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Institutional framework for ocean governance : a way forward

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INSTITUTIONAL FRAMEWORK FOR OCEAN GOVERNANCE: A WAY FORWARD

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DECLARATION

I certify that all the material in this dissertation that is not my own work has been identified, and that no material is included for which a degree has previously been conferred on me.

The contents of this dissertation reflect my own personal views, and are not necessarily endorsed by the University.

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ABSTRACT

Title of Dissertation : Institutional Framework for Ocean Governance:

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The institutional framework is one of the main components of ocean governance under which institutions are established in order to manage the oceans, their resources and related issues. The dissertation looks at the establishment of these institutions and their purpose, and finds that often a new institution is established every time a new issue is identified. It is appreciated that a specific institution is created in order to feasibly address a specific issue. However, in the long run this trend will see overlapping roles of those institutions for ocean governance.

The work and responsibility of managing the oceans and their related issues, is mostly international in nature and involves substantive and integrated efforts. At the same time, it requires the work of experts. Therefore, an alternative to the current system by way of capacity building is explored to further enhance these essential elements at the global level.

Taking advantage of the internal advantages and the current developments of the institutional framework, it is hoped that capacity building would serve as an alternative solution to mitigate the current nature of ocean governance. Elements of leadership, human capital, communication, and financing are discussed to show the relevance of capacity building. Initiatives at international and regional levels are also presented in order to show its practicality.

KEYWORDS : Institutions, Institutional Framework, Ocean Governance, Capacity Building, United Nations.

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LIST OF ABBREVIATIONS

ACC	Administrative Committee on Coordination
APEC	Asia-Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
CEB	United Nations System Chief Executives Board for Coordination
CFP	Common Fisheries Policy
CLCS	Commission on the Limits of the Continental Shelf
CSD	Commission on Sustainable Development
DOALOS	Division for Ocean Affairs and the Law of the Sea
DSD	Division for Sustainable Development
ECOSOC	Economic and Social Council
EEZ	Economic Exclusive Zone
EU	European Union
FAO	Food and Agricultural Organization
FWG	Fisheries Working Group
GCOS	Global Climate Observing System
GOOS	Global Ocean Observing System
HLCM	High-Level Committee on Management
HLCP	High-Level Committee on Programme
IAEA	International Atomic Energy Agency
ICAO	International Civil Aviation Organization
ICSU	International Council for Science
IFAD	International Fund for Agricultural Development
IGOs	Intergovernmental Organizations
IHO	International Hydrographic Organization
ILO	International Labour Organization
IMF	International Monetary Fund

IMO	International Maritime Organization
IOC	Intergovernmental Oceanographic Commission
ISA	International Seabed Authority
ITCP	Integrated Technical Cooperation Programme
ITLOS	International Tribunal for the Law of the Sea
ITU	International Telecommunication Union
JCOMM	Joint IOC/WMO Technical Commission for Oceanography and Marine Meteorology
NGOs	Non-governmental Organizations
UN	United Nations
UNCED 1992	United Nations Conference on Environment and Development 1992
UNCLOS III	United Nations Conference on the Law of the Sea III
UNCLOS 1982	United Nations Convention on the Law of the Sea 1982
UNCTAD	United Nations Conference on Trade and Development
UNDG	United Nations Development Group
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNEP	United Nations Environment Programme
UNFPA	United Nations Population Fund
UNHABITAT	United Nations Human Settlements Programme
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNICPOLOS	United Nations Open-ended Informal Consultative Process on
UNIDO	United Nations Industrial Development Organization Oceans and Law of the Sea
UNODC	United Nations Office on Drugs and Crime
UN-Oceans	Oceans and Coastal Areas Network

UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East
UNWTO	World Tourism Organization
UPU	Universal Postal Union
WBG	World Bank Group
WFP	World Food Programme
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WMO	World Meteorological Organization
WTO	World Trade Organization

CHAPTER ONE

INTRODUCTION

1.1   Background

The Earth's surface is extensively covered by oceans which provide a massive and varied habitat within their depths, and offer a dynamic resource to living things. For instance, they steer the climate and weather, controlling the global currents of heat and freshwater. They provide a livelihood for human beings through fishing, shipping, exploration of hydrocarbons, exploitation of mineral resources, as well as leisure activities.[1] The oceans are open to all and their enormous contributions are for mutual benefits.

Nevertheless, this huge wealth of natural resources, living and non-living, in the vast ocean areas which were previously open to all and known as part of the high seas have been turned into assets of certain states. A principal justification for this change was the growing sense at the third United Nations Conference on the Law of the Sea III (UNCLOS III), which took place from 1973 to 1982, that international efforts to manage

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[1] Field, J. G., Hempel, G., Summerhayes, C. P., *Oceans 2020: Science, Trends and the Challenge of Sustainability*, Washington: Island Press, 2002 at p. 1.

human uses of marine resources had failed.[2] In relation thereto, a new approach came into the picture that vested the responsibility for the sustainable use of the oceans. As the uses of the oceans expanded rapidly, new principles emerged, new procedures were introduced and new institutions were established. This phenomenon has initiated efforts to create international cooperation to manage the oceans and as the need of such cooperation grew stronger, international institutions having mandates on various aspects of ocean resources and ocean related activities started to proliferate.[3] These institutions have a mandate that covers certain marine sectors, and most of them precede the United Nations Convention on the Law of the Sea 1982 (UNCLOS 1982).

Prior to the Conference and the ratification of the Convention in 1982, matters relating to the oceans were scattered over several conventions. In practice, what was worse was that as one could not understand one aspect of ocean management without understanding its relationship with all the other aspects. Hence, efforts were put forward for the Conference to operate by way of consensus and it laboured for a period of nine years in order to bring about its single text. This Convention represents 'a package deal', in which the interests of certain States, or groups of States, in relation to particular issues of the law of the sea were traded or compromised in return for concessions to the interests of those States in other parts of the text.[4] It is indeed a comprehensive document and known as a world constitution for the oceans and universal in every sense.[5]

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[2] Authors, Ocean Governance and Institutional Change. In Ebbin, S., Hoel, A. H., Sydnes, A., *A Sea Change: The Exclusive Economic Zone and Governance Institutions for Living Marine Resources*, The Netherlands: Springer, 2005 at p. 3.

[3] Payoyo, P. B., *Ocean Governance: Sustainable Development of the Seas*, Tokyo: The United Nations University Press, 1994 at p. 28.

[4] Shearer, I., Oceans Management Challenges for the Law of the Sea in the First Decade of the 21st Century. In Elferink, A. G. O., Rothwell, D. R., *Ocean Management in the 21st Century: Institutional Frameworks and Responses*, The Netherlands: Koninklijke Brill NV, 2004 at p. 2.

[5] *Supra*, footnote 3 at pp. xli-xlii.

However, it is as difficult as documenting the Convention on paper when it comes to designing an institutional framework to deal comprehensively with the implementation and application of the UNCLOS 1982, in comparison to agreements covering a unilateral issue. Yet, the creation of an institutional framework under the Convention would still to lead to an unnecessary duplication of effort.[6]

As the common heritage of mankind needs to be managed for the benefit of humankind as a whole, including future generations, authorities or institutions capable of managing and integrating short-term and long-term needs and requirements are really essential,[7] thus a forum is needed to consider and address these closely interrelated problems. Being a comprehensive constitution for the oceans, the Convention confirms and in most cases expands the functions of these institutions in order to assist States to implement its provisions and especially to reap the individual and collective benefits from the Convention for sustainable development of the oceans and their resources.[8] This pattern not only managed to adjust these institutions to their new responsibilities *vis à vis* the Convention, but on top of that a few others were also established.

Nevertheless, ocean-related matters in general may easily fall within many different sectoral divisions, thus laying the ground for fragmentation of governance responsibility and duplication of efforts. In some cases, ocean affairs do not represent a central concern, but they are just matters subsidiary to other activities having higher priority. Thus, their political stature is generally low, which translates into the placement of the activity at a low level within the governmental hierarchy as well as into certain patterns of resource

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[6] Elferink, A. G. O., Reviewing the Implementation of the LOS Convention: The Role of the United Nations General Assembly and the Meeting of States Parties. In Elferink, A. G. O., Rothwell, D. R., *Ocean Management in the 21st Century: Institutional Frameworks and Responses*, The Netherlands: Koninklijke Brill NV, 2004 at p. 299.

[7] Borgese, E. M., *Ocean Governance and the United Nations*, Halifax: Dalhousie University, 1995 at p. 151.

[8] *Supra*, footnote 3 at p. 29.

allocation (this includes limited personnel and low levels of funding).[9] In view of this, there is a need for interdisciplinary planning and decision making on matters concerning human capital and financing, as well as for integration of policies and their respective work of implementation at national, regional and global levels.

Relating to this matter, management of single-sector activities has been moved towards a framework approach where integration and coordination between different uses and users of the oceans could be provided. This integrated oceans management, has been the focussed agenda for national policy development, regional initiatives and global discussions, which then emphasized its development, implementation and evaluation respectively in relation to the concept of governance. These kinds of growth have increased attention towards appropriate governance of ocean and coastal areas and, effectively, a new oceans agenda.[10]

1.2   Purpose of Dissertation

Based on the background, the purpose of this dissertation is, therefore, to identify the existing institutions as well as the coordinating bodies established in the field of ocean governance. The discussion will be centred on the mandates, functions and mechanisms of each institution and coordinating body. This identification is aimed to look at the trend of the creation of these institutions and coordinating bodies which has been largely due to the development of different plans and arrangements once any new issue arose.

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[9] *Supra*, footnote 7 at p. 152.
[10] Haward, M., Vince, J., *Oceans Governance in the Twenty-first Century: Managing the Blue Planet*, The United Kingdom: Edward Elgar Publishing Limited, 2008 at p. 3.

Realizing the fact that matters concerning ocean governance are international in nature, the writer is of a view that establishing a new institution or creating a new coordinating body on a continuous scale is not an easy task. It involves the work of experts and specialists, requiring pure substantive understanding and major integrated efforts. Therefore, an alternative of capacity building is suggested and explored.

This dissertation will look at the role and strength of the capacity building elements, namely, leadership, human capital, communication, and financing. By putting forward efforts to enhance these elements, it is hoped that the concerned institutions would become more competent and, therefore, would be able to further undertake the responsibility to address any new issue. On top of that, initiatives in capacity building carried out by international and major regional institutions are also cited, in order to show that this alternative has already taken its first step and is thus very much practical.

CHAPTER TWO

OCEAN GOVERNANCE : CONCEPT AND PHILOSOPHY

2.1   Definition of Ocean

The Oxford Advanced Learner's Dictionary defines ocean as 'the mass of salt water that covers most of the earth's surface'. In another definition[11], ocean means 'a very large stretch of sea' which is explained as 'the continuous body of salt water that covers three quarters of the planet'. These two definitions and an explanation show that the word ocean represents the mass or body of salt water of the planet Earth. However, for the purpose of this dissertation, the word ocean is also looked at from a wider perspective in which it can be associated with physical, management and jurisdictional components.[12]

The physical component of the ocean is comprised of four distinct parts, namely, water surface, water column, seabed and subsoil. The management component, on the other hand, consists of natural ocean system; ocean uses; and government programmes, agencies and policies.[13] The natural ocean system is divided into three parts, which are ocean space (i.e. parts in the physical component), ocean resources (i.e. living and non-

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[11] The Free Dictionary by Farlex (2010). Retrieved on 28 June 2010 from World Wide Web: http://www.thefreedictionary.com

[12] Armstrong, J.M., Ryner, P.C., *Ocean Management: A New Perspective*, Michigan: Ann Arbor Science, 1981.

[13] *Ibid*.

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living resources), as well as dynamic systems (e.g. tides and thermal patterns).[14] Ocean uses refer to the use of the ocean for various purposes and its respective users; whereas, government programmes, agencies and policies refer to the government efforts to guide, direct and manage the ocean.[15] Finally, for the jurisdictional component, in accordance with the UNCLOS 1982, the ocean is divided into four separate jurisdictional zones, namely, Territorial Sea (water column 0 – 12 M), Contiguous Zone (water column 12 – 24 M), Exclusive Economic Zone (EEZ) (water column up to 200 M) and Continental Shelf (seabed and subsoil up to 200 M).

These maritime zones have a distinctive regime within which coastal States are entitled to exercise sovereignty or jurisdiction, particularly in prescriptive and enforcement jurisdiction over criminal and civil matters. However, the occurrence of overlaps between the contiguous zone and the EEZ, the EEZ and the continental shelf, as well as the continental shelf and the high seas creates unclear rights and responsibilities in relation to the operative legal regime within those areas. The rights of navigation by foreign vessels exercising their passage through these zones are also not similar, which causes difficulties in determining the rights and duties of either coastal states or flag states within these waters. Besides, there is also an issue for coastal States to contemplate the control and regulation of shipping beyond the EEZ and on the high seas on either environmental or security grounds.[16]

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[14] *Ibid*.

[15] *Ibid*.

[16] Rothwell, D. R., Oceans Management and the Law of the Sea in the Twenty-first Century. In Elferink, A. G. O., Rothwell, D. R., *Ocean Management in the 21ˢᵗ Century: Institutional Frameworks and Responses*, The Netherlands: Koninklijke Brill NV, 2004 at pp. 332-333.

2.2   Definition of Governance

The term governance has been around in various discourses for a long time, referring in a generic sense to a task of running a government, or any other appropriate entity for that matter. In this regard, the Oxford Advanced Learner's Dictionary defines governance as 'the activity or manner of governing'.

The working definition used by the British Council, however, emphasizes that 'governance' is a broader notion than government.[17] It states that 'Governance involves interaction between the formal institutions and those in civil society. Governance refers to a process whereby elements in society wield power, authority and influence and enact policies and decisions concerning public life and social upliftment'.[18] This is in line with the interpretation of the World Bank, which defines governance 'as a way in which power is exercised in the management of the economic and social resources of a country, notably with a view to development'.[19]

Therefore, 'governance' not only encompasses but transcends the collective meaning of related concepts like the state, government, regime and good government, as many of the elements and principles underlying 'good government' have become an integral part of the meaning of 'governance'.[20] In this regard, John Healey and Mark Robinson defined 'good government' as follows :

> It implies a high level of organizational effectiveness in relation to
> policy-formulation and the policies actually pursued, especially in the

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[17] *Understanding the Concept of Governance*. Retrieved on 30 June 2010 from World Wide Web: http://www.gdrc.org/u-gov/governance-understand.html
[18] *Ibid*.
[19] Mustafar, A. M., *Ocean Governance*, unpublished master's thesis, World Maritime University, Malmö, Sweden, 2001.
[20] *Supra*, footnote 17.

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conduct of economic policy and its contribution to growth, stability and popular welfare. Good government also implies accountability, transparency, participation, openness and the rule of law. It does not necessarily presuppose a value judgement, for example, a healthy respect for civil and political liberties, although good government tends to be a prerequisite for political legitimacy.[21]

This definition is further supported by the interpretation of the World Bank concerning 'governance' which describes the concept of 'good governance' as follows :

Good governance is epitomized by predictable, open and enlightened policy-making, a bureaucracy imbued with professional ethos acting in furtherance of the public good, the rule of law, transparent processes, and strong civil society participating in public affairs. Poor governance, on the other hand, is characterized by arbitrary policy making, unaccountable bureaucracies, unenforced or unjust legal systems, the abuse of executive power, a civil society unengaged in public life, and widespread corruption.[22]

In addition to that, John Fobes is of the view that the concept of governance :

Emphasizes that order in society is created and maintained by a spectrum of institutions, only one of which is known as government. By examining that spectrum at all levels of society, we can obtain a broader sense of 'governability' as it is exercised in policy-making, in providing services and the application of law. Order is certainly part of governance.

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[21] As cited in *Supra*, footnote 17.
[22] *Ibid*.

But by considering governance, at least at the international level, as a global learning exercise, may expand the thinking of politicians, practitioners, activists and academies beyond the traditional concept of government, of international organizations and of the exercise of sovereignty.[23]

Such a pattern has also been a focus of the World Bank whose governance approach highlights issues of greater state responsiveness and accountability, as well as their impacts on political stability and economic development. The World Bank has once expressed this notion by stating that :

Efforts to create an enabling environment and to build capacities will be wasted if the political context is not favourable. Ultimately, better governance requires political renewal. This means a concerted attack on corruption from the highest to the lowest level. This can be done by setting a good example, by strengthening accountability, by encouraging public debate, and by nurturing a free press. It also means… fostering grassroots and non-governmental organizations such as farmers' association, cooperatives, and women's groups.[24]

From here, it can be deduced that governance encompasses a broad agenda that includes effective government policies and administration, respect for the rule of law, protection of human rights and an effective civil society. Nevertheless, it is imperative too, to point out that it is not confined only to political and social issues, but also includes proper

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[23] Fobes, J., *Next Steps in World Governance*, unpublished remarks at the Club of Rome Conference, Santander, Spain, 1985 at p. 1.
[24] *Supra*, footnote 17.

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management of the economy as well as transparency and fair competition in business.[25] According to this broad definition, sustainable development, especially in relation to the utilization of natural resources and environmental management, is also part of governance. For good governance to be effective and sustainable, it must be anchored in a vigorous working democracy which respects the rule of law, a free press, energetic civil society organizations, and effective and independent public bodies.[26]

In this regard, it is emphasized that :

> The governance approach is the creative potential of politics, especially with the ability of leaders to rise above the existing structure of the ordinary, to change the rules of the game and to inspire others to partake in efforts to move society forward in new and productive directions.[27]

This view and the entire concept and approach of governance and specifically, good governance, are encapsulated into the following[28] :

i.   Governance is a conceptual approach that, when fully elaborated, can frame a comparative analysis of macro-politics;
ii.   Governance concerns 'big' questions of a 'constitutional' nature that establish the rules of political conduct;
iii.   Governance involves creative intervention by political actors to change structures that inhibit the expression of human potential;

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[25] Palamagamba, J.K., *Good Governance: Definition and Implications*. Retrieved on 5 July 2010 from World Wide Web: http://www.fes-tanzania.org/doc/good-governance.pdf
[26] *Ibid*.
[27] *Supra*, footnote 17.
[28] *Ibid*.

iv.   Governance is a rational concept, emphasizing the nature of interactions between state and social actors, and among social actors themselves; *and*

v.   Governance refers to particular types of relationship among political actors: that is, those which are socially sanctioned rather than arbitrary.

2.3   Theoretical Concept and Philosophy of Ocean Governance

From the definitions and explanations of the meanings of 'ocean' and 'governance' in the previous sub chapters, the term 'ocean governance' itself can then be defined as 'the way in which ocean affairs are governed, not only by governments, but also by local communities, industries and other stakeholders, which includes national and international law, public and private law, as well as custom, tradition and culture, and the institutions and processes created by them'.[29]

Looking at the concept of ocean governance, it is, relatively speaking, not new. A multitude of institutions addressing a number of issue areas including navigation, fishing, and pollution are governing the oceans. From the seventeenth century onward, the oceans were separated into 'territorial waters', a narrow band where coastal states possessed rights similar to the rights they exercised over their land territory, and 'high seas', a vast area in which all states enjoyed the freedom to use those waters and associated natural resources as they saw fit.[30]

Initially, this system rested on the premise and belief that the resources of the ocean were infinite, i.e. the supply would always be greater than the demand of the human users. Nevertheless, as it became evident that the oceans and their natural resources were

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[29] Borgese, E. M., *Ocean Governance*, Halifax: International Ocean Institute, 2001 at p. 10.
[30] *Supra*, footnote 2 at p. 4.

not inexhaustible, the rule of thumb implying that the natural resources of the high seas are *res nullius* came under pressure. Hence, in the early post-World War II period, a number of coastal states introduced a series of unilateral extensions of their maritime jurisdictions to reduce pressure on natural resources and secure for themselves a greater share of the wealth of the oceans.[31]

Four conventions[32] were produced by the United Nations conferences on the law of the sea (the first was in 1958 and the second was in 1960), based on the impetus provided by these unilateral actions. They, however, did no go far in creating a governance system capable of managing the growing uses of the oceans and their resources. Several events during the 1960s and early 1970s, among them continued unilateral assertions of rights on the part of coastal states and the prospects of exploitation of metallic nodules on the deep seabed, provided the impetus for the UNCLOS III, which commenced in 1973.[33] By then, the idea of extended coastal state jurisdiction had matured, and a consensus soon emerged that coastal states should be accorded 'sovereign rights' over the natural resources located in a zone stretching 200 nautical miles seawards, as measured from their coastal baselines.[34]

Extended coastal state jurisdiction changed the prior system of ocean governance for which the coastal state is awarded sovereign rights over the natural resources in a designated zone for the purpose of '… exploring and exploiting, conserving and managing the natural resources, whether living or non-living'.[35] As regards living marine resources, these rights on the part of the coastal states are accompanied by

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[31] *Ibid*.
[32] Convention on Fishing and Conservation of the Living Resources of the High Seas; Convention on the Continental Shelf; Convention on the High Seas; *and* Convention on the Territorial Sea and Contiguous Zone.
[33] *Supra*, footnote 2 at p. 5.
[34] *Ibid*.
[35] Article 56 of United Nations Convention on the Law of the Sea 1982.

obligations to conserve the resources, utilise them, and cooperate with other countries to those ends.[36] This constitutes a common framework within which coastal states have been enabled to create arrangements governing human activities taking place within their zones. Administrative structures, ministries and agencies, as well as policies and legislation have been developed.

The broad definition of ocean governance at the beginning of this sub chapter also explains the concept of common heritage of mankind. This concept under the philosophy of ocean governance has been further elaborated with regard to its implications as follows[37] :

i.   It can be used but not owned, i.e. the area with no property rights;

ii.   It is a system of management in which all users share;

iii. It constitutes an active sharing of financial benefits, as well as, benefits derived from shared management and transfer of technologies;

iv.   It implies reservation of ocean space for peaceful purposes; *and*

v.   It implies reservation for future generations.

In analyzing ocean governance, attention is given to the development of new tools and approaches to manage marine areas including the development of ecosystem-based approaches to management and the attempt to shift from sectoral to integrated management. [38] In this regard, it is suggested that the assessment contains four elements[39] :

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[36] *Supra*, footnote 2 at p. 5.
[37] Borgese, E.M., *The Future of the Oceans*, a report to the Club of Rome, Montreal: Harvest House, 1986 at pp. 43-44.
[38] *Supra*, footnote 10 at p. 12.
[39] *Ibid*., at p. 13.

i. priority, i.e. to articulate its common set which involves goal definition and mediation or conflict resolution of competing goals;

ii. coherence, i.e. to sustain consistency and coordination;

iii. steering, i.e. to apply policy instruments and to implement strategy; *and*

iv. accountability, i.e. to evaluate.

It is believed that this will help to develop an analytical institutional framework that can be widely applied in ocean governance either at national, regional or global levels. Therefore, it is clear that governing the ocean is the responsibility of the world community as a whole. The theoretical concept and philosophy of ocean governance evidently shows that it is multidisciplinary in the sense that it is economic as it encourages the development of the ocean; environmental as it calls for conservation; ethical as it urges for the benefits from development be shared equitably; and peaceful as it calls for the peaceful use of the ocean.[40]

2.4   Components of Ocean Governance

The concept of ocean governance is comprised of three components, namely, institutional framework, legal framework and tools of implementation.

The institutional framework represents the administrative mechanisms required to manage the ocean by establishing institutions and coordination bodies within and between stakeholders involved in various aspects of ocean governance at three distinct levels; national, regional and global. The roles of this institutional framework are important in many ways and the UNCLOS 1982 requires States to cooperate on a number of issues such as the management and conservation of certain fish stocks, the

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[40] *Supra*, footnote 29.

protection of the marine environment and the cooperation of States bordering enclosed and semi-enclosed seas, with reference to national, regional and global organizations.[41]

The legal framework then takes the form of binding instruments such as conventions at those different levels, which make provisions for the management process. The establishment of the stable ocean boundaries under the UNCLOS 1982, for instance, is accomplished by a set of rules describing the extent of maritime zones under the sovereignty or jurisdiction of coastal States. The UNCLOS 1982 also addresses the division of jurisdiction between States within the different maritime zones established.[42]

Finally, the tools of implementation includes the execution of activities and programmes to achieve the level of implementation and coordination set out in the institutional framework, as required under the UNCLOS 1982. Depository functions, the elections of the members of the International Tribunal for the Law of the Sea (ITLOS) and the Commission on the Limits of the Continental Shelf (CLCS), as well as the approval of the ITLOS budget are examples of such activities and programmes. They are carried out so as to act in accordance with provisions prescribed in the legal framework regulating management activities.[43]

However, for the purpose of this dissertation, only the institutional framework aspect of the ocean governance will be discussed.

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[41] *Supra*, footnote 6 at p. 297.
[42] *Ibid*., at pp. 296-297.
[43] *Ibid*., at p. 298.

2.5   Institutional Framework – An Overview

Institutions refer to 'sets of rules of the game or codes of conduct that serve to define social practices, assign roles to participants in these practices, and guide the interactions among the occupants of these roles'.[44] Unlike organizations, which are material entities that typically figure as actors in social practices, institutions may be thought of as the rules of the game that determine the character of these practices. Institutions can encompass both formal and informal rules and codes such as bodies of law, non-binding agreements, established practices, as well as organizations.[45]

In practice, institutions may be linked in ways that affect their individual and collective performances. Institutional interplay refers to those situations in which the contents, operations or consequences of one institution influence other institutions.[46] Interplay may occur among institutions at the same level of social organization (horizontal interplay) or among institutions at different levels of social organization (vertical interplay).[47]

A significant contribution of the institutional interplay approach is the recognition that institutions cannot be analyzed in isolation, but must be seen within the context of their institutionalised environments. As the institutional density within international issue areas increases, such interplay may be expected to become an increasingly dominant feature of international relations.[48]

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[44] *Supra*, footnote 2 at p. 9.
[45] *Ibid*., at p. 10.
[46] *Ibid*.
[47] *Ibid*.
[48] *Ibid*., at pp. 10-11.

Additionally, the institutional framework must poses characteristics such as comprehensive, consistent, trans-sectoral or multidisciplinary, and participational, i.e 'bottom-up' rather than 'top-down'. Comprehensive concerns about whether or not this framework could reach from the very basic local level of the community through national governments, to regional and global levels of international organizations. The framework must be consistent in the sense that regulation and decision-making processes and mechanisms are compatible at all levels. As mentioned before those institutions cannot be analyzed in isolation, trans-sectoral or multidisciplinary means that the framework cannot separate its activities into sectors, hence the activities must be designed in such a way that they must be interrelated. Lastly, participational is looking at the involvement of communities in the making of regulation and in management, which means they do not leave these responsibilities to the central government alone.[49]

Realizing the fact that development of oceans and coastal policy cannot be done in a fragmented environment and in an uncoordinated manner, and the institutions' functions cannot be isolated, the institutional framework comes into the picture with an effort to integrate these sectoral elements. The establishment of and coordination among institutions in an institutional framework to govern the oceans has a considerable strength in its functions. However, new challenges present themselves based on changing demands and thus new institutions are established.

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[49] Borgese, E. M., *The Oceanic Circle: Governing the Seas as a Global Resource*, Tokyo: The United Nations University Press, 1998 at pp. 15-16.

CHAPTER THREE

INSTITUTIONS IN OCEAN GOVERNANCE :
ARRANGEMENTS, FUNCTIONS, MECHANISMS

3.1   National, Regional and Global Institutions – An Overview

Ocean governance has long been attracting attention at national, regional and global levels. Institutions at these different levels have developed various degrees of cooperative relationships and coordination among their activities. They have been working on numerous projects, programmes and action plans. There are frequent features in terms of cooperation and coordination among institutions, especially in the fields of large-scale scientific research and monitoring; the protection of the marine environment; the conservation and development of living resources; as well as the development of shipping and related industries and facilities. In some cases, United Nations agencies and bodies conclude agreements, in the form of memoranda of understanding, in order to ensure long-term cooperative relationships.[50]

At the national level, States themselves are to respond to the challenge of integrating development and environment. In this regard, an active planning infrastructure and inter-ministerial coordinating mechanisms will contribute to integrated policy-making in ocean-affairs. In addition, marine scientists, coastal communities, and producers, and

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[50] *Supra*, footnote 3 at p. 31.

consumers of ocean-related goods and services should also be involved in the policy-making process. States should complete their legislation dealing with all uses of ocean space and harmonize them with the provisions of the UNCLOS 1982.[51]

Institutions having responsibilities for aspects of ocean affairs at the regional level take many forms with differing mandates. Some are devoted exclusively to ocean-related activities, while others conduct such activities as part of their much broader functions. Whilst one regional institution has a comprehensive trans-sectoral mandate in marine affairs, all other existing bodies for ocean affairs are engaged in one or a few sectors only.[52] Some organizations at regional level are actually not regional in a geographical sense, but are groups of States with common interests or with special legal or political ties.[53]

However, these national and regional level institutions will not be further elaborated in this dissertation as the discussion will be focussed exclusively on global institutions.

There are currently a number of global institutions which are exclusively or partially engaged in activities concerning some aspects of ocean management in a broad sense. Most of them belong to the United Nations family. The nature of these activities will be reviewed in terms of: major agencies and bodies which are devoted exclusively to, or have a substantial involvement in, marine affairs; and others, whose activities cover some aspects of marine affairs.[54]

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[51] *Supra*, footnote 3 at p. xxv.
[52] *Supra*, footnote 3 at p. 39.
[53] *Ibid*.
[54] *Supra*, footnote 3 at p. 32.

3.2   United Nations' Intergovernmental Organizations

There are a number of the United Nations (UN) specialized agencies and programmes, known as the UN Intergovernmental Organizations (IGOs) which have been contributing significantly through various efforts to raise the profile of ocean governance and the following list introduces the major ones.

3.2.1   United Nations Development Programme

The United Nations Development Programme (UNDP) is the United Nations global network which began its operation in 1966. Its mandate is to provide developing countries with assistance to gear to their development objectives and thus to accelerate their development plans. It is an organization advocating for change and connecting countries to knowledge, experience and resources to help people build a better life. UNDP's focus is helping countries build and share solutions to the challenges of Democratic Governance, Poverty Reduction, Crisis Prevention and Recovery, Energy and Environment, and HIV/AIDS.[55] In this case, the UNDP helps developing countries attract and use aid effectively, inclusive of matters pertaining maritime affairs, hence the UNDP is one of the major functional institutions in ocean governance.

3.2.2   United Nations Environment Programme

The mission of the United Nations Environment Programme (UNEP) is to provide leadership and encourage partnership in order to take care of the environment by inspiring, informing, and enabling nations and people to improve their quality of life without compromising that of future generations. In this relation, the UNEP has been the

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[55] Oceans and Coastal Areas Network (UN-Oceans) (2008). Retrieved on 12 July 2010 from the World Wide Web: ioc3.unesco.org/un-oceans/index.php?option=com_content&task=view&id=14&Itemid=28

catalyst for organizing various activities and one of them is in marine and coastal areas. The activities include the Global Programme of Action for the Protection of the Marine Environment from Land Based Activities, the Global International Waters Assessment, the Small Island Developing States Network, the International Coral Reef Action Network, the World Conservation Monitoring Centre, Earthwatch, and Regional Seas Conventions.[56]

3.2.3 Food and Agricultural Organization

The mission of the Food and Agricultural Organization (FAO) is to raise levels of nutrition and standards of living; improving the production, processing, marketing and distribution of all food and agricultural products from farms, forests, and fisheries; promoting rural development and improving the living conditions of rural populations; and eliminating hunger by these means. FAO through one of its departments, the Fisheries and Aquaculture Department, is acutely aware of the fundamental social and economic role played by the fisheries sector in meeting global and national sustainable food security, providing self and paid employment for fishing communities as a means of alleviating poverty in fishing communities and stemming rural/urban drift, contributing to national and international trade, and generating national income. Knowing the fact that these basic and social objectives are very crucial, it is a necessary requirement that fisheries and aquaculture must be responsibly managed. The Fisheries and Aquaculture Department, therefore, provides, at the request of members, technical assistance in all aspects of fisheries and aquaculture management and development.[57]

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[56] *Ibid.*
[57] *Ibid.*

3.2.4   Intergovernmental Oceanographic Commission / United Nations Educational, Scientific and Cultural Organization

The Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization (IOC/UNESCO) provides an essential mechanism for global cooperation in the study of the ocean in order to promote scientific investigation of the nature and resources of the oceans. It is mandated to identify related issues, the solutions to which require international cooperation in scientific investigation of the oceans, and develop, recommend, and coordinate international programmes for such investigations. Its programmes focus on marine environmental protection, ecosystem dynamics, climate change, global observing systems, data and information management, coastal area management, and disaster management. Joint (IOC and the World Meteorological Organization – IOC/WMO) Technical Commission for Oceanography and Marine Meteorology (JCOMM) coordinates and manages the implementation of an operational ocean observing system through the Global Ocean Observing System (GOOS) and the Global Climate Observing System (GCOS) in support of the United Nations Framework Convention on Climate Change.[58]

3.2.5   World Bank Group

The World Bank Group (WBG) is a development bank, which aims to fight against poverty and improve the living standards of people in the developing world. It provides loans, policy advice, technical assistance and knowledge sharing services to low and middle income countries. The WBG has the perspective that reducing poverty through sustainable development is a global strategic priority for the survival of our planet, which entails dealing with the comprehensive nature of development including ocean. This approach is reflected in the implementation of projects and programmes in

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[58] *Ibid*.

partnership with the public and private sectors, and civil society. Participation, empowerment, strengthened institutions, environmental protection and conservation, and focus on the rural poor are all foundations for sustained and inclusive economic growth.[59] Therefore, with reference to the ocean governance, the role of the WBG is very important in securing financial support especially for the institutional framework to undertake activities and programmes.

3.2.6 International Maritime Organization

The International Maritime Organization (IMO) is the UN specialized agency, established in 1959, responsible for improving maritime safety and preventing pollution from ships. Its main objective is to facilitate cooperation among States on technical matters affecting international shipping, in order to ensure that the highest practicable standards of maritime safety and efficiency in navigation are in place. In addition to that, it also has a responsibility for safety of life at sea and for the protection of marine environment through prevention of pollution of the sea caused by ships and other crafts. The International Convention for the Prevention of Pollution from Ships is the most important convention regulating and preventing marine pollution by ships and covers accidental and operational oil pollution as well as pollution by chemicals, goods in packaged form, sewage, garbage and air pollution. Another convention, i.e. the International Convention on Oil Pollution Preparedness, Response and Cooperation provides a global framework for international cooperation in combating major incidents or threats of marine pollution. Further, IMO also has secretariat responsibilities for the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, generally known as the London Convention.[60]

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[59] *Ibid.*
[60] *Ibid.*

3.2.7 World Meteorological Organization

The World Meteorological Organization (WMO) is the specialized agency of the UN for meteorology (weather and climate), operational hydrology and related geophysical sciences. It commenced its operation in 1951 and is mandated to facilitate international cooperation in various aspects of meteorological and related services and observations, as well as furthering the application of meteorology to aviation, shipping, water problems, and other human activities. Among other initiatives undertaken, is the WMO – ICSU[61] – UNESCO/IOC World Climate Research Programme, established in order to address scientifically founded quantitative answers on climate issues and the range of natural climate variability, as well as to provide a basis for predictions of global and regional climatic variations and of changes in the frequency and severity of extreme events. WMO also provides the global infrastructure that develops and delivers products and services, which are critical for the development of global, regional and national natural disaster risk management and response strategies.[62]

3.2.8 International Labour Organization

The International Labour Organization (ILO) is devoted to advancing opportunities for employees to obtain decent and productive work in conditions of freedom, equity, security and human dignity especially for the maritime-related personnel whose work at sea can be described as challenging. The aims of ILO are to promote rights at work, encourage decent employment opportunities, enhance social protection and strengthen dialogue in handling work-related issues by establishing policy guidelines, providing technical cooperation programmes and projects, as well as adopting international

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[61] ICSU stands for International Council for Science.
[62] *Supra*, footnote 55.

standards.[63] In addition to generally applicable instruments, ILO has also adopted several conventions and recommendations on certain specific issues with regard to the working conditions and training of ocean-related workers.[64]

3.2.9 United Nations Industrial Development Organization

The United Nations Industrial Development Organization (UNIDO) mobilizes knowledge, skills, information and technology to promote productive employment, a competitive economy and a sound environment, particularly to assist developing countries to develop their industries by fully utilizing their locally available natural and human resources. This includes maritime industry, mainly consists of shipping and port industries and the utilization of these countries human resource world widely. Other than that, UNIDO also enhances cooperation at global, regional and national levels focusing on three inter-related thematic priorities, namely Poverty Reduction through Productive Activities, Trade Capacity-Building, as well as Energy and Environment.[65]

3.2.10 World Tourism Organization

The World Tourism Organization (UNWTO) is a specialized agency of the UN and the leading international organization in the field of tourism, not excluding marine-related tourism sector which is in a very high demand these days. It serves as a global forum for tourism policy issues and practical source of tourism know-how. The Organization plays a central and decisive role in promoting the development of responsible, sustainable and universally accessible tourism, paying attention to the interests of developing countries in particular.[66]

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[63] *Ibid*.
[64] *Ibid*.
[65] *Ibid*.
[66] *Ibid*.

3.3 Institutions associated with United Nations Convention on the Law of the Sea (UNCLOS) 1982

Although the UNCLOS 1982 needs to be read as an integral whole, it still has distinct blocks, some of which update and codify existing law, and others are just constitutive. These components then embody new concepts, create new law and establish new institutions.[67] In this regard, the UNCLOS 1982 adopted a number of resolutions that gave attention to the importance of operational procedures, as well as, preparatory investments in pioneer activities relating to polymetallic nodules.[68]

3.3.1 Division for Ocean Affairs and the Law of the Sea

The Division for Ocean Affairs and the Law of the Sea (DOALOS) is a unit under the Office of Legal Affairs that has consistently been recognized for its role in contributing to the wider acceptance and rational and consistent application of the UNCLOS 1982. During the 52nd General Assembly in 1998, the DOALOS was given a mandate to carry out the responsibilities entrusted to the Secretary-General upon the adoption of the Convention and fulfil the functions associated with its entry into force. To be more specific, the developments in all relevant areas are also monitored by the Division in order to report to the General Assembly annually on matters relating to the law of the sea and ocean affairs. Further, it formulates recommendations to the General Assembly and other intergovernmental fora, with an aim to promote a better understanding of the Convention, thus ensuring that the Division has the capacity to respond to requests for advice and assistance from States in the implementation of the Convention.[69]

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[67] *Supra*, footnote 7 at p. 13.
[68] *Ibid*., pp. 35-36.
[69] Oceans and Law of the Sea: Division for Ocean Affairs and the Law of the Sea – The Division for Ocean Affairs and the Law of the Sea, its functions and activities (2010). Retrieved on 14 July 2010 from the World Wide Web: http://www.un.org/Depts/los/doalos_activities/about_doalos.htm

In addition, the Division serves as the Secretariat of the UNCLOS 1982 and provides information, advice and assistance to States with a view to promoting a better understanding of the Convention and the related Agreements, their wider acceptance, uniform and consistent application and effective implementation. Apart from that, the Division also acts as a secretariat to the Meetings of States Parties to the Convention and the Commission on the Limits of the Continental Shelf, which will also be discussed in this Chapter.[70]

In the new development, the Division has also been serving the meetings of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea since 1999. This institution was established by the General Assembly in its resolution 54/33 with the aim to facilitate its annual review, in an effective and constructive manner, of developments in ocean affairs. These are done by considering the Secretary-General's annual reports on oceans and the law of the sea, who then identifies particular issues to be considered by the General Assembly.[71]

The Division has undertaken educational and training programmes aimed at capacity building at the national and regional levels, in order to achieve its goals of continuing effort to promote understanding of the UNCLOS 1982, its wider acceptance, uniform and consistent application, and effective implementation. In doing so, the Technical Cooperation Trust Fund Agreement between the United Nations and the Nippon Foundation of Japan is one of the examples of the aforementioned educational and training programmes.[72]

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[70] *Ibid.*
[71] *Ibid.*
[72] *Ibid.*

3.3.2 Meeting of States Parties to the UNCLOS

The Meeting of States Parties is convened in accordance with the UNCLOS 1982 which provides, in Article 319, paragraph 2 (e), that the Secretary-General "shall convene necessary meetings of States Parties in accordance with this Convention". At the 37th General Assembly, resolution 37/66 approved "the assumption by the Secretary-General of the responsibilities entrusted to him under the Convention and the related resolutions". Resolutions 49/28 and 52/26 requested that the Secretary-General should continue "preparing for and convening the Meetings of State Parties to the Convention and providing the necessary services for such meetings, in accordance with the Convention".

Among other things, the Meeting elects one-third of the members of the ITLOS every three years, as well as the 21 members of the Commission on the Limits of the Continental Shelf every five years. It considers, annually, the report of the Tribunal and deals with its budgetary and administrative matters. Besides, the Secretary-General of the International Seabed Authority and the Chairman of the Commission on the Limits of the Continental Shelf also provide information on their respective activities. Further, the Secretary-General under Article 319, is obliged to send a report for the information of States parties on issues of a general nature, relevant to States parties, that have arisen with respect to the UNCLOS 1982.[73]

3.3.3 Commission on the Limits of the Continental Shelf

The creation of the Commission on the Limits of the Continental Shelf (CLCS) is with the purpose to facilitate the implementation of the UNCLOS 1982 regarding the

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[73] Oceans and Law of the Sea: Division for Ocean Affairs and the Law of the Sea – Meetings of States Parties to the 1982 United Nations Convention on the Law of the Sea (2010). Retrieved on 15 July 2010 from the Word Wide Web:
http://www.un.org/Depts/los/meeting_states_parties/meeting_states_parties.htm

establishment of the outer limits of the continental shelf beyond 200 nautical miles from the baselines, i.e. from which the breadth of the territorial sea is measured. A provision under the Convention, clearly states that the coastal State shall establish the outer limits of its continental shelf where it extends beyond 200 nautical miles on the basis of the recommendation of the Commission. In the event that the Commission is making recommendations to coastal States on matters related to the establishment of those limits, the Commission needs to ensure that its recommendations as well as the respective actions of the related States shall not prejudice matters relating to the delimitation of boundaries between States with opposite or adjacent coasts.[74]

Annex II to the Convention contains provisions governing the Commission, detailing the membership, functions, role, and procedures of the CLCS. As set forth in Article 3 of Annex II, the functions of the Commissions are :

i.   To consider the data and other material submitted by coastal States concerning the outer limits of the continental shelf areas where those limits extend beyond 200 nautical miles, and to make recommendations in accordance with Article 76 and the Statement of Understanding adopted on 29 August 1980 by the Third United Nations Conference on the Law of the Sea; *and*

ii.   To provide scientific and technical advice, if requested by the coastal States concerned during preparation of such data.

It is clear from the functions above that the focus of its work involves technical aspects as well as scientific interpretation of the provisions of the UNCLOS 1982, which

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[74] Oceans and Law of the Sea: Division for Ocean Affairs and the Law of the Sea – Commission on the Limits of the Continental Shelf (2010). Retrieved on 15 July 2010 from the World Wide Web: http://www.un.org/Depts/los/clcs_new /commission_purpose.htm

explains why the Commission is comprised of 21 experts in the fields of geology, geophysics or hydrography. It is noted that there are no jurists or legal experts on the team, which reinforces the technical and scientific nature of its work.[75]

The Commission ordinarily meets twice a year. The convening of these sessions and services to be provided are subject to approval by the General Assembly of the UN in its annual resolutions on oceans and the law of the sea.

3.3.4 International Seabed Authority

The International Seabed Authority (ISA) is an autonomous international organization established under the UNCLOS 1982 and the 1994 Agreement.[76] In accordance with the regime of the seabed and ocean floor and subsoil thereof beyond the limits of national jurisdiction (the Area) established in Part XI and the Agreement, States Parties to the Convention shall organize and control activities in the Area through ISA, particularly with a view to administering the resources of the Area.[77]

The Authority came into existence on 16 November 1994 upon the entry into force of the UNCLOS 1982, and established its headquarters in Kingston, Jamaica. However, it was only in June 1996 that the ISA became fully operational as an autonomous international organization after taking over the premises and facilities in Kingston, Jamaica, previously used by the United Nations Kingston Office for the Law of the Sea.[78]

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[75] *Supra*, footnote 16 at p. 337.
[76] Agreement relating to the Implementation of Part XI of the UNCLOS 1982.
[77] International Seabed Authority (2009). Retrieved on 15 July 2010 from the World Wide Web: http://www.isa.org.jm/en/about
[78] *Ibid*.

The Authority functions through different organs, i.e. the Assembly, the Council and the Secretariat. One of its work programmes concerns administrative procedures directed towards establishing and giving effect to the Authority's organizational structures by holding annual sessions; managing the Secretariat, which consists of the Office of the Secretary-General, Office of Resources and Environmental Monitoring, Office of Administration and Management, and Office of Legal Affairs; as well as finalizing any necessary arrangements with the host's country.[79] The Authority is also supported by a Finance Committee, Legal and Technical Commission, and Observer States.[80]

3.3.5   International Tribunal for the Law of the Sea

The International Tribunal for the Law of the Sea (ITLOS) is an independent judicial body established by the UNCLOS 1982 to adjudicate disputes arising out of the interpretation and application of the Convention. The 21 independent members of the Tribunal are elected from among persons enjoying the highest reputation for fairness, integrity and competence in the field of the law of the sea.[81]

It is open to States Parties to the UNCLOS 1982 and in certain cases to other entities such as international organizations. All disputes submitted to the Tribunal in accordance with the Convention are under its jurisdiction. Furthermore, its jurisdiction is also extended to all matters specifically provided for in any other agreement which confers jurisdiction on the Tribunal. The Tribunal may also give advisory opinions on certain cases under international agreements related to the purpose of the Convention.[82]

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[79] *Supra*, footnote 16 at p. 341.

[80] *Supra*, footnote 77.

[81] International Tribunal for the Law of the Sea (2002). Retrieved on 15 July 2010 from the World Wide Web: http://www.itlos.org/start2_en.html

[82] *Ibid*.

There are five Chambers formed under the Tribunal and they are[83] :

      i.   Seabed Disputes Chamber;

      ii.   Chamber of Summary Procedure;

      iii.   Chamber for Fisheries Disputes;

      iv.   Chamber for Marine Environment Disputes; *and*

      v.   Chamber for Maritime Delimitation Disputes.

However, only the Seabed Disputes Chamber is established pursuant to the provisions of Part XI, Section 5 of the Convention and Article 14 of the Statute, the other chambers are established in accordance with Article 15 of the Statute.[84]

The Seabed Disputes Chamber, composed of 11 judges and a quorum of seven members required to constitute the Chamber, receives submissions on disputes relating to activities in the ISA. The Chamber is competent to give advisory opinions on legal questions arising within the scope of the activities of the Authority. Every three years, members of the Tribunal will select these members of the Chamber based on the representation of the principal legal systems of the world and equitable geographical distribution.[85]

Paragraphs 3 and 4 under Article 15 of the Statute specify the task of the Chamber of Summary Procedure to hear and determine a case by summary procedure if the parties so request. The Chamber for Fisheries Disputes, established in accordance with Article 15, paragraph 1, of the Statute, is available to deal with disputes concerning the conservation and management of marine living resources, which parties may agree to

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[83] *Ibid.*
[84] *Ibid.*
[85] *Ibid.*

submit to. The Chamber for Marine Environment Disputes and the Chamber for Maritime Delimitation Disputes were also established under the same Article and paragraph. The former is available to deal with disputes relating to the protection and preservation of the marine environment, whereas the latter is available to deal with disputes on maritime delimitation. Both are dependent on the prior agreement of the parties to submit to it.[86]

3.3.6 ITLOS Trust Fund

In accordance with the General Assembly resolution 55/7, the Secretary-General has established the ITLOS Trust Fund pursuant to the Agreement on Cooperation and Relationship between the UN and the ITLOS. In order to assist States in the settlement of disputes through the Tribunal, a voluntary trust fund is established by the Secretary-General as requested by Operative Paragraph 9 of the resolution. It is also requested for the fund to report annually to the Meeting of States Parties to the Convention on the status of the fund.[87]

The financial assistance provided to States Parties to the Convention, however, is only to be used for expenses incurred in connection with cases submitted, or to be submitted, to the Tribunal, including to its Seabed Disputes Chamber and any other of the four Chambers. Under the terms of reference, assistance should only be provided in appropriate cases, principally those proceeding to the merits where jurisdiction is not an issue, but in exceptional circumstances may be provided for any phase of the proceedings.[88]

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[86] *Ibid*.

[87] International Tribunal for the Law of the sea Trust Fund (2004). Retrieved on 15 July 2010 from the World Wide web: http://www.un.org/Depts/los/ITLOS/itlos_trust_fund.htm

[88] *Ibid*.

3.4 Institutions associated with United Nations Conference on Environment and Development (UNCED) 1992

The United Nations Conference on Environment and Development (UNCED) 1992 has had significant impacts in the development of ocean governance. The Conference convened in Rio de Janeiro from the 3rd till the 14th of June 1992 provides a number of major outcomes including key international conventions and the reiteration of a number of soft law principles. Alongside with this progress is the establishment of the institutions to monitor specific action plans, emphasizing the approaches which must be integrated in content, and precautionary and anticipatory in ambit.[89]

3.4.1 Division for Sustainable Development

The Division for Sustainable Development (DSD) is an authoritative source of expertise on sustainable development within the UN system. It provides leadership and promotes sustainable development through technical cooperation and capacity building at global, regional and national levels. It also acts as the substantive secretariat to the UN Commission on Sustainable Development. The context for the Division's work is the implementation of Agenda 21, the Johannesburg Plan of Implementation and the Barbados Programme of Action for Sustainable Development of Small Island Developing States.[90] The Division's goals are as follows[91] :

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[89] *Supra*, footnote 10 at pp. 2-3.

[90] UN Department of Economic and Social Affairs: Division for Sustainable Development – About the Division for Sustainable Development (2009). Retrieved on 3 July 2010 from the World Wide Web: http://www.un.org/esa/dsd/dsd/dsd_index.shtml

[91] *Ibid*.

i. Integration of the social, economic and environmental dimensions of sustainable development in policy-making at international, regional and national levels;

ii. Wide-spread adoption of an integrated, cross-sectoral and broadly participatory approach to sustainable development; *and*

iii. Measurable progress in the implementation of the goals and targets of the Johannesburg Plan of Implementation.

In order to achieve these goals, the Division has several priority activities to run, namely to facilitate intergovernmental negotiations, consensus-building and decision-making through the provision of substantive support to the work of the Commission and other related bodies; to provide technical assistance, expert advice and capacity building to support developing countries and countries with economies in transition in their efforts to achieve sustainable development; to facilitate inter-agency and inter-organizational cooperation, exchange and sharing of information, and catalyze joint activities and partnerships within the UN system and with other international organizations, governments and civil society groups in support of sustainable development; to promote and facilitate monitoring and evaluation of, and reporting on, the implementation of sustainable development at the global, regional and national levels; and to undertake in-depth strategic analyses to provide policy advice, for instance, to the UN system and intergovernmental organizations with a focus on cross-cutting and emerging sustainable development issues.[92]

3.4.2 Commission on Sustainable Development

The UN Commission on Sustainable Development (CSD) was established by the UN General Assembly in December 1992 aimed at ensuring effective follow-up of the

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[92] *Ibid*.

UNCED 1992. The CSD is an intergovernmental body which meets annually and focuses on clusters of specific thematic and cross-sectoral issues, among others, oceans and seas.[93]

The CSD is responsible for reviewing progress in the implementation of Agenda 21 and the Rio Declaration on Environment and Development. It is also meant to provide policy guidance for the review and subsequent related actions of the Johannesburg Plan of Implementation at the local, national, regional and international levels. In this case, the Plan reaffirmed that the CSD is the high-level forum for sustainable development within the United Nations system.[94]

Members of the CSD are elected by the Economic and Social Council (ECOSOC) from amongst the Member States of the UN and its specialized agencies. The role of the Commission as a high level forum on sustainable development, includes[95] :

i.   to review progress at the international, regional and national levels in the implementation of recommendations and commitments contained in the final documents of the UNCED 1992, namely; Agenda 21; and the Rio Declaration on Environment and Development;

ii.   to elaborate policy guidance and options for future activities to follow up the Johannesburg Plan of Implementation and achieve sustainable development; *and*

iii.   to promote dialogue and build partnerships for sustainable development with governments, the international community and the major groups identified in

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[93] UN Department of Economic and Social Affairs: Division for Sustainable Development – About the UN Commission on Sustainable Development (2009). Retrieved 3 July 2010 from the World Wide Web: http://www.un.org/esa/dsd/csd/csd_index.shtml

[94] *Ibid*.

[95] *Ibid*.

Agenda 21 as key actors outside the central government who have a major role to play in the transition towards sustainable development.

3.5   Non-governmental Organizations

Apart from States, other organizations also claim their rights to play a role in the domain of governing the oceans to the extent that they can be influential thus they could also provide an alternative avenue to deal with issues of ocean governance.[96] Two of these Non-governmental Organizations (NGOs) are listed below.

3.5.1   International Ocean Institute

Professor Elisabeth Mann Borgese established the International Ocean Institute in 1972 as an international knowledge-based institution, devoted to the sustainable governance of the oceans. It operates with a large network of national institutions in which its functions and activities such as capacity development, research, policy analysis, advocacy, dissemination of information, training and education, project implementation and promotion of peaceful use of the ocean are efficiently put in place.[97]

Its establishment was a milestone in the struggle to promote the peaceful and sustainable uses of ocean space and coasts as well as the management and conservation of the ocean and its resources so that future generations can share in their benefits. As an international non-governmental body with special consultative status at the UN, the

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[96] *Supra*, footnote 19.
[97] International Ocean Institute. Retrieved on 18 July 2010 from the World Wide Web: http://www.ioinst.org

International Ocean Institute works to uphold and expand the principle of the common heritage of mankind as enshrined in the UNCLOS 1982.[98]

3.5.2   International Union for Conservation of Nature

The International Union for Conservation of Nature was founded in October 1948 with the purpose to help the world to find pragmatic solutions to the most pressing environmental and developmental challenges. The Union supports scientific research, manages field projects all over the world and brings governments, non-government organizations, UN agencies, companies and local communities together to develop and implement policy, laws and best practice.[99]

Initially it was known as the International Union for the Protection of Nature before changing its name to the International Union for Conservation of Nature and Natural Resources in 1956, which remains its full legal name to date. It is the world's largest and oldest global network – a democratic membership union with more than 1,000 government and NGOs members, and almost 11,000 volunteer scientists in more than 160 countries.[100]

The Union functions through four different channels as follows[101] :

    i.   Knowledge : To develop and support cutting-edge conservation science, particularly concerning biodiversity and ecosystems, and how they link to human wellbeing;

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[98] *Ibid*.

[99] International Union for Conservation of Nature (2010). Retrieved on 18 July 2010 from the World Wide Web: http://www.iucn.org/about

[100] *Ibid*.

[101] *Ibid*.

ii. Action : To run thousands of field projects around the world to better manage natural environments;

iii. Influence : To support governments, NGOs, international conventions, UN organizations, companies and communities to develop laws, policy and best-practice; *and*

iv. Empowerment : To help implement laws, policy and best practice by mobilizing organizations, providing resources and training, and monitoring results.

ESTABLISHMENT OF COORDINATING INSTITUTIONS

4.1   United Nations System Chief Executives Board for Coordination

The United Nations System Chief Executives Board for Coordination (CEB) is the highest level coordination mechanism of the UN system.[102] It brings together the leaders of the UN system organizations under the chairmanship of the Secretary-General and is comprised of leadership of member organizations as follows[103] :

i.   International Labour Organization (ILO);

ii.   Food and Agriculture Organization of the United Nations (FAO);

iii.   United Nations Educational, Scientific and Cultural Organization (UNESCO);

iv.   The International Civil Aviation Organization (ICAO);

v.   World Health Organization (WHO);

vi.   World Bank Group (WBG);

vii.   International Monetary Fund (IMF);

viii.   Universal Postal Union (UPU);

ix.   International Telecommunication Union (ITU);

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[102] United Nations System Chief Executives Board for Coordination. Retrieved on 7 July 2010 from the World Wide Web: http://www.unsceb.org/ceb/home

[103] United Nations System Chief Executives Board for Coordination – Members of the Chief Executive Board. Retrieved on 7 July 2010 from the World Wide Web: http://www.unsceb.org/ceb/cebmembers

x. World Meteorological Organization (WMO);

xi. International Maritime Organization (IMO);

xii. World Intellectual Property Organization (WIPO);

xiii. International Fund for Agricultural Development (IFAD);

xiv. United Nations Industrial Development Organization (UNIDO);

xv. International Atomic Energy Agency (IAEA);

xvi. World Trade Organization (WTO);

xvii. World Tourism Organization (UNWTO);

xviii. United Nations Conference on Trade and Development (UNCTAD);

xix. United Nations Development Programme (UNDP);

xx. United Nations Environment Programme (UNEP);

xxi. United Nations High Commissioner for Refugees (UNHCR);

xxii. United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA);

xxiii. United Nations Children's Fund (UNICEF);

xxiv. United Nations Population Fund (UNFPA);

xxv. World Food Programme (WFP);

xxvi. United Nations Office on Drugs and Crime (UNODC); *and*

xxvii. United Nations Human Settlements Programme (UNHABITAT).

CEB is the prime instrument for supporting and reinforcing the coordinating role of the UN intergovernmental bodies on social, economic and related matters. It aligns the strengths, capacities and expertise of a decentralized system of specialized organizations to enhance coherence. It also ensures that the UN system can deliver as one united entity at the national, regional and global levels on a broad range of commitments made by the international community within its various intergovernmental mandates.[104]

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[104] *Supra*, footnote 102.

The origins of CEB date back to 1946, when the ECOSOC stressed its desire to 'discharge effectively its responsibility to coordinate the activities of the specialized agencies'. Consequently, the UN Secretary-General established the Coordination Committee which then changed its name to Administrative Committee on Coordination (ACC) in 1948 to distinguish it from ECOSOC's own Coordination Committee.[105]

The underlying premise in the creation of the then ACC was based on the demand for an institutional mechanism in order to draw together the disparate parts of a decentralized system of specialized bodies. In view of this, each institution with its own constitution, mandate, governing bodies and budgets is intended to gfit into a cohesive and functioning whole.[106]

In 2001, the name was changed again, and now to CEB. CEB meets twice a year and is supported by three committees[107] :

     i.   High-Level Committee on Programmes (HLCP);
     ii.   High-Level Committee on Management (HLCM); *and*
     iii.   United Nations Development Group (UNDG).

The function of the HLCP is to promote global policy coherence in the UN system. This includes the development of common policy tools together with its works on global policy and programme issues. The HLCM on the other hand, is aimed to promote harmonization of business practices across the UN system, including general

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[105] United Nations System Chief Executives Board for Coordination – What is the Chief Executives Board for Coordination ?. Retrieved on 7 July 2010 from the World Wide Web: http://www.unsceb.org/ceb/brochure/overview
[106] *Ibid*.
[107] United Nations System Chief Executives Board for Coordination – High-Level Committees of the Chief Executives Board. Retrieved on 7 July 2010 from the World Wide Web: http://www.unsceb.org/ceb/brochure/desc/ceb-high-level-committees/index

management issues. This is done in such a way to ensure that management coherence from global to national level is in place. Last but not least, the UNDG's function is to unite the 32 UN funds, programmes, agencies, departments, and offices that play a role in development. Its common objective is to deliver more coherent, effective and efficient support to countries seeking to attain internationally agreed development goals.[108]

Nevertheless, for the purpose of this dissertation, only HLCP, which deals with works on global policy issues, will be further discussed as HLCP through CEB has endorsed the creation of the Ocean and Coastal Areas Network covering a wide range of issues and is composed of the relevant programmes, entities and specialized agencies under the UN system and the secretariats of the relevant international conventions, in relation to the governing of the oceans.[109]

4.2　**High-Level Committee on Programmes**

The High-Level Committee on Programmes (HLCP) is responsible to CEB for fostering coherence, cooperation and coordination on the programme dimensions of strategic issues for the UN system. It acts as the principal mechanism for system-wide coordination in the programme area in the UN system.[110]

Together with other pillars of CEB, i.e. HLCM and UNDG, its programme of work is developed and aligned by HLCP in order to ensure proper sequencing of issues considered by one or more of the three pillars. Such alignment aims to maximize

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[108] *Ibid.*

[109] *Ibid.*

[110] United Nations System Chief Executives Board for Coordination – High-Level Committee on Programmes. Retrieved on 7 July 2010 from the World Wide Web:
http://www.unsceb.org/ceb/brochure/overview/ceb/hlcp

complementarities and synergy of work of the CEB structure in support of greater system-wide coherence in realizing intergovernmental mandates.[111]

HLCP serves for two main functions[112] :

i. System-wide follow-up of intergovernmental decisions and major UN conferences and summits in order to maximize their impact in conjunction with the strategic approaches and objectives adopted by the CEB; *and*

ii. Scanning and identification of emerging programme issues requiring a system-wide response in order to elaborate common strategies, policies and tools, serve as a forum for inter-agency dialogue and prepare for CEB sessions on issues of global significance.

In order to achieve the above, HLCP will[113] :

i. include in its rolling three-year programme of work, cross-cutting and multi-sectoral issues giving special attention to policy areas for which no lead agency has been identified;

ii. develop innovative, timely and cost effective working arrangements including identifying policy themes and clusters, time-bound task forces and where required identifying lead/convening agencies;

iii. develop arrangements for monitoring and guiding the work of inter-agency bodies relevant to its work;

iv. foster dialogue and propose ways in which the collaboration and interaction with the private sector, semi-governmental and non-governmental

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[111] *Ibid.*
[112] *Ibid.*
[113] *Ibid.*

organizations and other parts of civil society can be enhanced and contribute to the achievement of agreed system-wide goals; *and*

v.   foster knowledge-sharing to enhance transparency, to develop consensus and to learn and apply proven successful practices and policies.

In the exercise of these functions, HLCP will operate within the framework of the constituent instruments of member organizations and the relationship agreements between the UN and the specialized agencies. HLCP, composed of senior staff authorized by their executive heads to take decisions on their behalf, will meet twice a year in regular session, and will hold other meetings on an as-needed basis. During its 7th Session in 2003, HLCP through CEB approved the establishment of the Ocean and Coastal Areas Network.[114]

4.3   Oceans and Coastal Areas Network

The Oceans and Coastal Areas Network, subsequently known as 'UN-Oceans', was created in September 2003 in view of the idea to develop a new inter-agency coordinating mechanism as a result of consultations between the UN Programmes and Agencies participating in the coordination of oceans and coasts. This is consistent with the new arrangements being developed in the UN system concluded by CEB that all existing subsidiary bodies should cease to exist by the end of 2001, and that future inter-agency support requirements would best be handled through ad-hoc, time-bound, task-oriented arrangements using a lead agency approach.[115]

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[114] *Ibid*.

[115] Oceans and Coastal Areas Network (UN-Oceans) (2008). Retrieved on 10 July 2010 from the World Wide Web: ioc3.unesco.org/un-oceans/index.php?option=com_content&task=view&id=13&Itemid=27

In this regard, the UN-Oceans decided to establish a 'distributed secretariat' with functions divided into two different secretariats, namely an Organizing Secretariat and an Implementing Secretariat in order to ensure its smooth and effective functioning, yet at the same time maintaining the financial and human capital requirements.

The UN-Oceans is assisted by the Organizing Secretariat established in DOALOS in order to meet its reporting requirements. The assistance rendered, with the consultation of the Coordinators[116], will also include coordination on the preparation of reports and organization of meetings.[117] The Implementing Secretariat established in IOC-UNESCO will, in consultation with the Coordinators, assist the Network in strengthening cooperation, reviewing the relevant programmes and activities, and promoting the coherence of the UN system activities on oceans and coastal areas.[118] The first meeting was hosted by IOC of UNESCO in January 2005.

The objective of UN-Oceans is aimed at enhancing effective coordination and cooperation among secretariats of the international organizations and bodies concerned with ocean related activities. It is also meant for establishment of strong connections with the UN Open-ended Informal Consultative Process on Oceans and Law of the Sea. The functions it identified for the Network are as follows[119] :

    i.   Strengthening coordination and cooperation of the UN activities related to ocean and coastal areas;

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[116] A Coordinator and a Deputy Coordinator are elected for a term of 2 years to coordinate the UN-Oceans and their term ends at the same time.
[117] *Supra*, footnote 115.
[118] *Ibid*.
[119] *Ibid*.

ii. Reviewing the relevant programmes and activities of the UN system, undertaken as part of their contribution to the implementation of the UNCLOS 1982, Agenda 21, and the Johannesburg Plan of Implementation;

iii. Identification of emerging issues, the definition of joint actions, and the establishment of specific task teams to deal with these, as appropriate;

iv. Promoting the integrated management of ocean at the international level;

v. Facilitating as appropriate, the inputs to the annual report of the Secretary General on oceans and the law of the sea; *and*

vi. Promoting the coherence of the UN system activities on oceans and coastal areas with the mandates of the General Assembly, and the priorities contained in the Millennium Development Goals, the Johannesburg Plan of Implementation and of governing bodies of all UN-Oceans members.

The UN-Oceans noted that in order to cover all aspects related to ocean activities, ranging from political, legal, economical, social, environmental and security aspects, members should also include international financial institutions and authoritative institutions, together with secretariats of multilateral environment treaties. In this respect, the inclusion of the ISA and the Convention of Biological Diversity among others, is most welcomed. Besides, any other secretariat in the UN system may become a member through a simple expression of will, in order to further expand its membership from the existing organizations that have joined through their participation in the previous works or in the informal coordination of the Informal Consultative Process.[120]

UN-Oceans also agreed that the participation of relevant international NGOs and other international stakeholders should be encouraged under the responsibility of the lead institutions coordinating the task forces, and thus these international organizations

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[120] *Ibid.*

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should be invited to contribute to the task force's activities and might be invited to attend selected items of the UN-Oceans agenda.[121]

In this regard, the process of reviewing joint and overlapping ongoing activities will be done in a flexible manner by the UN-Oceans. This mechanism will also include the process of supporting related deliberations of the Informal Consultative Process, as well as, coordinating its meetings with the Informal Consultative Process sessions as far as possible. This is actually the reason why the Organizing Secretariat is based in DOALOS.[122]

Apart from that, time-bound initiatives have also been agreed to be pursued. These initiatives are undertaken with well-defined terms of reference through ad-hoc task forces and opened to the participation of NGOs and other international stakeholders as required. These task forces, coordinated by a lead institution (with mandate and major activities in the specific issues being considered) will foster collaboration around existing joint activities. Mechanisms such as the Global International Water Assessment, the Joint Group of Experts on the Scientific Aspects of Marine Environmental Protection and the Global Oceans Observing System will also collaborate with the task forces.[123] The UN-Oceans then agreed that, in preparing its programme of work, it will take into account[124] :

    i.   the programme of work adopted by the governing bodies of each institution;

    ii.   the recommendations of the existing inter-agency coordinating mechanism; *and*

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[121] *Ibid.*
[122] *Ibid.*
[123] *Ibid.*
[124] *Ibid.*

iii.   the programmatic framework of recommendations from the Johannesburg Plan of Implementation and the Informal Consultative Process, taking into account new and emerging issues that will require the attention of the network, as well as reporting requirements or needs.

4.4   United Nations Informal Consultative Process on the Oceans and the Law of the Sea

An open-ended informal consultative process was decided on 24 November 1999 by the General Assembly to be established following the recommendation of the CSD. This is also consistent with the legal framework provided by UNCLOS 1982 and the goals of chapter 17 of Agenda 21. The purpose of the establishment is to facilitate the annual review of developments in ocean affairs and the law of the sea by the General Assembly in an effective and constructive manner. This is done by considering the Secretary-General's annual report on oceans and the law of the sea and by suggesting particular issues to be considered by it.[125]

The United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea (UNICPOLOS) was initially established for a three-year period. It is then reviewed at the General Assembly every 3 years to decide whether or not it should be continued.

The General Assembly decided, through its resolution 54/33, that the meetings of the UNICPOLOS should have as broad and inclusive participation as possible, thus making

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[125] Oceans and Law of the Sea: Division for Ocean Affairs and the Law of the Sea – United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea (2010). Retrieved on 10 July 2010 from the Word Wide Web: http://www.un.org/Depts/los/consultative_process/consultative_process.htm

these meetings open to all Members States of the UN, Members States of the specialized agencies, all parties to the UNCLOS 1982, entities that have received a standing invitation to participate as observers in the work of the General Assembly pursuant to its relevant resolutions, and intergovernmental organizations with competence in ocean affairs. In return, the meetings also provide an avenue to receive input from representatives of the major groups as identified in Agenda 21.[126]

The UNICPOLOS is intended to facilitate the annual review by the General Assembly of developments in ocean affairs and the law of the sea. It is undertaken by considering the Secretary-General's report on oceans and the law of the sea and by suggesting particular issues to be considered by the General Assembly, with an emphasis on identifying areas where coordination and cooperation at the intergovernmental and inter-agency levels should be enhanced.[127]

Pertaining to this matter, the Secretary-General's report on oceans and the law of the sea will be deliberated by the Meetings, with due account given to any particular resolution or decision of the General Assembly, any relevant special reports of the Secretary-General and any relevant recommendations of the CSD. The General Assembly will decide on topics for the focus of discussions at the Meetings in its annual resolution on 'Ocean and the law of the sea'. The topics are then discussed in depth in a discussion panel during the Consultative Process.[128]

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[126] *Ibid.*
[127] *Ibid.*
[128] *Ibid.*

4.5   Issues

Even with the establishment of new institutions, it should be recognized that these institutional arrangements still have considerable limitations in governing the oceans as far as the goal of integrated sustainable ocean development is concerned. There is a growing awareness of the need to overcome these limitations by designing alternative institutional arrangements through the existing capital and resources within the institutions themselves, rather than establishing new institutions.

Under this new paradigm, institutions should be able to maintain, work on and expand their own capacity with regard to the ability to display strong leadership in this area. This includes not only the ability to make decisions through different dimensions of processes and procedures, but also the ability to make quality policy decisions which are based on strong substantive knowledge and understanding. Policy capacity is also influenced by the relative size of an institution and its resources, both in terms of human capital and expertise, as well as, finance.

Eventually, when the ability to lead and decide, the possession of human capital and expertise, and the financial power are all in hand, an institution also needs to be able to communicate effectively in order to ensure the works, with the range of other actors engaged in the same field that contribute to the governing of oceans, are efficiently done.

Borgese has once mentioned that the world's problems cannot be solved by designing institutions, nevertheless, they must be solved by people.[129] This includes problems of ocean governance where establishing institutions in a continuous manner would not be feasible to address growing demands and issues. In this regard, Borgese has shown how

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[129] *Supra*, footnote 49 at p. 132.

important and influential human beings could be. The next discussion on building the capacity will resort for an alternative solution.

Therefore, the next chapter will look into all these vital elements which fall under capacity building. It is believed that the ability to work things out within an institution itself, along with efforts to enhance internal bureaucracies will serve to achieve better outcomes in providing a way forward towards an effective and efficient institutional framework for ocean governance.

CHAPTER FIVE

A WAY FORWARD : CAPACITY BUILDING

5.1 Introductory Remarks

Capacity building could largely depend on leadership, i.e. the art of decision making; human capital, i.e. the machinery of execution; communication, i.e the medium of interaction; as well as financing, i.e. the source of funds. A possible scenario could be cited which begins with the communication of information describing a developing situation. Then, human capital with expertise, sufficient knowledge and understanding of ocean governance will play their parts to take necessary actions and advise strategic directions to the stakeholders. Next, the decision making step will take place to conform to the procedural management being applied and the process involved. Lastly, the funding part will be put in place to make sure that the ideas and plans are materialized. This chain of events could take place either at national legislation, regional agreements or global conventions.

Therefore, this chapter will identify the roles of these elements in building the capacity under the institutional framework for ocean governance.

5.2   Leadership

An integrated ocean policy requires the highest level of political direction and oversight in order to ensure its success. Although there is no ideal organization to perform the task of formulating an integrated ocean policy and inter-agency coordination, one of the most effective mechanisms to achieve this objective is the involvement of the ministerial capacity at the highest political level. This kind of arrangement would be able to bring together governmental and non-governmental organizations involved in ocean affairs without having any hassle to establish a new institution or coordinating body. Hence, this should provide the necessary leadership as well as the opportunity and the leverage for policy-setting and inter-agency coordination to a degree that previously has not been possible.[130]

Moreover, this approach would be able to provide for a better position for which the ocean governance sectors could communicate with the planning agencies as to how priorities are to be established and decisions made. This task, which is politically sensitive, can only be accomplished by an institution that is located at the highest level in the governmental structure and presided over by a minister in charge.[131]

This assertion is made in light of the view that responsibilities for strategic ocean planning and for investment planning should be located at the highest level of the governmental hierarchy. These responsibilities are comprised of efforts to address the constraints faced by governments in terms of oceans funding, coastal planning and management efforts, as well as allocation of scarce financial resources. In order to perform effectively, a comprehensive development plan must be prepared and implemented by a planning body with authority. This planning authority should use a

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[130] *Supra*, footnote 3 at pp. 89-90.
[131] *Ibid*, at p. 90.

number of instruments for strengthening the involvement of all levels of government and other interested parties in order to attain the goals of integrated ocean planning.[132]

This can be successfully achieved by governing, *inter alia*, the inherent relationships of sustainable resource development and environmental protection; the improvement of the information base for management decisions; the development of human resources; and other needs as required. Furthermore, technical studies must be coordinated with universities, technical institutions, and the business community in order to support the policy planning investment decisions. Next, the stages and sequences of development must be carefully established, and finally the standards, time schedules, technological requirements, and other means to implement the plan must be programmed effectively.[133]

Nevertheless, there will still be a degree of decentralization which depends on various factors, such as the purpose of planning, the geographical locale of planning, the impetus for planning, and the planning approach selected.[134] This is where ocean governance should come into the picture in the form of a framework that is capable of addressing the complexity of the issues relating to the oceans in a timely and adequate manner, be it at the national, regional or global level, as there must be a continuous chain between them. This is only possible with the ability of the leadership of the institutional framework.

As an example, the rise of the sea-level due to climate change is a global issue. However, the solution to overcome this problem is very much geographically dependent, thus requiring a pool of regional experts to discuss and strategize plans that need to be undertaken by individual countries with their own national expenses. This can only be

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[132] *Supra*, footnote 3 at pp. 90-91.
[133] *Ibid*, at p. 91.
[134] *Ibid*.

done with efficient leadership skills such as decision making in order to promote a successful intergovernmental-linked cooperation, hence showing how essential the leadership is.[135]

Therefore, it is important to make sure that implementation should fall as much as possible within the sphere of existing governmental organizations for ease of execution. However, the mandates of existing institutions should be considered to be extended in the event that the structure does not cover the required decision making functions and competences, as required by programmes and projects. The arrangements should provide not only for the delegation of authority and responsibility to specialized bodies but also operational links for joint decision making among the operational bodies. This is to ensure that the unity and consistency intended at the planning stage is maintained throughout the implementation process.[136]

Moreover, monitoring of the execution of programmes and projects is an integral part of the continuous cyclic function of policy-making, planning, and implementation. It is required to follow-up and evaluate plans and programmes to ensure that the implementation experience is capable of being translated into new policy criteria. This is particularly essential in the circumstances where many ocean governance issues require attention at the global level. There is an inherent requirement that the decisions should be rightly addressed at each respective level of management and thus should be appropriately referred to the stakeholders, either 'bottom-up' or 'top-down'.[137]

Another instance that could be looked at is the CLCS, which is an organ that has been assigned specific functions under the UNCLOS 1982. This includes the task of making

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[135] *Supra*, footnote 1 at p. 268.
[136] *Supra*, footnote 3 at p. 92.
[137] *Supra*, footnote 1 at p. 272.

an independent evaluation of the submission of coastal States in respect of the outer limits of the continental shelf. In this case, the CLCS has to be presumed and seen to have the competence in terms of its credibility in making decisions, which is required to carry out these functions.

5.3   Human Capital

Qualified human capital is very essential for any institutional arrangement, without which no planning or implementation would be effective. In this case, the development of expertise, particularly in the field of interdisciplinary approaches to policy formulation and implementation should be given high priority. A key priority is to build the necessary policy analysis and decision making competence to deal with the complex problems and issues involved in the development of ocean areas. Likewise, it is advisable to consider the creation of special staff training programmes for the purpose of preparing personnel for their tasks ahead, in order to make sure that the development of the necessary integrated planning expertise is accomplished.[138]

Notions on multidisciplinary and interdisciplinary approaches are very much relevant in resolving the complex environments and development of oceans and coastal regions, which require different kinds of competencies among human capital. Cross-disciplinary thinking and multi-purpose research will provide human resource with a broad spectrum of knowledge about the oceans and enable them to function on national, regional and global scales.[139]

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[138] *Supra*, footnote 3 at p. 92.
[139] *Supra*, footnote 1 at p. 286.

The example given in sub chapter 5.1 indicates that anything that happens at the global level could be spread to the regional and national levels, or vice versa. Hence, this human capital must also be prepared at all levels in order to wisely govern the oceans. For instance, the issue of persistent organic pollutants which have reached unacceptable levels in the ecosystem, has caused a worldwide impact. Although their production and usage are subject to the national jurisdiction, actions to curtail these anthropogenic pollutants demand human capital on the global scale.[140]

Continuing on the same example of CLCS as in sub chapter 5.2, it has to be assumed that all experts sitting under CLCS's umbrella are competent enough to deal with issues concerning the interpretation or application of Article 76 of the UNCLOS 1982 or other relevant articles of the Convention. This ability is expected to the extent that they are capable to carry out the tasks assigned to them, knowing the fact that interpretation and application of these articles requires competence and expertise.

5.4   Communication

Ocean governance cannot work in isolation. Its institutional framework requires communication with stakeholders. Communication must be built upon creating public awareness about the oceans in all sectors and levels of society. The internet, among other various communication technologies, should be applied and exploited by new kinds of experts. Yet, these developments toward integration in communication will have varying potentials in different parts of the world.[141]

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[140] *Ibid*, at pp. 268-269.
[141] *Ibid*, at p. 286.

Thus, there is a need to improve the information available to decision-makers. This includes, *inter alia*, the establishment of appropriate databases, resource inventories, statistics, geographic information systems, as well as a permanent system for the exchange of managerial and technical information.

Audiences of maritime matters are of three types, namely, the public to whom the ocean belongs; policy formulators and decision-makers who seek to regulate and prolong uses of the sea; and specialists professionally involved with the sea and its exploitation, i.e. those who use it directly or try to understand it better.[142]

The operating spectrum concerning data and its interpretation which needs to be communicated at the global level, includes general themes, nature, economy and outlook. The general themes are divided into the communality of the oceans, hence the prospective Law of the Sea Treaty, as well as, complexity of the resource, i.e. ocean-land, ocean-atmosphere, land-atmosphere effects, and mankind's interaction. Next, nature among other things, includes awareness of the history of mankind's adaptation to the total oceanic environment, the coveted seashore, the threat to terrestrial expanses, the urban growth and decay, the offshore technologies, and the agriculture/food outlook. Economy encompasses transport, security and defence, outlook for energy, leisure/tourism and cultural impacts. Outlook includes plans, finance and legislation; implementation and regulation; evaluation and control; and the future of the humanity-ocean relationship.[143]

These suggested functional spectra, sometimes offer little occasion for the reporting of events. Similarly, the dissemination of knowledge or information that should be strongly

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[142] *Supra*, footnote 3 at p. 289.
[143] *Ibid*, at pp. 291-292.

considered, such as catching and maintaining the interest of non-professional audiences, become the main challenge for communicators.

Good examples of continuing informational sources conveying information to the various target groups are absorbed, analysed, assessed, and interpreted by them in direct relation to the segments of human activity. These sources may be classified as scholarly and technical journals, interdisciplinary media for professionals, interdisciplinary media for decision-makers, interdisciplinary media for the public, and unidisciplinary or single sector media relating to the specific topics listed above.[144]

As mentioned in sub chapter 5.1, there is a link to connect the leadership from global to regional to national or *vice versa* in order to communicate decisions made, in that particular sea-level rise case, 'top-bottom'. Therefore, there is a need for interaction between all levels and at all levels as those decisions must be communicated. Another example that could be cited of a 'bottom-up' approach is the development of coastal facilities. The said activity could definitely be under the jurisdiction of the coastal state, however, the possible after-effect damages like the loss of habitat of coral reefs or certain fishes is obviously a global ecological concern. Thus, the common understanding of this concern must be made available throughout from global to regional to national, and this is done through communication.[145]

Materials for decision-makers which are interdisciplinary are most important and often commissioned directly by governmental and non-governmental bodies. These are, for the most part, painstakingly detailed in their research and compilation, and statistically sound when databases are available and well stocked. In this regard, the related policy

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[144] *Ibid*, at pp. 292-293.
[145] *Supra*, footnote 1 at p. 268.

formulator will adopt it and then translate policies into decisions and operational programmes.[146]

Payoyo referring to a hydrologist, Roger Fujioka, suggested a dozen insights that should serve usefully all those concerned with rationalizing mankind's approach to the use – and minimal abuse – of a global common resource. His opinions are as follows[147] :

i. Recognize the fact that opinion is powerful;

ii. Recognize the difficulty in arguing against opinion from a technical point of view, for opinion is not based solely on the technical merits of practices under consideration;

iii. Recognize that opinion is strongly formed by public media, especially newspapers and television. For instance, impressions are made by newspaper headlines – opinions are formed from the headlines without reading the content further;

iv. Recognize that there are never enough data to respond to everyone's concerns in selecting the best technological approach to the solution of problems;

v. Recognize that any technical approach chosen will result in the creation of (new) potential problems;

vi. Recognize that some people distrust or reject new technology, or the recommendations made by government, industry, or university scientists;

vii. Recognize that a few persistent citizens can impede or delay projects. Recognize further that such people are often perceived as champions of just causes – such as protecting the environment or human lives, issues having essentially sentimental appeal;

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[146] *Supra*, footnote 3 at p. 293.
[147] *Ibid*, at 294.

viii. Recognize that the public must be educated on technical issues before these reach the state of open hearings. The public is willing to listen and absorb technical merits into the decision-making process, but not when the public seeks to 'make a point' during the final stage of public hearings;

ix. Recognize, however, that scientists and engineers are not trained (nor have they the time) to educate the public;

x. Recognize the need for professional specialists in information transfer – those trained in science or technology as well as those trained in communication with government regulators, the media, and the public; *and*

xi. Recognize that there is a need for responsible information which represents no vested interests other than providing a forum for the discussion of environmental resources.

As might be expected of a 'constitution of the oceans', various provisions of the UNCLOS 1982 expressly contemplate its interaction with other environmental instruments. Several provisions require States to cooperate in order to pursue environmental objectives consistent with the UNCLOS 1982. In a broader environmental context, Article 197 of the Convention obliges States to cooperate on a global and regional basis directly, or through competent international organizations. This can only be done through the ability to communicate effectively in order to formulate and elaborate international rules, standards and recommended practices and procedures consistent with the UNCLOS 1982 for the protection and preservation of the environment.[148]

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[148] Rothwell, D.R., Stephens, T., *Dispute Resolution and the Law of the Sea: Reconciling the Interaction between the LOS Convention and other Environmental Instruments.* In Elferink, A. G. O., Rothwell, D. R., *Ocean Management in the 21st Century: Institutional Frameworks and Responses*, The Netherlands: Koninklijke Brill NV, 2004 at p. 227.

The explanations and examples on how communication is accomplished show that it is open to several options. It varies between different levels and scales nationally, regionally and globally.

5.5   Financing

The mobilization of financial resources is a key issue in the process of institutional building. The present pattern of international assistance and other public financial flows, which relies almost completely on unpredictable voluntary contributions, has become obsolete and is woefully inadequate. In this connection, the introduction of a new approach to questions of international public finance has become an urgent challenge. There are mechanisms that could generate substantial revenues, giving options on an automatic rather than a discretionary basis, and comprehensively instead of through a patchwork basis. These could be used to fund general and ocean-related development programmes and also the regulation and conservation of ocean resources.[149]

These ideas will provide a viable approach, and the oceans could then offer an ideal starting point for a system of international public finance due to the potential benefit from the exploitation of marine resources. The UNCLOS 1982, by designating international property rights to the deep ocean bed, has in fact set this process in motion.

In addition to mobilizing revenues, a variety of corrective taxes and user fees are desirable for the management and optimum development of ocean resources. The global commons are always wrongly perceived to be free and inexhaustible resources, thus an action to charge users for the cost of using them can prevent their overuse. Specifically

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[149] *Supra*, footnote 3 at pp. 309-310.

designed long-term or even quasi-perpetual leases on fisheries, for example, could provide an incentive for leaseholders to maintain, rather than deplete, the resource.[150]

The implementation of these financial measures could be realized within the existing institutional framework by means of conventions, or multinational treaties. The potential sources of revenue that can be derived from the oceans are varied and extensive. A substantial portion should be allocated specifically for ocean governance and development, while other parts may be placed in a general fund for international programmes. Further, a proposed multi-sectoral oceans organization or institutional agreements could help mobilize these funds and manage their expenditure.[151]

International organizations and agencies with mandates for capacity building should develop a new role to act as brokers to persuade donor agencies to spend their money in ways more consistent with the needs. Capacity building will also be continuously supplied from their limited budgets.[152]

On a different note, the UNCLOS 1982 has established an institutional framework for the mobilization of resources from the exploitation of the deep ocean bed in the form of the International Seabed Authority. The Authority will be responsible for licensing and collecting fees for the mining of the deep ocean bed. The sources of revenue can be from the deep ocean bed, from fishing on the high seas, from taxes on trade through freight and overflight as well as permits for commercial activities. These resources can be placed in a general fund for general international use. A significant part, however, should be allocated specifically for ocean governance and development.

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[150] *Ibid*, at pp. 310-311.
[151] *Ibid*, at p. 311.
[152] *Supra*, footnote 1 at p.289.

5.6   Concluding Remarks

Although there are still deficiencies at all levels in relation to these four elements of capacity building, progress has been seen to take place. Efforts to build capacity in the institutional framework for ocean governance have yielded a number of achievements, for instance the conclusion of several global conventions and agreements, adoption of some regional legislation with a set of new standards for ocean governance, and actions of including global and regional monitoring systems in national plans.

This trend demonstrates a promising route for capacity building to add value to the institutional framework for ocean governance. Efforts are aggressively put in place and this process is ongoing. The next chapter will illustrate initiatives in capacity building at the global and regional levels.

CHAPTER SIX

CAPACITY BUILDING INITIATIVES : INTERNATIONAL AND REGIONAL

6.1   Introductory Remarks

Without efforts to coordinate and cooperate, initiatives put forth by various institutions, international coordinating bodies and regional organizations, capacity building will always lag behind. Active participations in the works of the institutional framework at the global and regional levels are very important for the broadening of the perspectives of ocean governance.

Strengthening and enhancing capacity building at national, regional and global levels so that it remains viable is of similar importance to the formation of new institutions to govern the oceans. The following will describe the initiatives by an international organization and a few major regional organizations. Efforts to build the capacity in terms of leadership, human capital, communication and financing will be discussed as they apply to each initiative. As the dissertation focuses on the development of institutional framework for ocean governance at the global level, initiatives under the UNICPOLOS are discussed in more length and detail. Others are initiatives put forward by the European Union, the Asia-Pacific Economic Cooperation and the Association of Southeast Asian Nations.

6.2   United Nations Informal Consultative Process on the Oceans and the Law of the Sea

The current capacity building activities and initiatives of ocean governance related fields at the international level are mainly driven by the UNICPOLOS. The implementation of the respective activities and initiatives is executed by the relevant intergovernmental organizations, non-governmental organizations and other stakeholders, either public or private. The following are the capacity building activities and initiatives put forward by the respective institutions.

6.2.1   Marine Scientific Research

The IOC was established with the purpose of promoting cooperation at the international level, as well as coordinating programmes in research, services and capacity building. The Commission, through which the UNESCO is regarded as a recognized competent organization in the fields of marine scientific research and transfer of marine technology, is also aimed at learning and applying knowledge about the nature and resources of the oceans and coastal areas, for the improvement of management, sustainable development, the protection of the marine environment and the decision making processes of its member States. The Commission has so far coordinated regional leadership, proposal writing and teambuilding workshops in the eastern Atlantic and western Indian Ocean regions.[153] These efforts mostly cover components of leadership and human resources of capacity building, reflecting the commitment of IOC in building the capacity in marine scientific research.

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[153] United Nations General Assembly Sixty-fifth Session. *Oceans and the Law of The Sea: Report of the Secretary General* (A/65/69). New York, 29 March 2010, pp. 26-27.

On the same note, the ISA has also addressed issues on capacity-building through the creation of the ISA Endowment Fund for Marine Scientific Research in the Area. This Fund facilitates the development of capacity through training and technical assistance, among others, to support the participation of qualified scientists and technical personnel from developing countries in international cooperative marine scientific research programmes. [154] This, on the other hand, indicates the importance of the financing component in order to build the capacity of its human capital. The fund ensures the smooth-running of the initiatives put forth by the authority in marine scientific research.

Initiatives undertaken by these two institutions in the field of marine scientific research reflect the provision of an avenue for capacity building to competitively explore any future challenges and demand in ocean governance.

6.2.2   Fisheries

Apart from the purpose mentioned in Chapter 3, the establishment of the FAO is also aimed at providing technical assistance and training in order to strengthen national capacity in fisheries sciences and to strengthen the knowledge base for the implementation of the ecosystem approach to fisheries in developing countries. In realizing this objective, among others, training workshops conducted are for the improvement of information on status and trends in fisheries capture and the generation and use of fishery statistics and information. Regionally, training workshops are also conducted, such as for the assessment and monitoring of fishery resources and the ecosystem in the Strait of Sicily and providing support to fisheries management in the western and central Mediterranean. In addition, developing country members have been taken care of by their respective regional institutions like the International Commission for the Conservation of Atlantic Tunas and the Secretariat of the Pacific Community.

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[154] *Ibid.*

They have organized scientific training activities such as training workshops on data collection and improvement in the Caribbean region and on parameter estimation and basic stock assessment modeled in the Mediterranean region. [155] This is another indication that capacity building, in this case in terms of human resource development, is also essential at the regional level.

Article 64 of the UNCLOS 1982 obliges relevant coastal and flag States to cooperate directly or through international organizations in order to conserve and promote the optimum utilization of highly migratory marine species both within and beyond coastal States EEZs. An example of this is the Commission for the Conservation of Southern Bluefin Tuna which was the first agreement signed after the adoption of the UNCLOS 1982 to give effect to the principles of Article 64 to the Convention.[156]

6.2.3   Marine Environment

Developing national capacity in marine science is the key focus of a project addressing land-based activities. Grants to developing countries and States with economies in transition for projects related to protection of the global environment are provided by the Global Environment Facility. This is an example on how the capacity building component of financing could play its role. The science-based approaches to capacity building in ocean affairs and the law of the sea are highlighted with regard to its international waters focal area as to show that capacity building is also taken care of in the field of marine environment. In order to introduce ecosystem-based approaches to management and to build the capacity of States to successfully implement the new approaches and technologies, the use of science has been applied. The targets of this

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[155] *Ibid*, at pp. 30-31.
[156] *Supra*, footnote 148.

approach are integrated coastal management and improved management of large maritime ecosystems.[157]

6.2.4   Climate Change

Climate in its own capacity dictates our daily lives and thus, in terms of the marine and maritime sectors, fishery distribution and transportation, among others, are to a certain extent decided by various climate variability aspects. Therefore, information on climate change process is crucial in order to help the world community to prepare for its occurrence. By understanding and analyzing the information, climate conditions could potentially be predicted through the reasonably modeled and forecasted climate variability.[158]

In this regard, the Subsidiary Body for Scientific and Technological Advice of the UN Framework Convention on Climate Change continuously maintains its efforts in organizing regular dialogues with research programmes and organizations that not only discuss current issues of climate change but also provide new scientific information on climate change. This is an example of building capacity through a communication platform. Another example of efforts made by the global institutions is GOOS as cited in sub chapter 3.2.4. It is a permanent global system for observations, modeling and analysis of marine and ocean variables including weather forecasting which serves as a medium of communication to support operational ocean services worldwide. In Africa, the System, with the support of a project office of the IOC, represents the ocean component for Africa.[159]

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[157] *Supra*, footnote 153, at pp. 31-32.
[158] Kullenberg, G., *Weather, Climate, Forecasting and Climate Change*. In Eng, C. T., Kullenberg, G., Bonga, D., *Securing the Oceans: Essays on Ocean Governance – Global and Regional Perspective*, Quezon City: GEF/UNDP/IMO, 2008, pp. 116 & 121.
[159] *Supra*, footnote 153 at p. 32.

6.2.5   Application of the United Nations Convention on the Law of the Sea

The UNCLOS 1982 as a leading convention to govern the ocean offers several fellowship and internship programmes to undertake studies and courses regarding the application of the Convention. One of them is the Hamilton Shirley Amerasinghe Fellowship on the Law of the Sea to assist qualified candidates to acquire additional knowledge of the Convention. This initiative is aimed at promoting the Convention's appreciation and applications in a wider perspective amongst personnel. It is also meant for them to enhance specialized experience in the field of the law of the sea. Besides, the Nippon Foundation Fellowship Programme has provided capacity building opportunities to developing States. The Fellowship named 'Human resources development and advancement of the legal order of the world's oceans', aimed to provide an advanced research fellowship in the field of ocean affairs and the law of the sea and related disciplines, is another example of the effort to build the capacity of human capital.[160]

6.2.6   Delineation and Delimitation of Maritime Zones

The DOALOS has organized a series of regional and sub regional training courses in view of its contribution to the effect of capacity building. As a prime institution in ocean governance particularly in the law of the sea, the Division's interest through these training courses is on the delineation of the outer limits of the continental shelf beyond 200 nautical miles and on the preparation of submissions to the Commission on the Limits of the Continental Shelf. To date, 53 States have benefited from the course since 2005. Besides, efforts to enhance the technical capacity of developing States for the determination of baselines and the establishment of the outer limits of maritime zones, including the lines of delimitation, have been initiated by the International Hydrographic Organization (IHO) capacity-building programme. There is also a potential to combine

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[160] *Ibid*, at pp. 33-35.

these efforts with the one undertaken by the Division in the clarification of technical aspects of the UNCLOS 1982 in relation to maritime spaces.[161]

6.2.7 Maritime Transportation and Navigation

Shipping and its respective port industry are such important elements of civilization and development that the growth of coastal megacities word wide has been linked to them.[162] Therefore, maritime transportation and navigation is very essential to ensure this achievement, hence its respective human capital development is equally important.

In this regard, IMO through its Integrated Technical Cooperation Programme (ITCP) has developed and delivered capacity building programmes. It is worth noting that IMO, as a specialized agency within the UN, is mandated with the authority in the field of safety of navigation and prevention of marine pollution from vessels. Therefore, these capacity building programmes are meant to assist developing countries to establish their human and institutional capacities for uniform and effective compliance with the IMO regulatory framework, and thus are branched out according to the salient aspects of maritime transport and navigation.[163]

Under maritime labour, ITCP has played an important role in human resource development for developing nations, specifically with the establishment of the World Maritime University in Malmö, Sweden as well as the International Maritime Law Institute in Valetta, Malta, which both offer training in maritime disciplines. Concerning the transport of dangerous goods, ITCP also plays an important role in placing focus on

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[161] *Ibid*, at p. 37.
[162] Kullenberg, G., *Transportation Across the Sea*. In Eng, C. T., Kullenberg, G., Bonga, D., *Securing the Oceans: Essays on Ocean Governance – Global and Regional Perspective*, Quezon City: GEF/UNDP/IMO, 2008, p. 43.
[163] *Supra*, footnote 153 at pp. 60-63.

the development and production of an interactive e-learning package for the benefits of human capital. This is done for the International Maritime Dangerous Goods Code class 7 radioactive materials in order to ensure that distance-learning and remote testing confirm the level of knowledge acquired by participants. On the aspect of safety of navigation, capacity building programmes are strengthened by the IHO to encourage bilateral and regional cooperation on hydrographics together with other related matters, in order to better support its member States to develop and enhance their hydrographic infrastructure. One of its programmes is to conduct technical and advisory visits to raise awareness of the importance of hydrography, and thus the consequent benefits of establishing a national hydrographic agency, and conducting analyses of the current national hydrographic status.[164]

6.2.8   Maritime Security

Programmes for capacity building for maritime security can take many different forms and cover a broad approach depending on the specific types of maritime security threats. One of them is the ever alarming piracy and armed robbery against ships. The IMO has been implementing a long term anti-piracy project under two phases since 1988. Phase one consists of a number of regional seminars and workshops for States in piracy-infested areas in order to concentrate efforts where they are most needed. After that, phase two comes in which consists of a number of evaluation and assessment missions to different regions. Another security threat involves terrorist acts on shipping, offshore installations and other maritime interests, where capacity building programmes through the IMO Global Programme on Maritime Security assist States in conducting assessment of maritime security needs and provide training through seminars and workshops at regional and international levels. Finally, there is a threat of transnational organized crime committed at sea. States are assisted to implement relevant international

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[164] *Ibid.*

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instruments like the 1988 UN Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances and the UN Convention on Transnational Organized Crime and its Protocol, as well as improving port security, container security and enforcement capacity.[165]

It could be noted that capacity building under maritime security focuses more on the human capital directly involved in the field. Nevertheless, components of leadership for effective decision making, communication of accurate information, and financing are equally important. They must be at their highest capability to effectively curtail this threat at sea at all times, as this kind of threat is real and unpredictable.

6.2.9   Protection of Archaeological and Historical Objects

Components of capacity building cannot be left out even in the management of archaeological and historical objects. In order to protect the objects, high levels of knowledge and technical expertise are required specifically for which the Convention on the Protection of the Underwater Cultural Heritage was established in 2001. This Convention is aimed at ensuring and strengthening the protection of such underwater cultural heritage. In this context, the first meeting of the States Parties to the Convention created a scientific and technical advisory body to provide scientific and technical advice concerning activities related to underwater cultural heritage. This demonstrates the importance of decision making under the leadership component of capacity building in order for the human capital to work for further necessary actions. In view of this, UNESCO as a secretariat for the Convention together with other centers associated with it, undertake various operational activities and engage themselves in capacity building programmes related to the protection of archaeological and historical objects.[166]

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[165] *Ibid*., at pp. 64-70.
[166] *Ibid*., at p. 71.

6.2.10 Settlement of Disputes

In 2007, the International Tribunal for the Law of the Sea-Nippon Training and Capacity Building Programme on Dispute Settlement was established under the UNCLOS 1982 with the support of the Nippon Foundation of Japan. This is aimed at providing advanced legal training in international dispute settlement under the Convention to junior-to-mid-level government officials and researchers. Opportunities in the form of internships to gain an understanding of the work and functions of the Tribunal are offered by the ITLOS to junior government officials as well as students of related fields of studies. In return this will also benefit the Tribunal in terms of the contribution provided by persons with relevant knowledge and skills in areas within the scope of the activities of the Tribunal. In view of the same benefit, the Korea International Cooperation Agency Grant was introduced in order to promote human resources development in developing countries and thus assist eligible candidates from said countries.[167]

6.3   European Union

One of the significant European Union (EU) interests is in the maritime affairs and its involvement in international discussions on related ocean governance issues has been very active. In view of this, EU takes this matter seriously and regards competency as its key element in addressing issues of ocean governance. This element of competency is important as it relates to capacity building and for the EU institutions to enact provisions binding on member states. It is also vital for these institutions to be engaged in the

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[167] *Ibid.*, at pp. 72-73.

implementation of the initiatives, as this shapes the patterns of interaction between the institutions.[168]

One of the major initiatives is the Common Fisheries Policy (CFP), established in 1983. This policy is subject to regular revisions most recent of which in 2002 is the most significant and contains detailed information on background to the revisions, key components and implementation plan. This policy functions through two types of instruments to conserve fish stocks, namely, setting total allowable catches, i.e. upper limits for the total amount of fish that can be landed from a particular area, and utilizing equipment restrictions, closures and size limits. In addition to that, the CFP also includes measures that attempt to control the capacity of the EU fishing fleets.[169]

Next, the Marine Strategy Directive released in October 2005 details the obligations of Member States to develop a Marine Strategy and implement it for their internal waters. This initiative is meant to ensure that all EU marine waters are environmentally healthy by 2021, which will benefit Europeans via safe and clean oceans and seas, as well as rich biodiversity. Three regions are established by this directive and they are the Baltic, the North-East Atlantic Ocean, and the Mediterranean.[170]

Another major initiative under the EU is the EU Maritime Policy, established through the release of An Integrated Maritime Policy for the EU in October 2007. The governing framework of the policy focuses on the application on an integrated approach at every level, including the use of horizontal and cross-cutting policy tools which necessitates a sound financial basis.[171]

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[168] *Supra*, footnote 10 at p. 65.
[169] *Ibid*., at p.68.
[170] *Ibid*., at p.71.
[171] *Ibid*., at p. 73.

It is clear that all these initiatives are steps taken towards integrated ocean governance at EU level. In order to achieve this purpose, it can be seen that the EU has been aggressively and continuously putting its efforts into building capacity within the EU itself. Among other efforts, the Union adopted Guidelines to Member States on an Integrated Approach to Maritime Policy. These Guidelines, concerned about the leadership component under capacity building, mobilize all related policy-makers and set out general principles for setting strategic objectives, organizing strong leadership to steer all sectors of policy, involving maritime regions, promoting cooperation at sea-basin level and a strong stakeholder dialogue.[172] Nevertheless, these works focusing on leadership have also led to the capacity building of human capital and their respective communication and financing.

6.4   Asia-Pacific Economic Cooperation

Asia-Pacific Economic Cooperation (APEC) recognizes the importance of integrated oceans management and thus facilitates exchange of information and capacity building amongst member economies.[173] To realize this, it emphasizes public-private sector linkages to improve corporate governance and is committed to the reduction of barriers to trade and investment. It promotes consultation and consensus centered on trade and investment liberation, business facilitation, and economic and technical cooperation.

In 1996, APEC leaders made commitments to address the environment and ensure sustainable development of the oceans surrounding the region, which marked the beginning of its focus on ocean governance. In the same year, the APEC Sustainable

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[172] European Commission: Maritime Affairs – Maritime Policy Development. Retrieved on 10 August 2010 from the World Wide Web: ec.europa.eu/maritimeaffairs/governance_memberstates_en.html
[173] *Supra*, footnote 10 at p. 4.

Development Ministerial Meeting held in the Philippines directed APEC to focus on issues of sustainability of the marine environment, sustainable cities and clean production. Relating to the ocean governance, APEC has developed three key objectives for the Sustainability of the Marine Environment, namely, integrated approaches to coastal management; prevention, reduction and control of marine pollution; and sustainable management of marine resources. This initiative focuses on capacity building in terms of training and education, use of research and exchange of information, technology and expertise, and participation and partnerships of the public and private sectors.[174]

The commitments made at the highest level among leaders exhibit the ability to further promote capacity building at other levels. In this case, those commitments could easily lead to plans and programmes to build the capacity of human capital (through training and education), communication (through research and exchange of information), as well as financing (through public and private partnership which could raise some funds).

The second APEC oceans-related Ministerial Meeting, held in Indonesia in 2005, led to the adoption of the Bali Plan of Action Towards Healthy Oceans and Coasts for Sustainable Growth and Prosperity for the Asia-Pacific Community which ensures the sustainable management of the marine environment and its resources, provides for sustainable economic benefits from the oceans, and enables sustainable development of coastal communities.[175] This is again another example which demonstrates that the involvement of a higher level stakeholder could easily decide and lead to a positive and fruitful outcome in an initiative to govern the oceans.

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[174] *Ibid.*, at p. 63.
[175] *Ibid.*

Another initiative, the APEC Fisheries Working Group (APEC FWG) has an important actual and potential role in the region, which provides benefits such as opportunities to discuss management arrangements, improvement in understanding of approaches and improvement in policy capacity for Asian countries. There are 'Lead shepherds' responsible for providing greater opportunities for cooperation to be enhanced between developed and developing fisheries nations in the region. Besides, technical exchanges within the ambit of the APEC FWG are also given greater focus and seen as a desirable outcome. [176] Thus, these efforts really indicate the seriousness of the institutional framework to develop its capacity building to efficiently govern the oceans.

6.5   Association of Southeast Asian Nations

The Association of Southeast Asian Nations (ASEAN) has grown from a regional arrangement founded on the principles of neutralism to become the vibrant multi-functional regional organization that it is today. One of its functions as a base for comprehensive multilateralism in the region is as a logical focal point for any possible integrated regional ocean governance initiatives.[177]

Among its first initiatives was the ASEAN Treaty of Amity and Cooperation established in 1976. The instrument sets forth the broad framework of regional cooperation which is also extended to the oceans, or applied in the context of expanded and integrated ASEAN programmes on marine affairs. This provides a platform for proper decision making to be exercised and undertaken by leaders of each member state which also include decisions for governing the oceans.[178]

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[176] *Ibid*., at p. 64.
[177] Payoyo, P. B., Ocean Governance in the ASEAN Region and the United Nations Convention on the Law of the Sea. *Pacifica Review, 9(2)*, 1997, 59-60.
[178] *Ibid*., at pp. 61-62

A further initiative was the Agreement on the Conservation of Nature and Natural Resources, which stipulates 'sustainable development' as the goal of a comprehensive programme of environmental management. The provisions on the protection of flora and fauna, sustainable use of species, preservation of genetic biodiversity and the conservation of water resources are all relevant in the ocean governance context. Another significant initiative is the South East Asia Nuclear-Weapons-Free Zone treaty which implements the 'zone of peace, freedom and neutrality'. This treaty is necessarily part of the legal landscape of ASEAN marine affairs inasmuch as its area of application reaches out to the Exclusive Economic Zones and the Continental Shelves of States Parties.[179] This Agreement and Treaty act as tools of communication to aid the personnel involved in the two different areas of ocean governace to undertake their respective tasks.

In addition to that, the ASEAN Maritime Forum, which just had its inaugural meeting in July 2010, is hoped to produce inter-sectoral recommendations for ASEAN sectoral bodies in addressing maritime related issues within their functions and responsibilities. This includes issues involving enclosed and semi-enclosed seas, as well as concerns over the large archipelagic nations in ASEAN.

Additionally, the Association is making great efforts to review its ocean governance programmes in a thorough and competent way which will lead to possible changes in practice and policy reform. Priorities are established to review, among other things, the adoption of more appropriate technology, in terms of whether or not ways of producing energy from the oceans and new methods for growing and producing food for the region's burgeoning populations are innovative. The challenge is in developing and using ocean technology which is relatively cheap and easy to apply, yet does not further burden the environment. A review is also undertaken of the flows of knowledge and information captured in an increasingly globalized society. ASEAN are ensuring that

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[179] *Ibid.*

their research and development capabilities are internationally recognized by encouraging their scientists to partake in various activities and programmes internationally, thus broadening their opportunities in furthering their professional academic education. They are also reviewing the regional cooperation as to avoid isolation, to further strengthen initiatives in the region and to counter the tendency of their members who are hesitant to cooperate regionally.[180]

6.6   Concluding Remarks

Four selected institutions have laid down several initiatives under capacity building. It is noted that these initiatives are actively executed and on-going, hence the relevance between building capacity and the institutional framework for ocean governance is very high. Although each initiative under a different institution has its own focus to promote its efforts in building capacity, either for leadership, human capital, communication or financing, these institutions have, in general, involved all of these components of capacity building as they are inter connected.

In a nutshell, this gives a clear indication that efforts to strengthen and enhance capacity building are worth considering. Therefore, the next chapter will explore this avenue and make some recommendations and conclusions.

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[180] *Supra*, footnote 1 at p. 288.

CHAPTER SEVEN

RECOMMENDATIONS AND CONCLUSION

7.1   Recommendations

From this dissertation, it can be seen that ocean governance covers prevailing aspects of managing the oceans. Even with the defined scope of only the related institutional framework, the discussion is still widely ranging from national to regional to global levels.

To begin with, Chapter Three of the dissertation shows a number of institutions reflecting their arrangements, functions and mechanisms in a framework to govern the oceans. They have been established based on distinctive aspects of ocean governance with the purpose to address different kinds of issues. Nevertheless, later in time, this pool of institutions caused some problems, specifically in terms of overlapping functions and fragmentation.

Chapter Four introduces a group of coordinating institutions which are inter-related in terms of their organizational arrangement, aimed at solving problems posed by the over-established individual institutions. Although this initiative for a coordinated approach has been working well, an alternative is necessary in light of the trend of the growing

development of the ocean usage, and the resulting institutional framework for ocean governance.

Therefore, Chapter Five promotes capacity building, giving attention to the elements of leadership, human resources, communication as well as financing respectively. As capacity building is the root for any institutional framework, it is very relevant to strengthen this internal arrangement and bureaucracy within an institution. This kind of approach is believed to be more practical rather than efforts to establish an entirely new institution or a coordinating body to integrate several institutions under the same field.

Furthermore, capacity building is not an unknown aspect for these institutions, even though it is relatively new in terms of the assessment of its success. In fact, there is no record as yet mentioning about its achievements. However, it is an option which is not far-reaching in terms of its accomplishment.

Hence, Chapter Six lists capacity building initiatives which have been put forth so far at the international as well as regional level. As mentioned in Chapter Six, no national level initiatives are cited due to the fact that this dissertation is aimed to look at a wider scope rather than individual nations. The regions chosen are also prominent in terms of the capacity and impacts that they give to the ocean governance as a whole.

Examples on initiatives undertaken by UNICPOLOS, EU, APEC and ASEAN indicate that capacity building activities and programmes are on-going and have their own methods for dealing with issues arising from the institutional framework for ocean governance. It is likely that capacity building initiatives could be elaborated within this existing institutional framework as these initiatives operate very much internally, thus ensuring ease of arrangement and mobilization. It is also hoped that the initiatives could be copied at national and local levels on a different scale, once the foundations at global

and regional levels are firm and stable. However, in most cases, these efforts are recommended to be run in parallel as capacity building also promotes a 'bottom-up' approach rather than a 'top-down' approach alone.

It is also recommended that the exact needs of stakeholders be noted in order to ensure that the plans and respective executions are clear from the beginning. Thus, efforts should be made to identify all stakeholders, hence the elements of leadership, and human capital and expertise are very important. In this regard, for the two elements to interact effectively, communication is essential and thereafter, financing will take place in the execution stage of the initiatives.

Another recommendation concerns the assessment of the initiatives. A periodic evaluation should be included in the time-frame schedule of the initiatives to audit plans and implementation of the respective initiatives. This is needed in the long-term to aid identification of the value-added of the said initiatives.

Last but not least, it is also worth recommending that capacity building initiatives should be realistic in their scope and build on the experience and strengths of the recipients, and existing institutions and arrangements. This is to ensure maximum effectiveness and achievement of sustainable results.

7.2   Conclusion

The growth in the usage of the ocean worldwide has resulted in the establishment of various institutions from time to time, to deal with different aspects of governing the oceans. Each institution is established with different mandates to address different issues. Hence, as the number of these institutions escalates, the possibilities of their mandates

and functions overlapping also increase. Apart from that, efforts to govern the ocean as a whole are also fragmented as each institution is independently run by its own authority.

In this connection, establishing a new institution as a way out for any new issue arising will not be a finite solution. More issues will develop as the usage of the ocean is still and will continuously be in high demand. Thus, other alternatives should be considered and put in place. Beside that, initiatives to create coordinating bodies in order to ameliorate the fragmentation which has occurred seem to be well accepted as they offer, among other things, an efficient way of governing the oceans. However, the trend is still similar that the birth of new entities continues.

Therefore, this dissertation, having examined the option, finds that the element of capacity building is highly related to the establishment of each institution or coordinating body. Capacity building in terms of leadership, human capital, communication and financing is extensively discussed and proposed to be an alternative to the establishment of institutions or coordinating bodies for ocean governance.

It is noted that the ocean governance community has been discussing elements of capacity building across the world at national, regional and global levels. Moreover, ideas, plans and implementation of activities and programmes related to capacity building of the institutional framework for ocean governance are aggressively pursued. The execution of these efforts is properly put in place by institutions the like UNICPOLOS, EU, APEC and ASEAN.

Despite the fact that capacity building in the field of institutional framework for ocean governance is still relatively new and although discussed and practiced under various fora, no comprehensive assessment has been carried out at the global level as yet, it is still wise to extend high and prioritized consideration to it. Therefore, in the quest for a

way forward of the institutional framework for ocean governance and realizing the fact that capacity building could be one of the methods of departure addressing issues of continuously establishing institutions and coordinating bodies for the sake of newly invented demands, it is believed that capacity building through competent leadership, knowledgeable and skilful human capital, effective communication and capable financial management, would efficiently provide a proficient alternative.

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