to the discussion was not inherently new. The Outer Space Treaty from 1967 had already coined the term 'province of mankind', and although the term is different, the principle that lies behind it is comparable to the 'common

heritage' principle. It states that 'exploration' should be 'carried out for the benefit and in the interests of all countries... [...]'.

The same was true of the principle that the Chicago committee introduced in their draft for a world constitution, where they wrote that 'The four elements of life – earth, water, air, energy – are the common property of the human race'. Though the terms varied between 'property', 'province' and 'heritage', their meaning was closely related.

Developments in real-world politics underlined the need to rethink world governance. In the case of the Law of the Sea, one such event was the Truman declaration in September 1945. It showed that, while Elisabeth Mann Borgese was grappling with world governance at a conceptual level with the committee in Chicago, ocean governance was already up for discussion.

The United States' attempts to secure claims offshore with the Truman declaration was a trigger for other nation states to follow their lead. The international community had to act before single states ended up taking the matter entirely into their own hands. These developments showed that clarifying maritime boundaries would be vital to maintaining stability in the world order. The shadow of the Cold War and the ever-present atomic threat made the need to secure resources even more pressing. Since the international community was not overtly interested in open conflict, these issues had to be solved through diplomatic negotiations.

The technological enthusiasm of the 1950s and beyond was not just important in that it brought inaccessible spaces like the deep oceans within reach. It also became a stumbling block for agreement at the UNCLOS III negotiations. Clearly, not all states had access to the relevant technology or the means to develop adequate technology speedily. Technological expertise in these fields was limited to, and developed by, industrialised countries, which were also the former colonial powers.

Fluctuations in the balance of power further complicated the negotiations. The decolonisation process had divided the world into developed and developing countries. There was now an increasing number of post-colonial developing states, and for many of them, UNCLOS III was the first time they could enter the international arena.

The Group of 77 is an excellent example of the rising power of developing states through necessary collaboration. In his speech, Arvid Pardo had mentioned the possibility of a ‘race into the deep’, in which industrialised countries would grab resources for themselves before developing states had the chance to invent the requisite technology. There was an inherent unfairness embedded in the whole system. In an attempt to balance out this injustice, the Group of 77 favoured a system of ocean governance that would enable them to catch up in terms of development. Applying the common heritage principle to the seafloor outside national jurisdiction was therefore appealing to them.

However, even in the very first session in 1973, the decision to work with a consensus system instead of voting was a defeat for the developing countries. From then on, there was no power in numbers; instead, compromise had to be reached.

Elisabeth Mann Borgese and her allies hoped to level out the technological superiority of the industrialised states, and this started with the implementation of the principle of common heritage of mankind.

The core of the idea – The common heritage treated as common property

Elisabeth Mann Borgese entered the negotiations on ocean governance with concrete suggestions on how to shape the Law of the Sea so it would incorporate a little piece of internationalism. The concept she suggested was that which Arvid Pardo had introduced as the common heritage of mankind. Mann Borgese’s aim was to fill out the principle with detailed meaning, and then to find ways of applying it to the real-life political situation.

The principle itself went through an interesting transformation during UNCLOS. In the 1970s, the way Mann Borgese intended to apply it brought the principle closer to what the Chicago committee had called the ‘common property’ of mankind. This was due to the aim Mann Borgese had for its application: to level out the economic injustice in the world order. In order to do so, the area outside national jurisdiction had to generate revenue that could be distributed.

During this study’s examination of Mann Borgese’s drafts for ocean governance, it has become apparent that the word ‘heritage’ was used rather loosely in relation to the common heritage principle. This is unsurprising when we consider why the seabed was

reserved for the common heritage of mankind in the first place. Discussions on the subject arose in the mid-20th century, and the focus at the time was on the resources on the seafloor and the apparently imminent prospect of their exploitation. Therefore, the international community was mostly interested in the question of ‘rights of access’ and ‘means of utilisation’ – questions which seemed very immediate in the 1960s thanks to John Mero’s optimistic predictions.

For Mann Borgese too, her view of the seafloor revolved primarily around how to utilise such a store of resources that had no ‘natural’ owner, and how access to these riches could be shared out fairly. According to Mann Borgese’s way of thinking, this meant giving every human on Earth the chance to benefit from the resources of the seabed.

In practice, however, the question was more about which states would appropriate or utilise the resources, and how they would do it. Would it be the industrialised states or the developing ones? With this in mind, Mann Borgese allied herself with those states who had the greatest interest in a very broad application of the common heritage concept. States without any expertise in utilising marine minerals were interested in making rules that would secure access for them despite the fact they lacked the necessary technology.

Mann Borgese proposed a solution to this problem. In a strict reading of her suggestion to solve the issue of unequal access to resources, she proposed compelling industrialised states to go into partnership with developing countries if they wanted to carry out mining activities in the Area. Through this, developing countries could gain technological knowledge through cooperation.

The perspective that was not so much in focus in the early discussions about the common heritage principle was the question of what the term ‘heritage’ meant in terms of reserving areas for future generations. This was barely discussed at the convention. Articles 192–237 deal with issues of pollution, but the section is vague on exact rules or regulations.

The environmental aspect of UNCLOS were first discussed with her students on the courses at Dalhousie University. As regards the convention, though – and particularly Part

XI – this perspective was mostly absent.¹³⁶³ A future study of this aspect of UNCLOS, focusing on both Mann Borgese and other individuals, would be interesting. A good starting point might be one of the treaty's opening statements, in which the parties state that the convention shall 'recognize [...] the equitable and efficient utilization of their resources, the conservation of their living resources, and the study, protection and preservation of the marine environment.'¹³⁶⁴

Elisabeth Mann Borgese's vision for the area outside national jurisdiction in the 1970s was mainly driven by a fascination with what might be technologically possible when it came to exploiting underwater resources. This attitude corresponded with Arvid Pardo's futuristic vision as laid out in his 1967 speech. For the pioneers of the common heritage concept, at the core of ocean governance was peace and justice through redistribution of resources. The convention was an arena in which they had an opportunity to contribute to levelling out economic injustice in the world. They could do this by favouring developing states through an International Seabed Authority that would redistribute revenue and force industrialised states to collaborate on seabed exploitation.

Therefore, the concept Mann Borgese had worked with in the Chicago committee was similar to the concept she wished to apply to the ocean. The 'common property of the human race' applied to one of the elements of life – namely water – in essence differs only in terminology from the principle of common heritage.

The idea in action though institution-building

During UNCLOS, Mann Borgese's work was characterised by her constant ability to change course and find new solutions if necessary. She was not afraid to downsize her ideal in line with the changing political realities that made it increasingly apparent that a holistic ocean regime was not a realistic goal. Mann Borgese adapted her methods and the ideal itself – which was to insert internationalism into ocean governance – to the challenges that arose

¹³⁶³ The Ocean Yearbook publications 11 and onwards would address the issue of the protection of the environment.

¹³⁶⁴ Bernaerts, *Bernaerts' Guide, 153 – Preamble to the United Nations Convention on the Law of the Sea*.

during the negotiation process. The outcome was not what she had hoped for, and Mann Borgese had to cut her losses to some extent, but a fraction of her ideal survived.

Throughout UNCLOS, Elisabeth Mann Borgese used several different institutions (or attempted to use them) as means to influence decision-making processes at the negotiations. As such, she established new institutions or platforms – like the International Ocean Institute on Malta and later in Halifax, and the *Pacem in Maribus* convocations – and she also used existing channels into the convention in the form of national delegations. First Malta, then Austria.

Initially, Mann Borgese had founded the International Ocean Institute in the hopes that it would evolve into a United Nations institution that would govern the world oceans. In the late 1960s and early 1970s, Mann Borgese could not know the future shape and form of this institution, which at the time was referred to as ‘international machinery’ to govern the seafloor. Judging from her suggestions in ‘The Ocean Regime’ (from 1968), in an ideal world this United Nations institution would be an overarching institution responsible for all activities in the oceans, not just the seafloor. Possibly, it could even extend its capabilities to world governance.

We know today that the International Seabed Authority is the real-world end result of the international organisations Elisabeth Mann Borgese envisioned, though on a much smaller scale than she proposed in ‘The Ocean Regime’. The International Seabed Authority is not located in Malta and it does not have any overarching functions other than to administer the seafloor outside national jurisdiction. Since Mann Borgese’s International Ocean Institute did not end up evolving into the seabed authority as anticipated, its tasks and purpose also changed accordingly over time. While Malta was hesitant to get behind the institute, Mann Borgese used it as a vehicle into the convention when the negotiations started in 1973. The Institute’s fate at the time may have been unclear, but Mann Borgese was quick to adapt it for other purposes in the meantime, and she transformed it into a non-governmental organisation. This purpose, too, would only last so long.

Early on during UNCLOS III, it became apparent that NGOs would have problems influencing the negotiation process, and Elisabeth Mann Borgese solved this problem by

joining the Austrian delegation. With the Austrians she had a platform from which she could once again directly influence negotiation processes, send in drafts and discuss paragraphs. An additional advantage was that Jens Evensen, who played a prominent role in the drafting committee, and Karl Wolf, the head of the Austrian delegation, were both based in Oslo. Although there is no direct proof, this might have led to easier access to an important policy maker in the form of Evensen. What we do know is that Mann Borgese and Wolf were invited on several occasions to the intersessional meetings Evensen organised.

Even in terms of her own workplace, Mann Borgese made changes during the period of her involvement with the Law of the Sea. The first *Pacem in Maribus* conference was organised by the Center for the Study of Democratic Institutions in Santa Barbara. The material that was studied in relation to her work in Santa Barbara shows that she attempted to engage the whole centre into the ocean endeavour, but this failed because the think tank fellows were not willing to follow her lead. When the centre began to fall apart, she looked for a new position and contacted Dalhousie University in Halifax.

Although, this study could not focus on her time in Halifax, it was the place she would stay for the rest of her life. In Halifax, she opened another branch of the International Ocean Institute, and this was likely a practical decision, since her new home base in Canada was a long way from Malta.

Mann Borgese's various ways into UNCLOS throughout its duration show that she changed, location and affiliation when necessary in order to achieve her goal of inserting internationalist ideas into the convention. And she was flexible with respect to her ideals too. She continuously downsized her vision in line with social, political and diplomatic changes. We can see this from the differences in scale between her draft of 'The Ocean Regime', in which the common heritage is a principle that overarches the entire ocean space, and its later incarnations. First, it was reduced to the International Seabed Authority and later to the authority's executive branch – the Enterprise. Even in this smaller form, it would still give developing nations a chance to partake in the exploitation of marine minerals.

Whenever her strategy did not pay off, or when the circumstances changed, Elisabeth Mann Borgese developed a new plan – a new 'appeal to act now'. She was not and could

never be a delegate for once specific camp or cause. Therefore, it is not surprising that she changed affiliations several times during UNCLOS III. Her involvement with the law-making process was never static, and neither was her strategy. Ultimately, her aim was to insert even just a microscopic trace of her internationalist ideals into ocean governance.

Elisabeth Mann Borgese's legacy

What was left after the 1994 Implementation Agreement? The last chapter of this study has discussed the amendment period between 1982 and 1994, during which time Mann Borgese was occupied with keeping the provisions of Part XI intact in an effort to protect the common heritage principal and maintain the purpose of the provisions. She did this through her work in the Prep Com for the International Seabed Authority.

We have seen that she tried to apply a mandate to the Prep Com that did not necessarily resonate with the official tasks of the commission. In fact, with the introduction of the Boat Paper, where provisions on Part XI were changed in order to accommodate the claims of industrialised states, the purpose of the Prep Com was abolished, just as Mann Borgese had predicted. She proposed freezing mining provisions, but she was overruled by states that wanted the convention to be effective – something which would only be the case once the United States and other industrialised states had signed and ratified the treaty.

Mann Borgese's own assessment directly after the Implementation Agreement had been approved was that in practice the common heritage principle was no longer effective. It is possible that she moderated this notion in later years in response to fresh developments, but this remains to be studied more closely. On the basis of the material examined for this study, we can see that part of her effort to repair the damage was to implement the provision of technology transfer through the International Ocean Institute's training programmes.

If one were to pinpoint a definitive legacy for Elisabeth Mann Borgese, it would be the International Ocean Institute on Malta, with its sister institutions in Halifax and in other places around the world. Even today, the International Ocean Institute still holds annual training courses for state officials and scholars from developing nations working in fields that are related to ocean or coastal management.

In many respects, the evolution of the International Ocean Institute reflects Elisabeth Mann Borgese's own ability to adapt. The institution started out as the 'concrete beginning' of the future International Seabed Authority and the ocean regime, and served as a think tank organising *Pacem in Maribus* in the most pressing times of preparation prior to UNCLOS III. It became an NGO to serve as a platform and vehicle into UNCLOS for Mann Borgese when she was struggling to join a national delegation, and finally it turned into a training facility for scholars from developing nations. In its current incarnation, it fills a gap that was originally supposed to be occupied by the International Seabed Authority before it was compromised due to the 1994 Implementation Agreement, in that it practices technology transfer to developing nations.

It is relatively simple to assess Mann Borgese's legacy in the aftermath of UNCLOS, but more difficult to quantify her direct impact on the negotiations. Without knowing the specifics of how other individuals and stakeholders operated, it is difficult to estimate the extent of Elisabeth Mann Borgese's influence during the negotiations. We know that she was in contact with influential key actors at the convention. Whether her proposals were heard, or just resonated with the proposals of other actors, is hard to determine without having studied the ideas set out by other actors.

A closer investigation into the question of whether Mann Borgese was successful with her various initiatives would require a case study of one or more specific initiatives through the entire process. One obvious starting point could be to investigate the Paul Engo case, where provisions were secretly changed in favour of developing states. If a closer investigation of this issue were to show that Mann Borgese was involved, this could give us an indication of her influence above and beyond her proposals. In this study, we have followed her ideals, her proposals to implement ideas, and the strategies which she employed to implement those ideas that would further her ideal of internationalism applied to ocean governance.

We have seen that she did this through various channels: by founding institutions, organising conferences, joining delegations, writing reports and holding speeches. We have also seen that she was able to ally herself with key people in the negotiation processes, like

Jens Evensen, Shirley Amerasinghe and many others who could not be included in this study. Dalhousie University Archive holds an abundance of letters to important delegates at the United Nations, many of whom Elisabeth Mann Borgese was on a first-name basis with. These letters provide possible threads that still need to be followed to get a more precise picture of her involvement and potential impact on decision-making in the Law of the Sea negotiations.

Today we know that Part XI, together with the Implementation Agreement of the Law of the Sea Convention, did not turn out as Mann Borgese and Pardo had envisioned in the 1970s. To what extent the common heritage is still a vital part of the Law of the Sea and whether it has any function or not is beyond the scope of this discussion. In respect of Elisabeth Mann Borgese's goals for Part XI and the shape and function of the International Seabed Authority, the Implementation Agreement abolished the initial purpose of the common heritage principle. As for the outcome, Mann Borgese's ideas partly failed. Nevertheless, we can only guess at whether the common heritage would have been applied in any shape or form to the seafloor outside national jurisdiction without Arvid Pardo and Elisabeth Mann Borgese.

The Leverings from the Neptune Group criticised Mann Borgese for being an ivory tower idealist, but the findings in this study contradict their argument. An ivory tower idealist would not have adapted and changed course as Mann Borgese did several times during the negotiation process. Perhaps the issue between the two parties was that they fought for different causes. The Leverings wanted to aid the consensus-seeking process, while Mann Borgese's aim was to contribute concrete proposals to the negotiation process. Those proposals had the potential to disrupt consensus, instead of aiding it.

Though the Leverings were mistaken about her ivory tower idealism, it is fair to make a critical evaluation of Mann Borgese's efforts. The Leverings were justified in objecting to Mann Borgese's methods, because she potentially disrupted consensus-seeking by re-introducing proposals that had already been rejected, like the proposal of a joint venture compromise that was never going to be accepted by the United States and eventually caused a stalemate when provisions were secretly changed in favour of developing countries.

Although we have no record of how much Mann Borgese was involved directly in changing the provisions, there is proof enough that her proposals were controversial.

In addition, Mann Borgese, inspired by Arvid Pardo, was perhaps overly enthusiastic about the abundance of mineral resources on the seafloor, without taking into account that they might be out of reach. However, this was a flaw she shared with many of the delegates that gathered at UNCLOS III.

Her enthusiasm for technological progress, her proactiveness concerning the implementation of the common heritage, and her lobbying efforts to recruit allies were all unrealistic at times. The driving force behind this was perhaps the belief that one has to set ambitious goals in order to achieve even a tiny proportion of them, but this strategy can be counterproductive. It is possible that her overly ambitious proposals sometimes disrupted her cause more than they enabled her to reach her aims.

Epilogue – House by the sea

In the years to come after 1994, Elisabeth Mann Borgese would live in her house by the sea in Sambro Head, overlooking the lagoon. She would continue working with the oceans until her sudden death in 2002.

When she moved into the Sambro Head house in 1978, eleven turbulent years of engagement with the Law of the Sea Convention lay behind her. For the preceding decade, she had travelled endlessly between New York, Malta, Santa Barbara and many other places. Each location had been important in its way for her engagement with ocean governance.

The house in Sambro Head would be her home for the last 24 years of her life. Maybe here, more than anywhere else, she would manage to tie together all the threads of her work with ocean governance. She would open her house to high-ranking guests, ambassadors, politicians and businessmen from all over the world. She would train students to become future advocates for the Law of the Sea, and would build a reputation among her peers as an open, affectionate woman with a remarkable stubbornness, who was willing to give and do everything for her cause – to protect the world's oceans for future generations.

When you visit the house today, you can see that it must have been very beautiful in its heyday. Locals remember a nicely tended garden, a neat swimming pool and a bunch of

exuberant dogs rampaging round the property. Elisabeth Mann Borgese had her desk on the second floor in front of the huge panoramic window overlooking the lagoon and the Atlantic beyond.

It would be easy to conclude that the house by the sea was the perfect point of arrival for her. It is tempting to apply symbolic significance to the fact that a woman who had spent so much of her life on the move would finally settle in Halifax, in her house by the sea. In hindsight, life is often interpreted as a thread of meaningful events following one after the other. Historians, in particular, can be tempted to apply an artificial pattern to the course of their research object's life, when in fact that life is by definition chaotic and characterised by coincidences.

Elisabeth Mann Borgese once said that ending up in Halifax was a coincidence, not a choice. The same could be said about her work with ocean governance. Her upbringing, her connections, her intellectual family, her husband, the political circumstances in which she grew up, and the political and social changes that would occur during her lifetime – all of these factors would play a role in the formation and evolution of her ideal of internationalism. It is interesting to explore how exactly she would try to apply different ideas to achieve portions of her ideals, but we have to avoid attributing too much importance to single events in her life, or looking for starting points.

In this study, we have followed Elisabeth Mann Borgese's path, the formation of her ideals and her introduction to ocean governance by staying close to the sources, in the hopes of experiencing the evolution of the Law of the Sea through Elisabeth's own eyes. The challenge of this method is the risk of becoming blinkered by Mann Borgese's personal take on the way the Law of the Sea evolved. At the same time, it may have given us a unique perspective on the formation of an ideal, and how ideas were prepared in order to actively apply them to a process. Finally, it has perhaps provided an insight into Mann Borgese's assessment of the outcome of her efforts by examining her attempt to 'rescue what is left to rescue'.

Archival Material

Dalhousie University Archive – Elisabeth Mann Borgese Fonds

Elisabeth Mann Borgese Fonds, MS-2-744, Dalhousie University Archives and Special Collections, Halifax, Canada.

MS-2-744, Box 16, Folder 19.
MS-2-744, Box 43, Folder 17.
MS-2-733, Box 43, Folder 46.
MS-2-744, Box 43, Folder 48.
MS-2-744, Box 43, Folder 49.
MS-2-744, Box 43, Folder 54.
MS-2-744, Box 47, Folder 6.
MS-2-744, Box 52, Folder 9.
MS-2-744, Box 62, Folder 8.
MS-2-744, Box 63, Folder 1.
MS-2-744, Box 84, Folder 12.
MS-2-744, Box 85, Folder 17.
MS-2-744, Box 87, Folder 4.
MS-2-744, Box 89, Folder 18.
MS-2-744, Box 94, Folder 1.
MS-2-744, Box 101, Folder 1.
MS-2-744, Box 108, Folder 1.
MS-2-744, Box 114, Folder 7.
MS-2-744, Box 114, Folder 8.
MS-2-744, Box 114, Folder 19.
MS-2-744, Box 120, Folder 25.
MS-2-744, Box 121, Folder 18.
MS-2-744, Box 125, Folder 2.
MS-2-744, Box 125, Folder 3.
MS-2-744, Box 132, Folder 1.
MS-2-744, Box 132, Folder 32.
MS-2-744, Box 135, Folder 22.
MS-2-744, Box 139, Folder 16.
MS-2-744, Box 145, Folder 11.
MS-2-744, Box 147, Folder 1.
MS-2-744, Box 175, Folder 21.
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MS-2-744, Box 176, Folder 13.
MS-2-744, Box 186, Folder 4.
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MS-2-744, Box 218, Folder 33.
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MS-2-744, Box 236, Folder 11.
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Elisabeth 118 Br.-Kop. (dav. 1. Fragm.), 4 Kt.-Kop., 1 Telegr.-Kop. an Nica Borgese Beil.:
1. Br.-Kop. an J.W.Fulbright.
EMB B4 Mann Borgese.

95 br. 1. Telegr. An Guiseppe Antonio Borgese
EMB B3 Mann Borgese.

Thomas Mann Archiv, Zürich, Schweiz

Ergänzter Nachlass Thomas Mann, B-III Briefe von Familienmitgliedern (direkte Nachkommen Thomas und Katia Manns, deren Ehepartner sowie Katia Mann), Thomas-Mann- Archiv, Zürich, Switzerland.

B III Briefe von Familienmitgliedern

B-III.17.EINS-1.
B-III.17-KENN-1
B-III.17-MANN-106.
B-III.17-MANN-107
B-III.17-MANN-108
B-III.17-MANN-109
B-III.17-MANN-110
B-III.17-MANN-126.
B-III.17-MANN-144.

University of Malta – Arvid Pardo Study Area – Pardo Room

Box: Personal Correspondences & Materials

PR-Box: Personal Correspondences & Materials, undated letter from Dr. Arvid Pardo to Salvino Busuttil (handwritten note on the right corner). CC: Joe Friggieri, Fr Peter Serracino Inglott, Freddie Amato Gauci, ~~Victor Gauci~~, Charlie Vella, Elizabeth Mann Borgese, ~~Victor Ragonesi~~.

PR-Box: Personal Correspondences & Materials, letter from Arvid Pardo to Secretary Ministry of Commonwealth, 18. October 1968, appendix 'D'.

PR-Box: Personal Correspondences & Materials, letter from Arvid Pardo to Secretary Ministry of Commonwealth, 18. October 1968, appendix 'C'.

PR-Box: Personal Correspondences & Materials, letter from G. George Olivier to Arvid Pardo, 23. November 1964.

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