



PUBLIC LECTURES



ARVID PARDO MEMORIAL LECTURE

Chair: Awni Behnam

ARVID PARDO: The Visionary Inspiring The Common Heritage Concept 1914 – 1999

Alexander Yankov

Introduction

I wish to express my gratitude to the organizers of this *Pacem in Maribus* XXXII Convention. It brings me 37 years back when I had the opportunity to take part at the first Convention of *Pacem in Maribus*, held at the same Corinthia Palace Hotel, which at that time was a modest lone hotel.

Today we commemorate the fortieth anniversary of the epoch-making statement of Arvid Pardo on the establishment of a new legal order for the seas and the oceans. In 1999 during the In Memoriam eulogies Arvid Pardo was extolled as “Father of the contemporary law of the Sea”. These words of his close friend Elisabeth Mann Borgese were further substantiated by her tribute to him as “...one of the great men of the twentieth century who has contributed decisively to shaping the world of the twenty-first....He had an encyclopaedic mind, like most of genius ... His disappearance marks the end of an era”. In his panegyric, Kofi Annan, the Secretary General of the United Nations, acknowledging the merits of Pardo, stated that, “He did more than any one of this generation to enlighten the world about what he called ‘the common heritage of mankind’”.

Arvid Pardo was known as an internationally minded person long before he joined the realm of international politics and diplomacy. Perhaps his genetic background and education have contributed greatly to his formation as a man of the world. His mother was Swedish and his father Maltese. He was born in Rome and received school education and a university degree in law in Rome, followed by a diploma in history at the French University in Tours. Most of his adolescence and first steps in political activities took place in Italy.

At the beginning of World War II, at the age of 26, he was arrested by the fascist military forces, who accused him of organizing underground groups in support of the Allies forces. He was sentenced to 18 years close confinement, including the first 2 years in solitary imprisonment at Regina prison in Rome. In 1943, on order of the Gestapo, he was deported to Germany in the concentration camp of Grossbeeren, and later transferred in the Alexander Platz prison in Berlin, where the bombardment was most ferocious. After the capitulation of Nazi Germany, in April 1945, he was freed by the International Red Cross, but was compelled to remain in Berlin and was shortly captured by the Soviet occupation forces. In order to escape from Berlin, he crossed by foot through the territory of Germany to the Allied occupation zone. These five distressing war years had a crucial impact on the philosophy of Arvid Pardo against war, for international cooperation and the establishing a peaceful regime over the world's ocean. The establishment of the United Nations at the San Francisco Conference focussed his attention towards the new world organization. From 1946 to 1964 he served as UN officer in various capacities, as an Acting Head of UN Archives, a member of the staff of the Division of Non-Self-Governing Territories, and a deputy-representative of the UN Development Programme in Nigeria and Ecuador.



During the first years as Permanent Representative of Malta to the UN, he considered several important areas of UN activities in the field of disarmament, peaceful settlement of disputes, peace-keeping, economic and social problems and human rights. This approach was a reflection of his political philosophy, emerging from his experience during the war and post war developments of the world.

After the independence of Malta in 1964 Arvid Pardo was appointed permanent representative of his country to the United Nations in New York. At the same time, as a rare precedent in diplomatic practice, from 1964 to 1971 he served as non-resident ambassador of Malta to the United States, the Soviet Union, as high commissioner to Canada, and as ambassador to the Vatican and other States.

The Historic Statement

Forty years ago, on 1 November 1967, the day of *All Saints*, during the Twenty-second session of the United Nations, the First Committee of the General Assembly at its 1515th meeting, at 10:30 a.m. opened the general debate on Agenda item 92, under the unusually long title reading:

“ Examination of the question of the reservation exclusively for peaceful purposes of the sea-bed 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 interests of mankind”

This formulation was the result of prior informal negotiations between the delegations from the three regional groups, namely, the Developing countries, encompassing Asian, African and Latin American and Caribbean States, Western European and other States and Eastern European States. In the course of active discussions four draft resolutions were submitted from the regional groups and Malta, the State that took the initiative to introduce this agenda item.

The main actor in the opening of the general debate was the Permanent Representative of Malta, Ambassador Arvid Pardo. His creative figment of imagination was eloquently proved already during his statement in the First Committee. His oral presentation was notable by its innovative subject on the agenda. The statement of Arvid Pardo in his capacity of Chairman of the Maltese delegation was supplied by abundant factual data enlightened on a high scientific level. Another unusual feature of the presentation was its length, taking two consecutive meetings - 1515 and 1516 - , an unusual precedent in the practice of the United Nations.

Many delegations were taken by surprise by the novelty of the item. There were some biting remarks that the item suggested by the Maltese delegation was science fiction of the category of the writings of the French writer Jules Verne. Others showed suspicion about the ability of a small developing state, a newly elected member of the UN, to be able to produce alone a statement of this calibre with well elaborated proposals, including the establishment of a special institution for the regime of the international seabed area.

This situation compelled the Maltese representative, in the introduction of his statement, to reply to several questions recently raised by a member of the House of Representatives of the United States, challenging “ the premature proposal “ and “why the rush?” In his brief explanation, Pardo pointed out that the Maltese islands, situated in the centre of the Mediterranean, “are naturally vitally interested in the sea” and, therefore, followed closely the rapidly developing technology which might lead to appropriation for national use of the seabed beyond the limits of national jurisdiction. For this reason, the Maltese Government considered that it might be wise “to establish some form of international jurisdiction and control over the sea-bed and the ocean floor beyond the limits of present national jurisdiction, before events take an irreversible course”. Responding to some insinuations that Malta “was a sounding board for any State” he categorically scorned similar allusions.

The substantial part of the long statement focused on a comprehensive evaluation of the present state of the oceans and the political, technological, economic, legal, military and institutional aspects of the new regime of exploration, exploitation, conservation and management of the seabed and ocean floor beyond national jurisdiction, and the use of their resources exclusively for peaceful purposes in the interests of mankind. Special emphasis was made on the continental



shelf and the deep ocean basins, including the resources of the seabed, the mineral resources of the sediments of the ocean floor containing large deposits of pelagic clays rich in manganese nodules, copper, nickel, cobalt with enormous economic potential.

On the examination of the state of the oceans and, in particular, the seabed and their resources, two major issues were emphasized. First, the large potential resources of the seabed, mainly the continental shelf, and the deep ocean floor, made accessible due to the impact of modern technology. The proposition that “[The] dark oceans were the womb of life” was supported by a wide range of scientific data, based on advanced oceanographic studies and *in situ* exploration. It was also pointed out that “the rapidly developing technology makes possible the exploration, occupation and exploitation of the world’s sea-bed and its ocean floor”. Secondly, any protraction of the establishment of a viable regime may lead to appropriation for national use and utilization for military purposes of the deep seas areas.

The other part of the Pardo statement focussed on the elaboration of the novel concept of the principle of common heritage of mankind and on the establishment of “a special agency” for the regime of the international seabed area. With regard to the concept of common heritage, this statement is the basic source of what are now articles 136 and 137 of UNCLOS. Article 136 stipulates that “The Area (i.e. the international seabed area beyond national jurisdiction) and its resources are the common heritage of mankind”. Article 137 defines the legal status of the Area and its resources, in accordance with the principle of common heritage, setting out the rules of non-appropriation and non-alienation, determining that these rights are vested in mankind as a whole on whose behalf the Seabed Authority shall act and that no state or natural or juridical person shall claim, acquire or exercise rights with respect to the mineral resources from the Area. His concept of the common heritage went beyond the traditional legal doctrine of common wealth or common property, *res communis* or *res omnium communis* as opposed to the notion of *res nullius* or *terra nullius*.

The creation of a special agency was considered as a “long-term objective”. It was anticipated that the agency should be “endowed with wide powers to regulate, supervise and control all activities on or under the oceans and the ocean floor”. The idea of an agency may be considered as the forerunner of Part XI, section 4, articles 156-158 of UNCLOS on the Authority. In his address in 1967, Pardo expressed the view that the suggested agency, like the specialised organization within the institutional system of the UN, should be founded on a treaty. In this connection, he advanced a list of generally acceptable principles to be incorporated in the proposed constitutive treaty, like peaceful purposes, exploitation activities primarily in the interests of mankind with particular regard to the needs of poor countries.

The statement of Arvid Pardo and, in particular, his proposal on the institutional arrangements for establishing an “agency” for the regime of the seabed, was considered positively by many delegations, not only from the developing countries, but also from the Eastern European group and some delegations from Western Europe. As the first president of the Seabed Committee and later President of the Third United Nations Conference on the Law of the Sea, Ambassador of Ceylon Amerasinghe pointed out that the statement “so comprehensively and ably presented by the representative of Malta is a bold and imaginative one”. Of course, there was a wide range of comments on the far-reaching legal, economic and technical implications which needed thorough examination before establishing an international institution with a wide range of functions and powers.

The four draft resolutions mentioned above, were the initial reflection of the positions of the regional groups. The draft resolution submitted by Ambassador Pardo, on behalf of Malta, was more comprehensive and far looking. It introduced the new legal and political concept of the common heritage of mankind. In addition, it was the only draft resolution contemplating the suggestion to consider, at the next session of the General Assembly, as a long-term objective “the creation of a special agency with adequate powers to administer in the interests of mankind the oceans and ocean floor beyond national jurisdiction.” This proposition was elaborated in the second part of the statement of Ambassador Pardo in the next 1516 meeting of the same day, 1 November 1967.



The draft resolution submitted by India, on behalf of the Group of Seventy-seven, while accepting the concept of common heritage, emphasized the importance of the principle of just and equitable international economic order, which takes into account the interests and needs of mankind as a whole and, in particular, the special interests and needs of developing countries. This idea found its place later in the Preamble of the 1982 United Nations Convention on the Law of the Sea.

The draft resolution of the Western European Group, submitted by Belgium, put the emphasis on three basic requirements, namely, the establishment of the seabed regime on the basis of market economy, protection of the industrial property and fostering international cooperation. Some of the members of this group also expressed, in principle, their support to the concept of common heritage.

The draft resolution of the Eastern European Group submitted by Bulgaria, emphasised the significance of international cooperation, prevention of private appropriation of the seabed and their resources which are the common heritage of mankind. The seabed and its resources must be used exceptionally for peaceful purposes. It was suggested that at this stage it was preferable not to proceed hastily to the establishment of committees and other organs, but to undertake appropriate studies through competent specialized organizations, the Intergovernmental Oceanographic Commission of UNESCO, the International Maritime Consultative Organizations (now International Maritime Organization- IMO), the Food and Agricultural Organization (FAO), the International Atomic Energy Agency, the World Meteorological Organization and other international institutions in the field of ocean affairs.

These four draft resolutions, on the basis of consensus, led to the composite Draft Resolution A/C.1/L.410, sponsored by 34 delegations and submitted for consideration at the 1542nd meeting of the First Committee, on 7 December 1967. The draft resolution was elaborated and drafted by a committee of six members, made up of Brazil, Bulgaria, the United States, India, Malta and Belgium, under the Chairmanship of Mr. Fahmi, Chairman of the First Committee. On the basis of this resolution was established the Ad hoc Committee to Study the Peaceful Uses of the Sea-bed and the Ocean Floor beyond the Limits of National Jurisdiction, composed of 38 members.

Arvid Pardo was an active member of the Seabed Committee. At the last session of the Seabed Committee in Geneva, he submitted for consideration a Draft Statute of the International Tribunal for the Law of the Sea, followed by similar drafts from the USA and USSR

Law-making in New Areas of the Law of the Sea

The novel concepts of Arvid Pardo triggered off the process of progressive development of modern international law and the law of the sea in new fields of maritime activities. In March 1971 Pardo made a second address to the General Assembly of the UN on the new legal order for ocean space. The concept of comprehensive approach to law making in the field of the law of the sea constituted a further conceptual evolvement of his methodology. After his removal from the position of Maltese ambassador, Arvid Pardo continued his work as a scholar in the Center for the Study of Democratic Institutions in Santa Barbara, California and the Woodrow International Center for Scholars in Washington, D.C.

Since the inception of IOI and *Pacem in Maribus* Conferences until his last days, after his dismissal as an official representative of Malta, Arvid Pardo continued his association with the United Nations Conference of the Law of the Sea as a Special Adviser. On the invitation by the Collegium of the Conference, he attended the last session for the opening of the signing of the Convention. His appearance at that session, not as a representative of a State, but as the citizen of the world, the father of the new Law of the Sea and architect of the new international legal order for the seas and oceans, gave rise to a spontaneous applause.

Now when we celebrate the fortieth anniversary of the historic statement of Arvid Pardo and commemorate his epoch making achievements, we listen to the voice of his close friend and mentor Elisabeth Mann Borgese, who in her Memorial in 1999, published in Vol. 14 of the Ocean Yearbook, wrote: " ...He was a genius with a complex temperament, phlegmatic and intensively

productive at the same time, committed and detached, idealistic and realistic, revolutionary and conservative, religious and cynical”.

In my view the great Arvid Pardo will remain forever the visionary generating novel concepts and stimulating the emerging modern law of the sea, inspiring the concept of the common heritage of humankind. His intellectual contribution will leave enduring marks in the annals of the *Pacem in Maribus* Conventions and the International Ocean Institute.

ARVID PARDO 1914-1999



Ambassador Pardo [of Malta] was known as the ‘Father of the Law of the Sea Conference.’ He did more than anyone of his generation to enlighten the world about what he called ‘the common heritage of mankind.’ Ambassador Pardo opposed the 200-mile Exclusive Economic Zone, which left the most valuable fish and mineral resources to the coastal states. Kofi Annan, 1999.

Arvid Pardo studied law and economics, and after World War II entered the Maltese foreign service and became the first Ambassador of Malta to the United Nations. It was here that he made his historical speech which led to the Third Nations Conference on the Law of the Sea in November 1967.

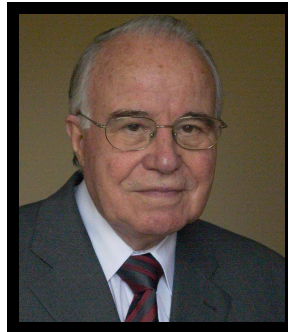
He raised the conscience of the world with respect to the uses of the vast resources existing in the deep ocean, and managed to get the idea of these resources to be declared as a common heritage of mankind to become debated and to be introduced in the Third United Nations Law of the Sea. Most of his ideas up to 1974, when he was forced to leave the Maltese service, can be found in *The Common Heritage of Mankind*. The concept of the common heritage of mankind is one of the most extraordinary developments in recent intellectual history and one of the most revolutionary and radical legal concepts to have emerged in recent decades. Ever since its emergence, it has become evident that no other concept, notion, principle or doctrine has brought as much intensive debate, controversy, confrontation and speculation as the common heritage phenomenon did. This is because it is a philosophical idea that questions the regimes of globally important resources regardless of their situation, and requires major changes in the world to apply its provisions.

The application and enforcement of the common heritage of mankind require a critical re-examination of many well-established principles and doctrines of classical international law, sovereignty, equality, resource allocation and international personality. After 1974, Arvid Pardo joined the faculty of the University of Southern California, where he taught international relations and the law of the sea until his retirement in 1984. Although deeply disappointed with the results and the aftermath of UNCLOS III, he remained a faithful friend of Elisabeth Mann Borgese, and a participant and wise counselor of *Pacem in Maribus* and all of the activities of IOI.

Arvid Pardo was one of the great men of the 20th Century who has contributed decisively to shaping the world of the 21st Century.



ALEXANDER YANKOV



Alexander Yankov was born in Bourgas, Bulgaria in 1924. He is Professor of International Law and the Law of the Sea, Judge in the Tribunal for the Law of the Sea in Hamburg, Honorary President of the Bulgarian Association of International Law and Member of the Institute of International Law.

Throughout his career, Prof. Yankov also held the following positions: Vice President of the International Ocean Institute; Member of the Advisory Committee of the Protection of the Sea, (1980-1996); Member of the Executive Council of the International Association of the Law of the Sea; Ambassador, Permanent Representative of Bulgaria to UN (1972-1976); Chairman of the Third Committee of the UN Convention on the Law of the Sea (1973-1982); Vice Chairman of the Intergovernmental Oceanographic Commission, UNESCO (Vice Chairman 1987-1991); and Member of the Independent World Commission on the Oceans, Lisbon (1995-1998).



ELISABETH MANN BORGESE MEMORIAL LECTURE

Chair: Peter Serracino Inglott

The Oceans – from a Heritage of Power to a Heritage of Peace

Joanna Darmanin

Ladies and gentlemen,

In many ways the concept of a common heritage of mankind can be encapsulated in personalities like Elizabeth Mann Borghese. Her life-long dedication to the oceans and seas has earned her the name of "Mother of the Oceans". When nominated for the 2002 Nobel Peace Prize she was called *"the brightest star in the firmament of the galaxy of those who have dedicated their life to the cause of global peace and justice"*.

The tireless work of Elizabeth Mann Borghese was crucial to the adoption of UNCLOS. Her dedication did not stop there. Through the creation of institutions such as the International Oceanographic Institute and events such as the *Pacem in Maribus*, she ensured the continued living and developing nature of the Convention and the norms and principles it advocates. Like a mother, she has nurtured mankind's relationship with the oceans and seas.

What I propose to do today is to make an assessment of the Convention and whether it achieved its major objective. It will thus be necessary to evaluate the institutional framework established by the Convention and to look at current developments within a global and European perspective.

The concept of Common Heritage of Mankind as enshrined in the Law of the Sea Convention was a breakthrough in international legal history. It transformed the very foundations of the principles of ownership and property and transposed such ground-breaking notions to the international field.

The legal principle is today undisputed. It had ramifications far and wide. Its application in different fields corroborates the revolution in the mindset of generations. Domination and effective control over resources no longer premise ownership. In addition, this principle has been transposed beyond application to physical resources and has developed into notions of guardianship of issues such as the elderly, and most notably climate change.

The success of UNCLOS in keeping the peace on our seas and oceans is unparalleled. It served as a framework to dissuade States that could, from rushing in and forging new empires. It provided a tacit agreement between East and West that the oceans and seas would remain outside the sphere of their influence.

The power struggle over the seas started the moment man learnt how to navigate its waters. Yet there was always an inherent respect for the oceans as it was perceived to comprise a heritage of humanity. Domination of the oceans was an extraordinary form of power. By way of example, I quote the advice of Cardinal Richelieu to King Louis XIII from his *'Testament Politique'*: *"The sea is one of the heritages to which all rulers claim to have the greatest share, and yet it is the one where the rights of each person are the least clear. The empire of this element was never well assured to anyone One must be powerful to claim that heritage."*



Over the centuries, the power of the oceans grew even further, from one providing trade and navigation routes to that of providing limitless resources. The effect of UNCLOS was primarily to transform the oceans from a heritage of power to a heritage to peace.

Malta's proposal, as outlined in Pardo's speech in the First Committee of the UN General Assembly, was driven by two major concerns – peace and equity. He was concerned with the Truman Declaration regarding the US continental shelf, which he judged as setting a precedent for the high seas. At the time, ownership was deemed to be nothing but effective control and ability to exploit resources. The objective behind Pardo's proposal was to reverse the state of affairs where international law encouraged *"the appropriation of this vast area by those who have the technical means to exploit it"*. What he had in mind was to avoid a scenario whereby an *"intolerable injustice"* would be allowed to happen which would *"reserve the plurality of the world's resources for the exclusive benefit of less than a handful of nations"*.

Twenty years after the adoption of UNCLOS, with a radically changed political climate and with vast developments in technology and communication, the questions: "Does it work? Did it meet its objective?" spring to mind. To arrive at honest answers we need to look at the reasons for which the proposal was made.

Put simply, the oceans and seabeds are an unknown. The extent of their potential is equivalent to the ability of technology to exploit them. It is unexplored territory.

At the time of the proposal, the advent of technology had brought to the fore the untapped potential of minerals and metals. Pardo's forecast was that such resources would be commercially exploited within the next decade, i.e. by the end of the seventies.

He gives an extensive analysis of what was believed to be the quantities of such metals contained in the nodules. The figures he quoted are impressive. To give one example, for the seabed of the Pacific ocean alone, it was believed that the nodules contained 43 billion tonnes of aluminium equivalent to reserves for 20,000 years at the 1960 world rate of consumption and as compared to known land reserves for 100 years.

Pardo's speech reflects a burning sense of urgency and calls for quick and decisive action. This huge untapped resource was easily and freely available. The cost of the technology was also deemed to be low. What had to be avoided at all costs was the equivalent of an international gold rush.

In order to affect the principle of equity and fair distribution of the wealth that was foreseen with exploitation of the seabed, Pardo proposed the establishment of an Agency. He calculated the revenues of such an agency to amount to 6,000 million US\$ per annum. 1,000 million US\$ would go for administration costs and 5,000 million US\$ would be used for the development of poor countries.

I will not dwell on the political intricacies that led to eventual agreement on Part XI. The word in the corridors of the United Nations at the time was that it was better to have a weaker agreement than no agreement at all. This at least was the feeling among the developing countries. Some of the original vision was compromised, especially in terms of what the initial Convention promised to developing countries. Disagreements on issues such as transfer of technology were subdued allowing for the implementing agreement to come into force. Many felt that it was vital for the United States and other developed nations to be party to the Convention. Ingenious ways of bringing the US on board, at least in institutional terms, were found. However, the US is not a party to the Convention as yet, although some positive noises are now emerging from across the Atlantic.

Ladies and Gentlemen,

The establishment of the International Seabed Authority was greeted with great anticipation. To date expectations are yet to be met. That is not to say that the Authority has not taken its task



seriously. Clearly the economic and technological backdrop has not developed as fast as was predicted, thus depriving the Authority of its major role.

The latest report of the Secretary General of the International Seabed Authority paints a bleak picture. The activities of the eight contractors do not point to any imminent breakthroughs. The pace of exploration work remains very slow. Even more worrying is the fact that their programmes, for the second five-year period up to 2011, indicate that *"all of the contractors essentially plan to continue work at the same pace"*. As yet there are no proposals for investigating issues such as the physical problems of recovering nodules from the ocean floor or to ascertain the cost of mining nodules and processing them into metals of commercial interest.

As pointed out by the Secretary-General, the task of the Authority is not one of management alone. He writes: *"The fundamental objective of the regime established by the Convention and the Agreement is to encourage the development of those resources for the benefit of mankind as a whole"*. The expectation at the time of the adoption of Part XI was that after 15 years of their approved work plans, contractors would either move to the exploitation phase or surrender the areas allocated to them. What seems evident today is that contractors will basically continue to sit on the sites and seek multiple extensions of their contracts.

Given the very open nature for grounds for extensions of the work programmes, it is clear that until the economic circumstances change there will barely be motivation from the contractors to move forward with serious exploration and eventual exploitation. In other words, it is the economic backdrop which will likely be the determining factor for developments and not the Authority that will be able to drive developments in this area.

A quick assessment of the economics of the world metal market as they relate for example to copper, as an important commodity for world economic development, demonstrates the upward trends in production and consumption mainly attributed to developments in China.

Overall world copper mine production rose by 30% during the last decade (1997 – 2007). In terms of prices a dramatic upward trend can also be seen with world refined copper prices rising from an average of 80 US \$ per tonne in 2000 to an average of around 300 US \$ per tonne in 2006 – 2007. The forecast for output and annual mine capacity over the 2006 – 2011 period is projected to grow at an average rate of 4.6% per year.

Given that this boom in the land-based copper industry can be met with supplies that support the demand at least into the next century, it is unlikely that the economics for deep sea bed mining will shift with any faster a pace.

What then of the future for the International Seabed Authority? So far, its work has focused on building up databases and establishing the framework should exploitation become feasible. The discussions on the mining code demonstrate that, in many ways, the issues at hand are a moving target. Setting in place a framework for exploitation is all well and good, but it will necessarily apply to today's circumstances. Should deep sea bed mining become a reality within the next couple of decades, technology and science would also have progressed, possibly making the codes a somewhat outdated exercise.

Without doubt the environmental and other data collected by the Authority is an immense service in the interest of humanity. However, until exploitation of the seabed becomes a reality, its role to develop the resources there will remain largely unfulfilled.

Another institution established by the Convention was the International Tribunal on the Law of the Sea (ITLOS). The cases it has had before it relate mainly to issues of prompt release. Yet the jurisdictional issues relating to maritime border disputes remain mostly in the realm of the International Court of Justice (ICJ). Since 1999, three new maritime border cases have been submitted to the ICJ. Given the establishment of the ITLOS at the end of 1996, there is still a reluctance by States to use this court as their first choice. Over the years, the ICJ has built up an amount of institutional experience and nurtured the trust of states in maritime issues. The ICJ is



universal, whereas ITLOS is not. Over time, and with the submission of a few cases, it is hoped that ITLOS may build trust as the more appropriate jurisdictional body for maritime issues.

The Commission on the Limits of the Continental Shelf also faces considerable challenges in view of the 2009 timeframe within which it was set to complete its tasks. To date it has only been able to issue recommendations for two submissions – by the Russian Federation and Brazil. There are currently some six other pending submissions, none of which, however, are from developing countries. The expenses incurred in the preparation and scientific evaluations necessary for such submissions are definitely a mitigating factor. It is unlikely that within the next two years all the remaining States would have completed the necessary work to make their submissions. Ingenious ways will have to be sought to make further extensions of the timelines provided for in art. 76 and later amended by the States Parties.

Paradoxically, this body has an increasingly sensitive role to play. Recent actions by the Russian Federation in the Arctic will surely have ramifications. Press reports alleging an upcoming submission by the UK in the Atlantic Ocean floor around the Falklands also point to the need to ensure that the Commission is put on a sure footing to enable it to carry out its mandate effectively.

Thus, whereas the legal value of the Convention has been unparalleled, not only because of its implications in other fields of activity but also because of its nature as an instrument for peace, the value of the institutions created by the Convention is still to be fully actualised. This is largely due to developments in economic and resource scenarios that were not contemplated at the time the Convention was adopted.

In terms of the principles it sets out, the Convention's unquestionable triumph was the negation of the status of *res nullis* as applied to the ocean space and its resources. However it is not amiss to state that, in seeking a collective exercise of the *res communis*, the international community has not been as successful. It needs to be seen whether this is because of a lack of political willingness or rather because the elements that comprise the vision set out by Pardo do not match the political and economic realities of today's world.

Pardo can certainly be proud that Cardinal Richelieu's assertion that one must be powerful to claim the heritage of the oceans is now part of history. On the other hand, it does remain true that the rights of individuals over this heritage are still not clear. The "*res comunnis*" is undisputed as a legal principle, however, turning this principle into a tangible reality has not been as straightforward. Whereas the notion of systems for benefit sharing remain a real objective, the extent to which this actually happens falls short of Pardo's expectations.

The current debate on marine genetic resources demonstrates this particular point. UNCLOS is silent on the issue. The question of what types of resources were going to fall under the jurisdiction of the Convention was settled in article 133 in Part XI, which largely defines the resources covered by the Convention as minerals. Therefore such resources currently have a status of *res nullis* and may thus be appropriated by any State without prejudice to the duty to cooperate in their conservation and management.

Today, bio-prospecting and biotechnology are among the fastest growing industries. Just to cite a few examples: in 2005 revenues for publicly traded companies in the biotechnology industry grew by 18% over the previous year to 63.2 billion US\$, 75% of which are accounted for by the US. In 2002, global sales of marine biotechnology products have been estimated at 2.4 billion US\$. This is only a small proportion of the overall biotech industry but an increasingly important one.

The development of drugs from marine organisms can also be highly profitable. Chemicals in the sponge, for example, have led to more than 50 million US\$ annual sales in derived antiviral medicines. Chemicals found in a coral in the Bahamas have been found to have anti-inflammatory and analgesic properties. Eventually a pure form was developed and is now used in Estee Lauder skin care products and has an annual market value of 3-4 million \$.

However, the cost and technical difficulties of identifying and collecting marine samples, the sometimes lengthy and highly skilled laboratory processes mean that high levels of investment are



necessary. Japan, for example, spends almost a billion dollars a year, 80% of which comes from the private sector. Other countries spend far less, but the search for new compounds, through marine bio-prospecting, is big business.

Compared to the terrestrial-derived bio-products, the number of marine natural products that have found their way into hospitals, clinics and pharmacies is, thus far, small. This has more to do with the relative infancy of the field than any lack of potential for discovery. In fact, the natural products isolated from marine sources tend to be more highly bioactive than their terrestrial counterparts and hence are considered to be more intrinsically valuable.

Marine bio-prospecting is thus likely to see growth in the years to come. In the absence of legal certainty and in the knowledge of claims regarding benefit sharing, the onus is even heavier on policy makers to agree on a balanced framework whereby fair access to the benefits of marine biotechnology can be guaranteed, while at the same time allowing for a predictable and profitable framework that encourages the development of this sector that can bring about huge benefits for medicine, health and science in general.

Ladies and Gentlemen,

Notwithstanding the fact that the institutional framework established by UNCLOS has not matched expectations, the different spin-offs of the Convention in the area of oceans management and governance have mushroomed, giving to the Convention a life of its own and a place in the history of oceans affairs. Of this achievement Pardo can certainly be proud.

Fisheries is a primary area where developments have been largely inspired by the Convention. Articles 61 and 62 on the Conservation and Utilisation of Living Resources sets out a number of principles that reflect many of the current principles underlying the EU Common Fisheries Policy (CFP).

Since the adoption of the Convention, progress in the establishment of Regional Fisheries Organisations (RFOs) has been steady and determined. They provide a framework for agreements on managing the fish resources of the open seas. The EU is one of the prime movers for strengthened operation of RFOs. It is a contracting party to 11 existing RFOs and is in the process of joining others and it also plays a major role in pushing for the establishment of RFOs where they do not exist.

RFOs also represent an appropriate framework for combating illegal, unreported and unregulated fishing (IUU), which today constitutes one of the major challenges to sustainability of fish stocks. Most RFOs have already adopted measures to deter IUU. A major gap, however, will continue to exist for areas that are not covered by RFOs and where compliance is even harder to ensure. The European Commission has just adopted an Action Plan for the eradication of IUU which contemplates the tightening of our legal framework in this field.

Ladies and Gentlemen,

Developments since the adoption of the Convention have pointed to another lacuna in the manner in which we manage our oceans and seas. Today, increasingly, the oceans and seas pose different challenges. We have moved from a situation of uses of the High seas and the allocation of space or resources to one or another of competing uses within the same space.

Maritime activities tend to be concentrated into small yet crucial spaces along coastlines. The key question is the manner in which we allow each activity to flourish while at the same time ensuring that detrimental effects are as limited as possible. The following are just a few examples of the importance of the maritime space to the European Union: maritime activity accounts for 3-5% of Europe's GDP; this share is much bigger if concentrated into coastal regions where the contribution is of 40% of Europe's GDP; 40% of the oil and 60% of the gas currently consumed in Europe is drilled offshore; whereas 90% of all EU external trade is seaborne.



Given these statistics it is surprising that a consciousness of the importance of a maritime policy for the European Union has not emerged earlier. You will have heard during this week's proceedings of the package of proposals adopted by the European Commission just under a month ago that seek to flesh out a new path towards a coordinated maritime policy. The preamble of UNCLOS contains a specific recognition that "*the problems of ocean space are closely interrelated and need to be considered as a whole*". What we have essentially done with the Maritime package is to recognise that it is not only the space that is interrelated and needs to be considered as a whole, but also the uses of the oceans that interrelate in an amazingly complex manner. We need to develop the tools to deal effectively with such interrelation and move towards integrated policymaking which can avoid pitfalls and create synergies.

Ladies and Gentlemen,

Humanity's relationship with the oceans has changed over the centuries. From being an expanse to be conquered only by the enterprising and powerful few, it has become a vault of potential uses, the benefits of which can be shared by the many. UNCLOS was the start of a revolution in the mind-set of generations. Pardo's vision has been a remarkable contribution to peace on our oceans and seas. Thirty years of hindsight and *real politik* have transformed that vision. In some respects the projections envisaged by Pardo have fallen short of expectations. The transition from *res nullis* to *res communis* is undisputed, however, it is fair to say that the negation of *res nullis* has been more powerful than the actualization of the *res communis*. The collective exercise of the rights enshrined in the concept of the common heritage of mankind, have not been as simple or straightforward as Pardo may have thought. A recent example from the situation with marine genetic resources demonstrates that the driver for developments lies in industry, where the notion of benefit sharing will only work up to a point. Notwithstanding, the fact that industry actually recognizes these principles is in itself a tribute to the vision instilled by Pardo.

Developments in other fields such as fisheries have pointed to the living nature of the Convention. The logical development of integrated policies is another such challenge. Moving forward in these areas will require the determined courage of States at the international and regional level, but increasingly, also, it necessitates the trust of all stakeholders. The unstinting efforts of people like Elizabeth Mann Borgese and Arvid Pardo serve as an example and give us the direction.

We have to be bold enough to follow.

ELISABETH MANN BORGESE 1918-2002



Elisabeth Mann Borgese founded the International Ocean Institute in 1972. She was born in Munich, Germany on 24 April 1918, the fifth of six children of Katia Pringsheim and Thomas Mann (author and Nobel Literature Laureate, 1929). Having experienced a difficult childhood in war-torn Europe, her family was exiled to France, Switzerland and then the United States in 1938.

One of the most important influences throughout her life were the writings of Giuseppe Antonio Borgese (1882-1952), whom she married in 1939, and with whom she had two daughters, Angelica and Dominica. Elisabeth moved to Canada in 1979, which was her home for the remainder of her life.

After studying music and classics, Elisabeth began her academic career at the University of Chicago, where she joined a group that later formed the Committee to Frame a World Constitution. During that time the United Nations Law of the Sea discussions were initiated, following a speech given by Arvid Pardo, Malta's Ambassador to the United Nations. Elisabeth worked closely with Arvid Pardo, and her involvement in the Law of the Sea Negotiations led her to realize that the ocean could be used as a living laboratory in which the ideas surrounding the World Constitution could be put into practice.

In 1970, Elisabeth organized the first *Pacem in Maribus* Conference in Malta. The conference was to become an annual event, and led to the establishment in 1972 of the International Ocean Institute (IOI), as an independent global vehicle for promoting the peaceful use of ocean space and resources, guided by the principle of the Common Heritage of Mankind proposed by Arvid Pardo. Its establishment was a milestone in the struggle to enhance, promote and advocate the peaceful and sustainable uses of ocean space and coasts as well as the management and conservation of the oceans so that future generations can share in their benefits. *Pacem in Maribus* is the Institute's motto.

As a non-governmental body with consultative status at the United Nations, the International Ocean Institute works to uphold and expand the principles enshrined in the United Nations Convention of the Law of the Sea; namely that the seabed and the oceans are the common heritage of humankind, for the benefit of humankind as a whole, with particular consideration of the poor.

From these humble beginnings, the IOI has grown to encompass 27 Operational Centres around the world, focusing on research on coastal and ocean governance, education of decision-makers in ocean affairs for more effective ocean governance, and awareness-raising among coastal communities, including women and youth, on the importance of integrated coastal management.

Elisabeth's life-long dedication to ocean governance resulted in many achievements. The publication of her two books *Ocean Governance and the United Nations* and *The Oceanic Circle* explored Elisabeth's ideas of an inclusive, participatory system of ocean governance and have received much praise. Elisabeth established the *Ocean Yearbook*, an annual IOI publication which serves as a valuable resource for those involved in ocean affairs. Her academic dedication and vision also earned her recognition from academic institutions in the form of five honorary doctorates, and a host of honours from countries around the world.

JOANNA DARMANIN



Joanna Darmanin currently works in the Cabinet of European Commissioner Joe Borg, who is responsible for Fisheries and Maritime Affairs. Before joining the Cabinet, Joanna worked in the Private Secretariats of the Foreign Minister of Malta and of the President of Malta, dealing with European and multilateral affairs.

A diplomat by profession, Ms. Darmanin served as a First Secretary in the Permanent Mission of Malta to the United Nations during the time of the adoption of the Implementing Agreement on Part XI of the United Nations Convention on the Law of the Sea. She was also Malta's delegate to the International Seabed Authority's initial meetings in Kingston, Jamaica.

Ms. Darmanin was awarded a B.A. Honours in Philosophy from the University of Malta, having written her thesis on the Common Heritage of Mankind. She pursued further studies, in her capacity as a diplomat, at the University of Oxford, having been awarded a scholarship to participate in their Foreign Service Programme.