INTERNATIONAL PROGRESS ORGANIZATION

«The Phoenicia Roundtable»

MARITIME ORDER IN THE GLOBAL ERA
National Interest vs. Common Good of Humanity

In memory of Arvid Pardo and Elisabeth Mann Borgese

INTRODUCTORY REMARKS

by

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I am pleased to welcome you at The Phoenicia. The name of our venue evokes the legacy of those who were, according to a Homeric scholion, "the first to plough the seas."[1] As early as around the 8th century BC, the Phoenicians had made Malta a base of their trade in the Mediterranean. Herodotus even claims that they had ventured into the waters beyond the Pillars of Hercules [Gibraltar].[2]

Fast forward to the 20th century: it was here, in this building, where, on 20 September 1964, Prime Minister Dr. George Borg Olivier hosted a state banquet on the eve of Malta's Declaration of Independence.

And it was off the coast of Malta where, in December 1989, the leaders of the United States and the Soviet Union, accommodated on their warships (the Soviet missile cruiser Slava and USS Belknap, anchored in the choppy waters off Marsaxlokk) informally declared the end of the Cold War. Few still remember the solemn words of General Secretary Gorbachev at a joint press conference with President Bush on board the *Maxim Gorky*, in the calmer waters of Marsaxlokk port: "The world is leaving one epoch and entering another. We are at the beginning of a long road to a lasting, peaceful era."[3] As member of the Mediterranean Peace Committee and at the invitation of Malta's former Prime Minister, Dr. Karmenu Mifsud Bonnici, the International Progress Organization was taking part, here in Malta on 2-3 December 1989, in a meeting, of peace advocates that coincided with the Summit.

Unfortunately, the optimism and enthusiasm about a new world order the two leaders had displayed at their – as I vividly recall – storm-lashed meeting in the Mediterranean could not be sustained. The march on the "long" road envisioned by Gorbachev was quickly interrupted by a series of unilateral assertions of power.

This brings me to the challenges before us right at this moment. What kind of *maritime order* can evolve in a geopolitical environment where Cold War bipolarity has vanished, but an even more complex and pervasive struggle for global dominance unfolds in which the

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[1] "… πρῶτοι δὲ Φοίνικες τὰ μέγιστα διεπέρασαν πελάγη." (Schol. II, XXIII, 744 / ΙΛΙΑΔΟΣ Ψ. [23], quoted according to: *Scholia graeca in Homeri Iliadem [Scholia vetera]*. Ed. Hartmut Erbse*. Volumen quintum* [Vol. V] *scholia ad libros Υ– Ω continens*. Berolini [Berlin], apud Walter de Gruyter et socios, 1977, p. 438)

[2] "… ἀπέπεμψε Φοίνικας ἄνδρας πλοίοισι, ἐντειλάμενος ἐς τὸ ὀπίσω δι᾽ Ἡρακλέων στηλέων ἐκπλέειν ἕως ἐς τὴν βορηίην θάλασσαν …" (Ἡρόδοτος [Herodutus], Ἱστορίαι [The Histories], Book IV, chapter 42)

oceans increasingly become a theater of competition? A new concert of powers seems to emerge, indeed a 21st century *maritime version* of the "Great Game," where, as in the 19th century, the unilateralism of the national interest prevails. This has become obvious in a new rush for the resources of the ocean that ignores the provisions of the United Nations Convention on the Law of the Sea (UNCLOS). The open challenge to the International Seabed Authority (ISA) by the US President's Executive Order of 24 April this year, entitled "Unleashing America's Offshore Critical Minerals and Resources," is a case in point. The bellicose language of the Executive Order betrays the real motive. The President evokes "unprecedented national security challenges in securing reliable supplies of critical minerals independent of foreign adversary control."[4] Although the US is not a State Party to UNCLOS, the resources in the area beyond national jurisdiction can certainly not be claimed as "America's" resources, as the Order falsely suggests – unless one believes in something like "anarchy of the seas."

It was the previously mentioned first Prime Minister of independent Malta who early on warned of such unilateral action driven by the greed (under the cover of vital national interests) of powerful countries. In his speech at the Plenary Meeting of the General Assembly of the United Nations on 6 October 1967, Dr. Borg Olivier spoke about the consequences that could have resulted from the 1958 *Convention on the Continental Shelf*, then in force, which defined the limits of the continental shelf in terms of a country's *technological ability to exploit*. Introducing consideration of the common good of humanity into the discourse on maritime affairs, the Prime Minister lucidly explained what this "open-ended instrument,"[5] as he called the Convention, would imply for the exploration and exploitation of the resources of the ocean. "The formulation of this Convention might result in technologically advanced countries claiming to appropriate for their own exclusive benefit the sea-bed underlying the sea at any depth and at any distance from their coasts, as soon as they can exploit the natural resources thereof."[6] He thus suggested "the establishment of an international agency to assume jurisdiction, as **trustee for mankind**,

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[3] Quoted according to BBC: *ON THIS DAY* (3 December 1989), https://bbc.co.uk/onthisday/low/dates/stories//december/3/newsid_4119000/4119950.htm.

[4] President Donald J. Trump, The White House, Executive Orders, April 24, 2025, Section 1 ("Background").

[5] *Official Records*, United Nations / General Assembly, Twenty-second Session, 1582nd Plenary Meeting, New York, 6 October 1967, Par. 123, p. 13.

[6] *Loc. cit.*, Par. 124.

over the sea-bed and ocean floor in order to ensure their orderly and rational exploitation, and that from the immense potential of the exploitation the poor countries should also benefit."[7] Also, the Prime Minister called for an "equitable solution to conflicting national claims …"[8] This was many years before brakes were put on to the Geneva Convention's "open-ended" approach, through the definition of the continental shelf under UNCLOS.

In line with the Prime Minister's approach, Malta's first Permanent Representative to the United Nations, Ambassador Arvid Pardo, in his seminal and far-reaching speech at the First Committee of the UN General Assembly on 1 November 1967, spoke of the "intolerable injustice that would reserve the plurality of the world's resources for the exclusive benefit of less than a handful of nations."[9] He warned of "a competitive scramble for sovereign rights over the land underlying the world's seas and oceans, surpassing in magnitude and its implications last century's colonial scramble for territory in Asia and Africa."[10]

Thus, Malta was an early trendsetter in raising awareness for responsible ocean governance, emphasizing the shared responsibility of states, and Pardo laid out the elements of such a just maritime order. He introduced into UN phraseology the notion of the high seas as "common heritage of all mankind,"[11] quoting from a resolution that had been adopted by the *World Peace through Law Conference* earlier that year in Geneva.[12] The conference was attended by over 2,000 lawyers and judges from over 100 countries. Not least because of Pardo's indefatigable efforts as communicator of their message within the UN system, Article 136 of UNCLOS now reads: "The Area and its resources are the common heritage of mankind."

In view of his pioneering role in calling for a régime of the oceans that transcends the greed of the nation-state and incorporates a new paradigm beyond the essentially utilitarian approach, resembling the mindset of colonial exploitation, of the 1958 Geneva Convention, we would like to pay tribute to Arvid Pardo and dedicate our meeting to his memory.

We equally remember today the monumental role of Elisabeth Mann Borgese. Together

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[7] *Loc. cit*., Par. 125. (Emphasis H.K.)
[8] *Ibid.*
[9] *Official Records*, United Nations / General Assembly, Twenty-second Session, First Committee, 1515th Meeting, Agenda item 92 ("Examination of the question of the reservation exclusively for peaceful purposes of the sea-bed and the ocean floor …"), New York, 1 November 1967, Par. 91, p. 12.
[10] *Ibid*.
[11] *Loc. cit*., par. 104.

with Ambassador Pardo, she raised global public awareness for ocean governance that protects the environment and resources of the sea for future generations. As initiator of the *Pacem in Maribus* conferences[13] and founder of the International Ocean Institute (IOI), now headquartered in Malta, Elisabeth Mann created a legacy of scholarship and civil responsibility *in rebus maritimis*. It may be worthy of attention that the delegation of land-locked Austria appointed Mrs. Mann as advisor in the negotiations for UNCLOS.

Arvid Pardo's and Elisabeth Mann Borgese's lasting achievement is that they raised the issues of *shared responsibility* and *common good* in the negotiations on the law of the sea. Both, Pardo and Mann also substantially contributed to bolstering Malta's influential role in maritime affairs. In addition to the IOI, the International Maritime Law Institute (IMLI), an affiliated institution of the International Maritime Organization (IMO) of the United Nations, is also located in Malta.

Today, more than three decades after UNCLOS entered into force, it remains to be seen how the principle of common heritage introduced by Pardo can eventually be preserved in a climate that is increasingly one of global anarchy – in the wake of the obvious failure of a hastily proclaimed "rules-based order." One may again pay attention to the sobering analysis which he published shortly after the conclusion of the negotiations on UNCLOS in the early 1980s. According to the assessment of the "Father of the Law of the Sea" (as he is often called), the drafters of the Convention had "created a largely symbolic regime and excessively complicated institutions capable of efficiently carrying out few, if any, functions."[14]

This was indeed a premonition of sorts – as has become obvious in the predicament of the International Seabed Authority (ISA) vis-à-vis the unilateral steps of the Trump administration.

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[12] Resolution 15, adopted on 13 July 1967.

[13] The conferences started in Malta in 1970, with assistance of the government of Malta. The last conference was convened in 2013.

[14] "The Flawed Rendering of the Common Heritage Principle": chapter in the article, "An Opportunity Lost," in: *Law of the Sea: U.S. Policy Dilemma*. Eds. B. H. Oxman, D. D. Caron, C. L. O. Buderi. San Francisco: ICS Press [Institute for Contemporary Studies], 1983, p. 22. – In this essay, Pardo also draws our attention to a problem UNCLOS faces due to its, in his opinion, being "grossly inequitable" in terms of the provisions on the continental shelf. In his view, "the provisions of the convention legalize absurdities." He illustrates the assessment by reference, *inter alia*, to the fact that under UNCLOS "the Pitcairn Islands with 60 inhabitants may legally claim control over the resources of a maritime area several times larger than that which can be claimed by the Federal Republic of Germany with more than 60 million people [in 1983 / H.K.]." (P. 20)

Under evolving global conditions, an even greater challenge will be how to develop the common heritage principle further towards the notion of "common good of humanity." A subtle, implicit hint at the idea may be found in Art. 59 of UNCLOS, which states that parties involved in conflicts over rights and jurisdiction in the exclusive economic zone also must take into account "the importance of the interests involved (…) to the **international community as a whole**." It will not anymore be sufficient to think just of how to *equally share resources*; the overriding consideration must be how to *use them responsibly* in view of common survival. Increasing environmental threats that affect not only low-lying islands, but ultimately, and at various degrees, the entire international community, leave us no other choice. This concern is also reflected in the BBNJ Agreement that will soon enter into force and in which the Parties state that they "desire" "to act as stewards of the ocean in areas beyond national jurisdiction **on behalf of present and future generations**."[15]

It is indicative of the seriousness of the threat of climate change, with the rise of sea levels, that on 9 November 2023 Australia and Tuvalu in Rarotonga signed the "Falepili Union Treaty" that provides, *inter alia*, for what some commentators described as "climate refuge" for citizens of Tuvalu. The treaty perfectly highlights the importance of the idea of common good in today's maritime context. ("Falepili" in Tuvaluan means looking after your neighbors as if they were family.)

There are other challenges to maritime order under UNCLOS some of which I would like to briefly mention in closing.

As the Convention can only be fully implemented through arbitration and court rulings, one must ask how State Parties should deal, in the global constellation of today, with fellow State Parties that simply ignore the rulings and awards because they feel that they do not need to fear the consequences. This is indeed a major challenge to the international rule of law: rules without enforcement are not legal norms in the strict sense. They more resemble non-committal wishes or moral principles.

On a more positive side, Malta and Libya have set an example of how to resolve a dispute over maritime sovereignty. Their Agreement of 10 November 1986 implementing the ICJ's

[15] Preamble to the *Agreememt under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction*, New York, 19 June 2023, entry into force: 17 January 2026.

judgment on the delimitation of the continental shelf[16] demonstrated the spirit of good faith and cooperation that will also be needed to comprehensively implement UNCLOS. (The Agreement, predating the entry into force of UNCLOS, was concluded on the basis of customary international law, but *informed* by UNCLOS, which had been adopted in 1982, but only became binding in 1994.)

Also, the community of State Parties is faced with the question as to how to deal with the fact that some countries are not parties to UNCLOS. The most powerful among those few states is obviously not impressed by the *opinio juris* that UNCLOS – or basic provisions of it – has by now acquired the status of customary international law. The open contempt for the ISA displayed by the United States is a case in point.

Another serious issue for the maritime rule of law is how to deal with armed, and at times lethal, attacks against, sabotage, or abduction of, civilian, and in particular humanitarian, vessels and their crews by states in waters beyond their territorial jurisdiction, including in the exclusive economic zone of other states. The protracted armed conflicts in the Black Sea and Eastern Mediterranean regions, and recent incidents in the Caribbean Sea, have made the wider public aware of what is at stake when parties to a dispute interfere with the freedom of navigation or obstruct humanitarian missions by means that may include the use of military force. There must be no vigilante justice on the high seas!

Lastly, among the major challenges to maritime order is the assertion of sovereign rights over sea space on the basis of claims, often rooted in colonial history, to territorial sovereignty over distant islands, and the unilateral assertion – in the "Area" beyond national jurisdiction – of a state's "national interest" at the expense of the interests of all others.

In view of all of this, and against the background of deepening geopolitical instability and uncertainty, Elisabeth Mann's vision of *PAX IN MARIBUS* and Arvid Pardo's notion of the high seas as common heritage of mankind remain as relevant as ever – as a reminder to the conscience of nations.

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[16] International Court of Justice, *Case concerning the Continental Shelf (Libyan Arab Jamahiriya/Malta)*. Judgment of 3 June 1985. – Leġiżlazzjoni Malta, ACT No. II of 1987, signed: Agatha Barbara, President: *Malta-Libya Continental Shelf Delimitation (Ratification) Act*, 29 January 1987.