

In Memoriam

Elisabeth Mann Borgese

by Patricia Birnie*

Elisabeth Mann Borgese, the youngest daughter of Thomas Mann, died in Switzerland on 8 February 2002, aged 83. She was a remarkable woman who, for over 30 years, without any formal legal training, exerted considerable influence on the development of the law of the sea,



and, especially latterly, on its environmental aspects. Her appointment to a professorship at the International Ocean Institute at Dalhousie University, Canada facilitated her efforts. As befitted Thomas Mann's daughter, who had followed him into refuge in the USA, she was an indomitable visionary irrevocably committed to the achievement of world peace. After the end of World War II in 1945 she collaborated on the drafting of a Constitution for World Government. The difficulties encountered there did not deter her from pursuing the establishment of a legal regime that would at least ensure 'Pacem in Maribus'. When she joined the Centre for Democratic Institutions in Santa Barbara in the 1960s she focused her attention on the means of achieving this, and for the rest of her life applied her energy, ideals and deep beliefs to these goals, brooking no compromise. When coastal states began to extend their jurisdiction seawards, eroding the commons areas, she worked closely with Arvid Pardo, Malta's Ambassador to the United Nations, on his proposal that the area of the seabed should be declared 'the common heritage of mankind', to be exploited only under a comprehensive international regime on behalf of mankind as a whole, an approach she supported wholeheartedly. She appreciated the vitally important role to be played in any global ocean regime by the marine sciences and the need for this to be as international as possible. With the aid of UNDP she

established an International Ocean Institute in Malta to further these aims and help bridge the development gap by training specialists in all disciplines relevant to the law of the sea. She then instigated a series of 'Pacem in Maribus' Conferences, first convened in Malta and subsequently throughout the world. 'Science,' she declared, 'is the common heritage of mankind *par excellence* and should be managed by all nations co-operatively for the benefit of all.'

On the eve of the opening of the UN Law of the Sea Conference in 1973, she urged perceptively that 'if we want rational management of the oceans we must, by treaty commonly agreed upon, regulate the uses nations (and companies) make of ocean space which is an ecological whole.' Developing countries, to obtain advantage from it, should press for institutions that were not only comprehensive but also operational. In other words, she pressed not just for a seabed authority but a multi-purpose 'ocean space institution'. She worked with Pardo to develop the institutional and regulatory aspects of these aims. They were reflected in their 1967 publication 'The Ocean Regime' and draft of an ocean space treaty.

Over the next 30 years, as she continually promoted this all-embracing approach, her ever-fertile brain generated numerous initiatives to promote a more holistic, equitable approach to ocean management. In 1978, sponsored by the International Ocean Institute (IOI) and the East West Centre, the ongoing series of Ocean Yearbooks, edited by Elisabeth and various colleagues, was launched, enabling experts in these fields to examine all aspects of ocean management – living and non-living resources, transport and communication, the environment, coastal management, and military and regional activities.

After the conclusion of the UN Law of the Sea (UNCLOS) Convention in 1982, the drive to secure consensus, which had resulted in many broad and ambiguous provisions, greatly disappointed her: however, she continued to press her vision in the numerous post-UNCLOS fora. She was concerned that with the ending of UNCLOS there was no body within the UN system capable of considering the problems of ocean space *as a whole*, despite the recognition by the UNCLOS Parties in its preamble that these 'are closely interrelated and need to be considered as a whole'. Thus one of her initiatives in the 1990s was to promote the establishment of the Independent World Commission on the Oceans (IWCO), of which she became a member. Before resigning from it because she found its approach and methods too bureaucratic, she introduced into it a proposal from a Club of Rome Report, which she had written,² recommending that in order to enable the UN General Assembly to deal effectively, as only it could,

* Visiting Fellow at the London School of Economics Law Department. Former Director of the IMO International Maritime Law Institute in Malta.

with the closely interrelated problems of ocean space, it should establish a Committee of the Whole dedicated to developing such a policy. To her disappointment the IWCO included this proposal in its report without proposals for follow-up action, although UNCLOS itself had not, as is usual under most international treaties, established regular meetings of a Conference (or Commission) of the Parties (COP). Elisabeth and the IOI continued vociferously to press the need for the UNGA to establish a Committee of the Whole to develop an integrated oceans policy, prepared by the UN's Department of Ocean Affairs and the Law of the Sea (DOALOS), which would include representatives of upgraded Regional Seas Programmes, ocean-related UN specialised agencies, intergovernmental organisations (IGOs) and non-governmental organisations (NGOs), and which would act as an UN Ocean Assembly.

As Elisabeth strongly supported an 'ocean governance' approach, she was delighted when the UNGA, when the proposal was introduced to it by Malta, established UNICPOLOS (United Nations Informal Consultative Process on the Oceans and the Law of the Sea). She reported in full on its first session in EPL.³ She concluded happily that, 'this development must be considered a breakthrough in the process of building a global system of ocean governance' by the only UN body with a membership comprising not only all the GA member states but also I-G and regional organisations as well as the major groups of civil society with a mandate to consider the interrelated

problems of ocean space as a whole. She recognised that the problems involved remain formidable.

For the many who attended (as did this writer, on the same panel) the Global Conference on 'Oceans and Coasts at Rio+10', held at UNESCO in Paris from 3-7 December 2001, the last impression of Elisabeth was of her with her rhetorical powers undimmed, still vigorously presenting this final 'vision' oriented panel, her blueprint for 'Enhancing Ocean Governance', her idealism undiminished and untrimmed, despite the problems still presented by the UN's still largely sectorial and bureaucratic system, and growing array of *ad hoc* treaties.

A fitting epitaph is provided by a poem penned by Gabrielle Eggcomms, which preceded Elisabeth's Preface to the 1974 PIM Convocation report:

'If I were a river
I would not subdivide
Meander in a web of sluggish gullies
Ooze in some putrid delta
Trickle into an uncaring sea
I'd pour into the ocean
A new oneness'

Notes:

- 1 Preface, Proceedings, Pacem in Maribus Convocation, Malta, 23 June 1973, International Ocean Institute, 1974, xviii.
- 2 E.M. Borgese, *The Oceanic Circle*, Tokyo, United Nations University Press 1998.
- 3 *Environmental Policy and Law*, Vol. 30 (2000) No. 5 p. 224-232; see also *Environmental Policy and Law*, Vol. 31 (2001) No. 4-5 p. 221-220.



Memorial Service at St. John's Co-Cathedral at Valletta, Malta. In the foreground: Dr. George Hyzler, Acting President

Courtesy: IOI