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WORLD MARITIME UNIVERSITY

Malmö, Sweden

OCEAN GOVERNANCE

By

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Malaysia

A dissertation submitted to the World Maritime University in partial
fulfillment of the requirements for the award of the degree of

MASTER OF SCIENCE

in

MARITIME AFFAIRS

(MARITIME ADMINISTRATION AND ENVIRONMENTAL PROTECTION)

2001

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 necessary endorsed by the University.

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DEDICATION

To my wife and my children for their support and forbearance in the quest for this degree.

To my mother, father, brother, and sisters for their support and encouragement.

ACKNOWLEDGEMENTS

I am grateful to the Public Service Department of Malaysia for giving me the opportunity to pursue this postgraduate degree.

A special word of gratitude to the Sasakawa World Maritime University Fellowship Programme administered by the Ship & Ocean Foundation for providing me with the fellowship to enable me to undertake this study.

My thanks to Professor Moira McConnell for her encouragement, support, guidance and patience in the supervision of this dissertation and for sharing her vast experience and knowledge of maritime affairs.

My sincere gratitude and appreciation to Professor Elisabeth Mann Borgese, Professor Lawrence Juda, Professor Adalberto Vallega, Professor Steve Rayner, and Dr. Umit Unluata for their advice, comments, and valuable feedback.

I thank the WMU Library staffs, Susan Wangeci-Eklow, and Cecilia Denne for their invaluable assistance in searching for reference materials.

Finally, I would like to thank my colleagues for making this long and difficult journey a memorable one.

ABSTRACT

Title of Dissertation : Ocean Governance

Degree : MSc

The concept of ocean governance comprises three components. These components are the institutional arrangements, legal framework and tools of implementation. This dissertation investigates the institutional aspect of ocean governance.

Ocean governance at the global level is characterised by the involvement of a great number of institutions. This fact shows both the complexities of the issues involved, as well as legitimate interest that each may have, which make it not feasible to have only one institution involved because it will not be able to operate effectively and efficiently. However, by having so many institutions, roles of some of the institutions are confined, delimited and sometimes even obscured by the overlapping roles of all these other institutions.

At the same time, this complexity requires the promotion of a centrifugal force to pull together the diversity that occurs. Therefore, efforts have been undertaken by scholars at the global level to propose ways to rationalise the diverse roles of various institutions and to derive a structure that would serve to achieve integrated management and sustainable development of the ocean in a more effective manner.

The creation of the Inter-agency Committee on Sustainable Development (IACSD), Subcommittee on Ocean and Coastal Areas (SOCA) and United Nations Informal Consultative Process on the Ocean and the Law of the Sea (UNICPOLOS) can be viewed as the answer to the need to have centrifugal force as they perform tasks toward the achievement of sustainable ocean governance through intensifying

inter-agency coordination, cooperation and joint effort in the pursuit of cohesiveness and unity of purpose.

This dissertation holds a view that these centrifugal forces need to be linked together in order to better safeguard the ocean based on the integrated management approach.

KEYWORDS : Ocean governance, institutional aspects, focal point, integrated management, United Nations.

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LIST OF ABBREVIATIONS

ACC	Administrative Committee on Coordination
CBD	Convention on Biological Diversity
CCAO	Consultative Committee on Administrative Questions
CCPOC	Consultative Committee on Programme and Operational Questions
CEO	Chief Executive Officer
CGG	Commission on Global Governance
CSD	Commission on Sustainable Development
CSD7	Seventh Session of Commission on Sustainable Development
DESA	Department of Economic and Social Affairs
DOALOS	Division for Ocean Affairs and Law of the Sea
DSD	Division of Sustainable Development
ECA	Economic Commission for Africa
ECE	Economic Commission for Europe
ECLAC	Economic Commission for Latin America and the Caribbean
ECOSOC	Economic and Social Council
ESCAP	Economic and Social Commission for Asia and Pacific
ESCWA	Economic and Social Commission for Western Asia
FAO	Food and Agricultural Organisation
FB	Financial and Budgetary Questions
GA	General Assembly
GDP	Gross Domestic Product
GEF	Global Environmental Facility
GESAMP	Joint Group of Experts on the Scientific Aspects of Marine Environmental Protection
HQ	Headquarter
IACSD	Interagency Committee on Sustainable Development
IACWGE	Inter-Agency Committee on Women & Gender Equality
IAEA	International Atomic Energy Agency

ICAO	International Civil Aviation Organisation
IFAD	International Fund for Agricultural Development
IGES	International Group
IGO	Intergovernmental organisation
IHO	International Hydrographic Organisation
IIAS	International Institute on Administrative Science
ILO	International Labour Organisation
IMCO	Intergovernmental Maritime Consultative Organisation
IMF	International Monetary Fund
IMO	International Maritime Organisation
IOC	International Oceanographic Organisation
IOI	International Ocean Institute
ISA	International Seabed Authority
ISCC	Information Systems Coordination Committee
ITU	International Telecommunication Union
IUCN	International Union for the Conservation of Nature and Natural Resources
IWCO	Independent World Commission on the Oceans
JUNIC	Joint United Nations Information Committee
LC	Legal Committee
MEPC	Marine Environment Protection Committee
MSC	Maritime Safety Committee
NGO	Non Governmental Organisation
OC	Organisational Committee
OECD	Organisation of Economic cooperation and Development
OLA	Office of Legal Affairs
PEP	Personnel and General Administrative Questions
SD	Sustainable Development
SOCA	Subcommittee on the Ocean and Coastal Areas
SOF	Ship & Ocean Foundation
SS	Strong Sustainability
TC	Technical cooperation Committee
UN	United Nations

UNCCD	United Nations Convention to Combat Desertification
UNCED	United Nations Conference on Environment and Development
UNCLOS	United Nations Conference on the Law of The Sea
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNESCO	United Nations Education, Scientific and Cultural Organisation
UNFCCC	United Nations Framework Convention on Climate Change
UNFPA	United Nations Population Fund
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioners for Refugee
UNHCS (Habitat)	United Nations Centre For Human Settlements
UNICEF	United Nations Children's Fund
UNICPOLOS	United Nations Informal Consultative Process on the Ocean and the Law of the Sea
UNIDO	United Nations Industrial Development Organisation
UNU	United Nations University
UPU	Universal Postal Union
WCED	World Commission on Environment and Development
WFP	World Food Programme
WHO	World Health Organisation
WIPO	World Intellectual Property Organisation
WMO	World Meteorological Organisation
WS	Weak Sustainability
WTO	World Trade Organisation
WTO	World Tourism Organisation

CHAPTER ONE

INTRODUCTION

“If it were not for the sea, the Earth would just be one more small, dead planet, another desert island adrift in the limitless black ocean of space. Life began in its waters, and no animal could clamber out of them onto dry land before algae in the primaeval oceans released oxygen to provide a welcoming atmosphere. And without the water from the sea that falls as rain, the continents would become barren again”.

- GESAMP
A Sea of Troubles

Few people have any idea how much we all depend on the oceans. The oceans cover 71% of the earth's surface and this fact alone suggests that oceans play an important and significant role in the earth's climate and ecology (Constanza, 1999). Anything that happens to and in the ocean will have a direct impact on the world as a whole. Even more important is the world oceans area as a source of food because capture fisheries and aquaculture provide protein to the people. As land-based food supplies hit their limits, the ocean will play an even greater role and fisheries will become even more vital to food security.

We tend to think that the oceans resources (living and non-living) are inexhaustible, but studies showed that oceans resources are exhaustible and in some cases, are non-renewable. As terrestrial resources become scarcer, demands on the oceans will intensify. Therefore, our worldview about managing the ocean needs to be adjusted.

It is estimated that the oceans contributed significantly to the economic well being of the world in terms of energy resources, fisheries, transportation, recreation and habitat. The coastal area provides an ideal space for urbanisation. It is estimated that 37% of the world population lived between 100 kilometres of a coastline and approximately 44% within 150 kilometres (Joint Group of Experts on the Scientific Aspects of Marine Environmental Protection (GESAMP), 2001). If something happen to the oceans, for example, a change in the climate, the world

will become a hotter place to live, and as a consequence, the sea level will rise. As a result, coastal populations will be affected. Therefore, safeguarding the ocean in one way or another is vital for human survival. In short, the oceans play an important role in economic and social dimension of the world's population.

In term of economic activities, although there is no agreed value of the ocean, attempts have been made to estimate the value of the ocean. The coastal environment, including estuaries, coastal wetlands, sea grass and algae, coral reefs, and continental shelves have a disproportionately high value (Constanza, 1999). Some figures can be derived from the activities that taken place in the oceans. The oil and gas industry for example, is an important industry as the world currently relies heavily on these resources for its energy. Offshore production of oil and gas accounted for 30% of world total production (IWCO, 1998).

PRODUCTION	1993	1994	1995
Oil Production			
- World	3182.5	3224.3	3265.4
- Offshore	880.9	932.7	965.3
- Share Offshore (%)	27.7	28.9	29.6
Gas Production			
- World	1860.8	1881.3	1915.1
- Offshore	364.3	381.1	397.9
- Share Offshore (%)	19.6	20.3	20.8
Oil and Gas Production			
- World	5043.3	5105.6	5181.0
- Offshore	1245.2	1313.8	1363.2
- Share Offshore (%)	24.7	25.7	26.3

Table 1: Offshore oil and gas production as % of world total production 1993 – 1995
(in million tonnes of oil equivalent)

Source: IWCO, 1998, p.101.

In term of fishing, marine capture fishing accounts for more than 60% of the world fish supply.

	1995	1996	1997
Total world fish catch production	116,042,893	119,943,948	122,139,449
Total world marine fish production	71,901,428	73,531,689	72,483,737

Table 2: Total world fish production and marine fish production

Source: Food and Agriculture Organisation (FAO), 2000.

In terms of trade, maritime shipping is involved in the transportation of over 80% of the world's merchandise trade.

GROWTH OF WORLD SEABORNE TRADE (Goods – in million metric tonnes)		
Year	Trade	Per head of world population (metric tonnes)
1955	800	0.286
1975	3064	0.747
1995	4700	0.832
2000	5690	0.940

Table 3: World Sea borne Trade

Source: Review of Maritime Transport, UNCTAD, various issues.

Besides these figures, there are also attempts to estimate the total value of ocean related goods and services in monetary term and one study showed that the total sum of marine industries (oil and gas, tourism, sea borne trade, naval defence, shipbuilding, fishing, non-fuel minerals, submarine telecommunications), amount to US\$1 trillion and this amount represent 4% of total world's Gross Domestic Product (GDP) (IWCO, 1998). Moreover, there are attempts by economists particularly ecological-based economists that tried to estimate the value of world's ecological services.

BIOME	AREA (million hectare)	VALUE (US\$/hectare/year)	TOTAL VALUE (US\$billion/year)
Open ocean	33,200	252	8381
Estuaries	180	22832	4110
Sea grass/algae beds	200	19004	3801
Coral reefs	62	6075	373
Shelf	2660	1610	4283
Lakes/rivers	200	8498	1700
Tropical forest	1900	2007	3813
Temperate forest	2955	302	894
Grass/rangelands	3898	232	906
Tidal marsh/mangroves	165	9990	1648
Swamps/floodplains	165	19580	3231
TOTAL	45585		33142

Table 4: Ecological value of the world

Source: Constanza, 1997 and 1998.

Realising the importance of the ocean in terms of its economic, social and ecosystem value including the survival of humankind itself, attempts have been to better understand and manage the oceans and its resources. However, whilst efforts have been proliferated to understand the oceans, the directions in which these efforts are directed and evolving are not integrated. Therefore, we are often confronted with two extremes, one that are too pessimistic, and the other is to optimistic.

The International Conference on Human Environment held at Stockholm in 1972, brought about a major change in the vision of the environment. It sought to lay greater emphasis on a long-term management of natural resources and control of pollution. However, the institutional mechanisms in post-Stockholm lacked coherence and were unable to integrate environmental consideration in development process.

In 1982, after years of tense negotiations, United Nations Convention on the Law of the Sea (UNCLOS) is open for signatory. UNCLOS deals with all matters relating to the sea and is very comprehensive. UNCLOS is an attempt to establish universality in the effort to achieve a just and equitable international economic order in ocean by forwarding two important concepts, that are, the concept of the Common Heritage of mankind and, that the problems of the ocean are interrelated and need to be considered as a whole. UNCLOS also confirmed the task of existing organisations by referring to the notion of “competent international organisation”. Besides that, UNCLOS in one way or another, also expanding the works by these organisations.

The United Nations Convention on Environment and Development (UNCED) held at Rio in 1992 was inspired by the principle of sustainable development, has imposed a critical review and evaluation of the state of ocean resources and the marine environment, as well as the need to urgently respond to some new form of degradation; and to consequences of human activity; such as that resulting in the greenhouse effect and related sea level rise.

UNCLOS and UNCED are, thus, closely interlinked components and part of the process of a new governance of the ocean. Therefore, it is timely that an appropriate mechanism be created in order to provide these organisations an avenue to consider the interrelated problems of the ocean as a whole and to identify issues, programmes and strategies that are needed and mobilising fund. However, despite all these efforts at UNCLOS and UNCED the governance of the ocean remain fragmented and overlapping in responsibilities still prevailing.

Therefore, one of the weaknesses in the governance of the oceans is that, there are too many institutions involved in it. It is very clear that the institutional aspect of ocean governance lacks the “integrative vision”. However, the large number of agencies involved indicates both the complexities of the issues as well as

the legitimate interests that each may have. As problems in the ocean need holistic and comprehensive approach as envisaged by UNCLOS and UNCED, it is necessary to revitalise these organisations. Moreover, the absence of a Focal Point entrusted with the governance of the ocean as a key mandate is certainly a major setback.

1.2. RESEARCH OBJECTIVES AND METHODOLOGY

The main purpose of this dissertation is to identify international organisations involved in the governance of the ocean and to examine whether there is a need to have an international Focal Point for the governance of the ocean. This is because the complexity and diversity of issues involved in ocean governance mean it is not feasible to have only one agency involved. However, at the same time, this complexity, and diversity requires the promotion of a centrifugal force – a Focal Point to pull the diversity together for the integrated and sustainable development of the oceans.

The objectives of this dissertation are as follows:

- (a) to outline down the importance of the oceans in term of economic, social and ecosystem;
- (b) to define certain key governance principles such as sustainability, precautionary, inter and intragenerational equity and to lay the principles of integrated management and to establish arguments on why this approach is useful to be used and adapted for the governance of the ocean;
- (c) to identify international intergovernmental organisations and non-governmental organisations that are currently involved in ocean governance;
- (d) to outline proposals and recommendations that have been put forward in order to strengthen the institutional aspect of ocean governance; and finally,
- (e) to make a proposal regarding s system that will enhance the governance of the ocean.

The primary methodology adapted by this dissertation has been that of literature review particularly in the field of General Systems and Governance theory. The intellectual discourse of scholars on this approach was adopted in order to be in line with the mainstream of thinking prevailing worldwide within this subject. Exchange of views and discussions with scholars that involved in this field was conducted through personal electronic mail (e-mail). Literature review, exchange of views and discussions served as the backbone of this research and from there recommendations, solutions and conclusions are derived.

This research is presented in six chapters. The first chapter has introduced and established the importance of the ocean to the economic, social and ecosystem of the world. This chapter has also described briefly the research objectives and methodology.

In chapter two, attempt has been made to define some basic concepts used in this dissertation and advances the theoretical framework for this research, which is based on the General System Theory.

Chapter three identifies international organisations that are involved in the governance of the ocean at a global level. The purpose of this chapter is to describe and analyse the role and mandate of these organisations. This chapter is primarily descriptive in nature.

Chapter four investigates and traces the development of Administrative Committee on Coordination (ACC), Subcommittee on Ocean and Coastal Areas (SOCA) and United Nations Informal Consultative Process on the Ocean and the Law of the Sea (UNICPOLOS). The aims of this chapter is to establish the fact that institutional aspect of ocean governance has been identified in a weak situation and efforts have been attempted to resolve this problem.

Chapter five outlines and discusses proposals that have been advanced by scholars in term of improving institutional aspect of ocean governance. Three selected proposals are outlined and discussed in this chapter.

Chapter six provides a recommendation to address the problems outlined in this dissertation. This chapter also provides the conclusion for this research.

CHAPTER TWO

A THEORETICAL FRAMEWORK

“Hope, creativity, and imagination will be required to meet the challenges that we face with our oceans. But they are after all the traits that first enabled and inspired explorers to take to the sea. They are the traits that allowed us to look at our inextricable ties to our environment and to invent new ways to protect our natural wonders. In the 21st century, these traits must lead us to preserve our living oceans as a sacred legacy for all time”.

- President William Jefferson Clinton

2.0. INTRODUCTION

This chapter will provide a description of the various concepts that will be used in this research. First of all, the concept and definition of ocean, governance, ocean management, ocean governance, and focal point will be outlined. After that, the theory that provides the framework for this research will be discussed.

2.1. CONCEPTS AND DEFINITIONS

2.1.1. OCEAN

According to the Oxford Advanced Learner’s Dictionary, ocean means “the mass of salt water that covers most of the earth’s surface” (Crowther, 1995, p. 800). The same Dictionary defines sea as “the salt water that covers most of the earth’s surface and surrounds its continents and islands (Crowther, 1995, p. 1057). As can be seen, the word ocean and sea literally are synonymous. In this research, the word ocean will be used and it is meant to represent the salt-water mass of the earth as a whole.

In literature on management, the term “ocean” also carries other meaning associates with its physical, management and jurisdiction components (Armstrong & Rayner, 1981). The physical dimension of the ocean refers to the vertical division of

ocean, which in turn can be separated into four components. These components are the surface water, the water column, the seabed and the subsoil.

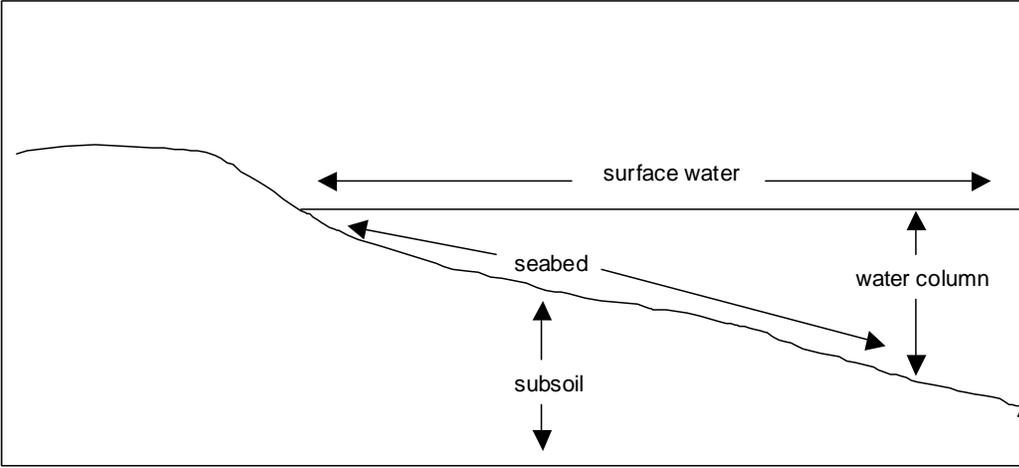


Figure 1: Physical dimension of the ocean (vertical profile)

Management component of the ocean can be divided into three sub-components. These sub-components are the natural ocean system, ocean uses and government programmes, agencies and policies (Armstrong & Rayner, 1981). The natural ocean system contains ocean space (as described in the physical component) and ocean resources such as living and non-living resources, dynamic systems such as tides and thermal pattern (Armstrong & Rayner, 1981). Ocean uses refer to the use of the ocean for various purposes such as navigation, fisheries, recreational and many more. It also refers to the users, of which the number is growing from single to multiple users consistent with the growth in uses. Government programmes, agencies and policies refer to the government efforts to guide, direct and manage the ocean (Armstrong & Rayner, 1981). The categories and sub-categories of ocean use can be summarised as in Table 5 and Table 6.

CATEGORIES	SUB-CATEGORIES
SEAPORTS	waterfront commercial structures offshore commercial structures dockyards passenger facilities naval facilities fishing facilities recreational facilities
SHIPPING, CARRIERS	bulk vessels general cargo vessels unitised cargo vessels heavy and large cargo vessels passenger vessels multipurpose vessels
SHIPPING, ROUTES	routes passages separation lanes
SHIPPING, NAVIGATION AIDS	buoy systems lighthouses hyperbolic systems satellite systems inertial systems
SEA PIPELINES	slurry pipelines liquid bulk pipelines gas pipelines water pipelines water disposal pipelines
CABLES	electric power cables telephone cables
AIR TRANSPORTATION	airports others
BIOLOGICAL RESOURCES	fishing gathering farming extra food products
HYDROCARBONS	exploration exploitation storage
METALLIFEROUS RESOURCES	sand and gravel water columns minerals seabed deposits
RENEWABLE ENERGY SOURCES	wind water properties water dynamics subsoil
DEFENCE	exercise areas nuclear test areas minefields explosive weapon areas
RECREATION	onshore and waterfront offshore
WATERFRONT MAN-MADE STRUCTURES	onshore and waterfront offshore

WASTE DISPOSAL	urban and industrial plants watercourses offshore oil and gas installations dumping navigation
RESEARCH	water column seabed and subsoil ecosystems external environment interaction special areas and particularly sensitive areas sea use management
ARCHAEOLOGY	onshore and waterfront offshore
ENVIRONMENTAL PROTECTION AND PRESERVATION	onshore and waterfront offshore

Table 5: Ocean use framework (source: Vallega (1992) p.95-96)

SEA USES	
CATEGORIES	INDIVIDUAL USES
NAVIGATION AND COMMUNICATION	Navigations aids Harbour/port Shipping Separation lanes Cables
MINERAL AND ENERGY RESOURCES	Sand and gravel dredging Maintenance dredging Separation drilling Production platform Coastal oil installations Oil transportation Pipelines Ocean mining Tidal energy
BIOLOGICAL RESOURCES	Demersal fishing Pelagic fishing Seaweed gathering Aquaculture
WASTE DISPOSAL AND POLLUTION	Solid waste Nuclear waste Incineration Industrial effluent Sewage Oil pollution
STRATEGY AND DEFENCE	Nuclear test zone Firing/bombing ranges Torpedo ranges Submarine exercise areas Minefields

RESEARCH	Fishery research Marine geology Oceanography Archaeology
RECREATION	Swimming/diving Fishing Yacht racing/cruising Sailing Ocean cruises
MANAGEMENT: CONSERVATION	Reserves Marine parks
MANAGEMENT: ENVIRONMENT	Sea surface Water quality Ecology Fish stocks Seabed Subsea minerals Wrecks

Table 6: The global marine interaction model (source: Vallega (1992), page 91).

In term of jurisdictional dimensions of international management, the ocean can be divided according to the division that have been agreed upon internationally, notably in the United Nations Law of The Sea Convention 1982 (UNCLOS 1982). According to the UNCLOS, the ocean is divided into four separate jurisdictional zones. These zones are Territorial Sea, Contiguous Zone, Exclusive Economic Zone and the Continental Shelf. For each of these zones, state enjoys different rights and obligations to govern, and as a result, different governance approaches may be applied within their domestic governance.

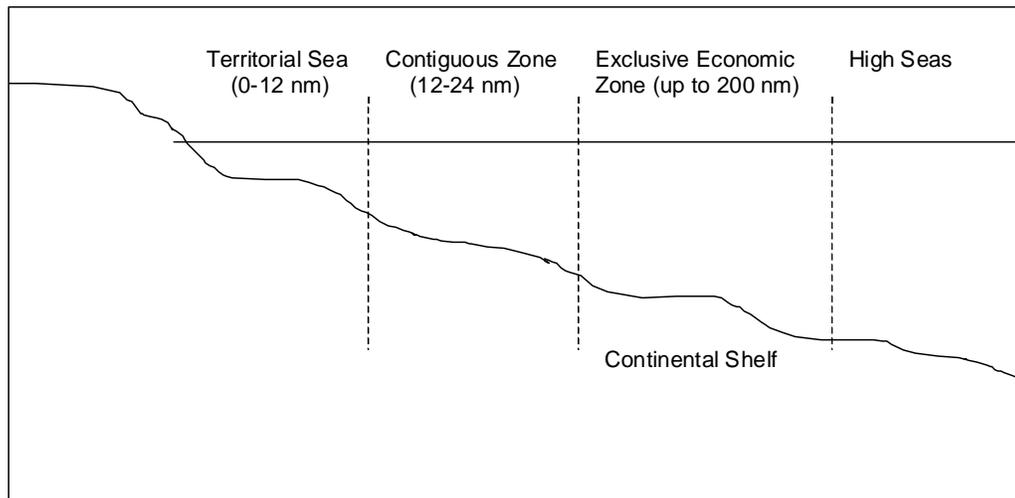


Figure 2: Jurisdictional zones of the ocean under the UNCLOS 1982

Based on these components, therefore, we can say that the term “ocean” encompasses many meaning. For the purpose of this research, the term ocean, besides representing the salt-water mass of the earth as a whole, is also means the physical components of the oceans, the uses framework and the jurisdictional zones of the ocean. Based on these conceptions, the ocean can be seen evolving in three directions. In term of physical components, the exploitation of human toward the ocean has been moving seaward. In term of uses framework, it has evolved from single use to multiple uses and from the jurisdictional component of view, the exploitation has been moving from near distance to up until 200 nautical miles and beyond under the regime of the Continental Shelf and the High Seas.

2.1.2. GOVERNANCE

Before we move and deal with the concept of ocean governance, it is important to first discuss the concept of governance. One of the problems regarding the term “governance” is that there are no precise definitions. Oxford Advanced Learner’s Dictionary stated that governance is “the activity or manner of governing” (Crowther, 1995, p.515). The World Bank, one of the early users of the term 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” (World Bank, 1992, p.2). Later in 1994, a World Bank publication further defines governance by emphasising the aspect of good governance and mentioned:

“good governance is epitomised by predictable, open and enlightened policy-making, a bureaucracy imbued with a professional ethos acting in furtherance of the public good, the rule of law, transparent processes, and a strong civil society participating in public affairs, whereas poor governance is characterised 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” (World Bank, 1994, p.1-2).

As suggested by the World Bank definitions, the concept of governance is concerned with the exercise of power, and can be said to focus on the effectiveness of the executive branch of national governments, as governance requires greater responsiveness and accountability from the State. Therefore, from the World Bank point of views, the focus is on the key element, that is, the governments.

The view that governance is a significant issue resulted in the formation of a Commission on Global Governance (CGG) in 1992 by an independent group of 28 public figures. The CGG was established with the primary task to strengthen global co-operation to meet the challenge of securing peace, achieving sustainable development, and universalising democracy (CGG, 1992). The Commission defines governance as “the sum of the many ways individual and institutions, public and private, manage their common affairs. It is a continuing process through which conflicting or diverse interests may be accommodated and cooperative action may be taken. It includes formal institutions and regimes empowered to enforce compliance, as well as informal arrangements that people and institutions either have agreed to or perceive to be in their interest” (CGG, 1995, p.2).

Other institutions are also interested in governance. For example, the Institute for Global Environmental Strategies (IGES) takes the view that governance is the science of decision-making. It argues that, “the concept of governance refers to the complex set of values, norms, processes, and institutions by which society manages its development and resolves conflict, formally and informally. It involves the states but also the civil society at the local, national, regional and global level” (IGES, 2001, p.1).

Lawrence Juda, one of the leading scholars in the field of ocean management defines governance as “the formal or informal arrangements, institutions, and mores which determine how resources or an environment are utilised; how problems and opportunities are evaluated and analysed; what behaviour is deemed acceptable or forbidden, and what rules and sanctions are applied to affect the pattern of resource and environment use” (Lawrence Juda, 1999, p. 90-91).

John Fobes, former Deputy Director-General of UNESCO, takes the view that the concept of governance “emphasises 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. But I believe that one should also consider governance, at least at the international level, as a global learning exercise. By so doing, politicians, practitioners, activists and academics may expand their thinking beyond the traditional concept of government, of international organisations and of the exercise of sovereignty” (Fobes, 1985, p.1).

The Governance Working Group of The International Institute of Administrative Sciences (IIAS), defines governance as a:

“process whereby elements in society wield power and authority, and influence and enact policies and decisions concerning public life, and economic and social development. These involve the relationship of individual men and women to the state, the organisation of organs of

state, the generation and management of resources for current and future generations, and the relationship between states. As such governance is a broader notion than “government”. Governance involves the nature of interaction between such formally defined institutions, and those of civil society. Existing cultural values and social norms, traditions on structures are important influences on this interaction process” (The Governance Working Group of IIAS, 1996, p.5).

It is also clear from the above definitions, one of the common factors in definitions of governance is that; (i) it is a process by which diverse interests are accommodated and, (ii) governance is not equivalent to government as it also incorporates other mechanisms and institutions such as civil society and non-governmental organisations.

In this regard, James Rosenau provides an excellent view on the difference between governance and government. According to him,

“both refer to purposive behaviour, to goal-oriented activities, to systems of rules; but government suggests activities that are backed by formal authority, by police powers to insure the implementation of duly constituted policies, whereas governance refers to activities backed by shared goals that may or may not derive from legal and formally prescribed responsibilities and that do not necessarily rely on police powers to overcome defiance and attain compliance. Governance, in other words, is a more encompassing phenomenon than government. It embraces governmental institutions, but it also subsumes informal, non-governmental mechanisms whereby those persons and organisations within purview move ahead, satisfy their needs, and fulfil their wants” (Rosenau, 1992, p.4).

Similarly, regime theorist, Oran Young argues that “governance is a social function whose performance is crucial to the viability of all human societies; it centres on the management of complex interdependencies among actors (whether individual, corporations, interests groups, or public agencies) who are engaged in interactive decision making and, therefore, taking actions that affect each other’s welfare. Governments, by contrast, are organisations-complex material entities possessing offices, personnel, equipment, budgets, and legal personality and often professing political ideologies that we commonly take for granted as vehicles for the provision of governance because we are so accustomed to their efforts to perform this role in domestic societies” (Young, 1996, p.2).

As a result, there are at least two essential actors in governance that are government and civil society. The first actor is well known. However, the term civil society needs some investigation. Generally speaking, civil society means other than government and includes non-governmental organisations (NGOs), communities and private multinationals. Daniel Wolfish and Gordon Smith (2000) identifies six types of actors in governance processes. These are state actor (government); global city regions such as New York Area; intergovernmental organisations (IGOs) such as International Maritime Organisation (IMO), United Nations Environment Programme (UNEP) and so on; non-state actors such as NGOs, firm and private corporations; quasi-state institutions such as central banks, and finally transnational communities such as transnational ethnic minorities and criminal organisations (Wolfish & Smith, 2000).

From the brief discussion about the concept of governance as above, it can be said that governance encompasses and transcends the collective meaning of related concepts like state, government and the aspect of good government. Many of the elements and principles of good government such as transparency, accountability, efficiency, equitable, rule of law and responsive have become an integral part of the meaning of governance. Therefore, we can say that governance is a complex, but rational concept.

As a result of all these definitions, we can identify several principles associated with governance. These principles are:

- a. governance involves multiple and diverse actors, that is to say, the government and the civil society. As a result, it can be said that governance is participatory;
- b. governance requires sustainability;
- c. governance involves equity;
- d. governance requires precautionary approach; and
- e. governance is proactive or anticipatory rather than reactive.

Clearly from above quotes, it is clear that governance operates at a higher organisational level than management and is essentially an upward extension of the concepts, formats, language and mentality of management (Carver, 1999). Carver further argued that “governance is attainable if we can embraced a new premise: rather than an upward extension of management, governance is a downward extension of ownership” (Carver, 1999, p.1).

The 21st century is the century of cooperation. This is because new and emerging concepts such as globalisation, free market, and so on, demanded that every nations cooperate with each others. At the same time, the collapse of communism has enabled democracy to spread all over the world. As a result, concepts of good governance which are dominated by democratic ideas is proliferating. The proliferation of good governance norms is backed up by arguments from international support agencies such as International Monetary Fund (IMF), the World Bank and so on. Consequently, states are more willing to cooperate with each other for mutual benefits. Besides that, the 20th century has changed our perception toward science as more and more scientific information available.

2.1.3. OCEAN GOVERNANCE: AN INTRODUCTION

The previous section has set out ideas about the concept of governance in general. This section will consider this concept in the context of ocean use and management. In particular, it is useful to see what scholars say about ocean governance and whether ocean governance also employs values that exist in governance. Professor

Elisabeth Mann Borgese, the leading scholar in the field of ocean governance, defines ocean governance as “the way in which ocean affairs are governed, not only by governments, but also by local communities, industries and other stakeholders. It includes national and international law, public and private law as well as custom, tradition and culture and the institutions and processes created by them” (Borgese, 2001, p. 10).

According to Freidheim, (global) ocean governance means “the development of a set of ocean rules and practices that are equitable, efficient in the allocation of ocean uses and resources (Including the notion of sustainability), provide the means of resolving conflicts over access to and the enjoyment of the benefit of oceans, and specifically attempt to alleviate collective-actions problems in a world of interdependent actors” (Freidheim, 1999, p.748).

Therefore, as discussed above, ocean governance involves related concepts similar to governance such as participation, sustainability, equity, precaution and it is proactive. Before we move it is useful to visit these concepts briefly. Participatory means that in governance, multiple actors are actively involved in decision-making including government and civil society.

Sustainable development or sustainability emerged from attempts to balance economic development and environmental protection. The phrase “sustainable development” originated from a report produced by the International Union for the Conservation of Nature and Natural Resources (IUCN) in 1980 and became the central concept in the World Commission on Environment and Development (WCED), also known as Brundtland Commission report in 1987 (Jamieson, 1998). The Brundtland Commission refers to sustainable development as the ability to “meet the needs of the present without compromising the ability of future generations to meet their own needs” (WCED, 1987, p. 8). WCED further states that “sustainable development is not a fixed state of harmony, but rather a process of change in which the exploitation of resources, the direction of investments, the orientation of technology development, and institutional change are made consistent with future as well as present needs” (WCED, 1987, p.9). Ramphal who served on

the Brundtland Commission, recently wrote that “the great achievement of the sustainable development concept is that it broke with the old conservationist approach to natural resources and its tendency to place Earth’s other species above people” (1992, p.143). The concept of sustainable development can be linked to the economic and ethical dimension of the concept of the Common Heritage of Mankind (Borgese, 2001). From this explanation, we can say that sustainability encompasses other concepts, notably equity.

However, different people have deployed the idea of sustainable development by the Brundtland Commission differently. Kothari states that there are two notions of sustainable development and he argues that,

“to shift to sustainable development is primarily an ethical shift. It is not, a technological fix, nor a matter of new financial investment. It is a shift in values such that nature is valued in itself and for its life support functions, not merely for how it can be converted into resources and commodities to feed the engine of economic growth. Respect for nature’s diversity, and the responsibility to conserve the diversity, define sustainable development as an ethical ideal out of an ethics of respect for nature’s diversity flows a respect for the diversity of cultures and livelihoods, the basis not only of sustainability, but also of justice and equity. The ecological crisis is in large part a matter of treating nature’s diversity as dispensable, a process that has gone hand in hand with the view that a large portion of the human species is dispensable as well. To reverse the ecological decline we require an ethical shift that treats all life as indispensable (Kothari, 1994, p. 232).

Whether Kothari’s view is agreeable or not, “it is possible that the present disorder regarding the human relationship to nature will not be successfully addressed until we have developed a richer set of positive visions regarding the proper human relationship to nature” (Jamieson, 1998, p.191).

Sustainable development, over the last decade has generated the idea of sustainability (Jamieson, 1998). Jamieson (1998) argues that sustainability centred on the idea that “sustainable development should be directed towards building societal capabilities rather than towards development as an end in itself” (p.184). Jamieson further states that sustainability is related to the “human survivality and the avoidance of ecological disaster” (1998, p.184). However, scholars’ views on this idea are complex and diverse. At least two conceptions of sustainability have been developed and these are Strong Sustainability (SS) and Weak Sustainability (WS) (Jamieson, 1998). SS asserts that it is natural capital that should be sustained while WS is centred on the well being of humankind (Jamieson, 1998).

Ocean governance called for sustainable development of the oceans. If sustainability is our aim, therefore, we must have the ability to limit exploitation of the ocean (Freidheim, 2000). In the sense, this means that we need to eliminate open access to the resources of the ocean. As a result, common resources in the area outside national jurisdiction, notably in the High Sea need to be given ownership as even the most abundant resources have their limits, and the unrestricted use of the common lead to the degradation as illustrates by Hardin in “The Tragedy of the Commons”.

The concept of precaution reflects the attempt to move toward a more proactive mode of management. Therefore, we can say that the precautionary concept and anticipatory are identical, that is to say, they are aimed at considering the implications of any action in advance and to assess the possible effect of that action. (Juda, 1999). The precautionary concept was incorporated into the Rio Declaration and Principle 15 of Rio Declaration stipulates “in order to protect the environment, the precautionary approach shall be widely applied by states according to their capability. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environment degradation” (Rio Declaration, 1992).

Beside, humans are part of the whole nature. Therefore, the way we treats nature is indeed, the way we treat ourselves. Lefale, a spokesperson for NGOs at

the First Conference of the Parties to the Framework Convention on Climate Change states:

“Who cares about coral reefs? I often heard in the corridors of the UN building in Geneva and New York, when the red wine seeps into the head, reality sets in, and diplomacy is in full play. I care. I listen to the cries of millions of polyps that make up the corals. Why, because there is more at stake for all of us than just the deaths of polyps and corals. What is causing the polyps to die lies at the core of the way we humans live, especially in OECD countries. Dead corals are the victims of the injustices we continue to ignore, of greed, of selfishness and of the abdication of moral and ethical responsibility. It is an act of genocide against the corals and so against species who depend on them, including, ultimately, humans. The coral polyp’s own world mirrors the human experience - the cries for freedom from foreign debt, poverty, starvation, the cries to change lifestyles, not the climate, the cries to stop burning fossil fuels. To ignore the death of coral reefs is, I believe, to ignore the cries of many of the world’s people of today, at the peril of our future generations and our planet” (Lefale (1995), in Rayner, 1999, p. 264).

As a result, we can say that “the conservation of nature is self-conservation and the domination and degradation of nature is self-enslavement and debasement” (Borgese, 1986, p.127).

2.1.3.1. THE CONCEPT AND PHILOSOPHY OF OCEAN GOVERNANCE

Currently, ocean governance is characterised by a set of sectoral institutions at each level (international, regional, national and local). In such as way, responsibilities for management remain fragmented among different entities with conflicting objectives, mandates and priorities. However, current issues in the ocean

are becoming more and more diverse and not confined to single organisation mandates, and as a result overlap in responsibilities occurred. Besides that, there are issues that cannot be tackled effectively by any organisation because of existing gaps in responsibilities and jurisdiction.

The aim of the new ocean governance should be to create a climate of cooperation rather than confrontation among the parties involved. Significant global gains can be achieved through collaboration, and all parties will be better off in the long run. Therefore, the development of the new system for ocean governance not only necessary, but need to be defined in ways that foster the participation and involvement of all parties (IWCO, 1998).

As mentioned in the introduction, a new concept of ocean governance is already emerging, but it till lacks the commitment and vision for integration; a commitment and vision that is required in order to make the system not only consistent at every level, but also within every level and with the nature itself (Borgese, 2001).

The most important aspect of the philosophy of ocean governance is the seminal concepts put forward by Ambassador Arvid Pardo of Malta. The seminal concepts are common heritage of mankind and that all aspects of ocean space are interrelated and must be considered as a whole (Tommy Koh, 1983).

According to Borgese, the concept of Common Heritage of Mankind has five implications and

“the first implications is nonappropriability - that is, the common heritage can be used but not owned. It is an area where there is no property. Second, it is a system of management in which all users share. Third, it constitutes an active sharing of not only financial benefits but also the benefits derived from shared management and transfer of technologies. The second and third points change the structural relationship between rich and poor nations and traditional concepts of development aid. Fourth, the concept of common heritage implies reservation of ocean space for peaceful purposes. Fifth, it implies reservation for future generations” (Borgese, 1986, p. 43-44).

Therefore, the concept of Common Heritage of Mankind means that nobody can appropriate the ocean, and it belongs to everybody and as a result, becomes a global common and put responsibility on humankind to manage it collectively, not only for the benefit of present generations, but for the future generations as well. Therefore, governance of the ocean must be done by entity that representing the world community as a whole. Besides that, Common Heritage of Mankind also calls for the peaceful use of the ocean. As a result, ocean governance emerged as a concept that is multidisciplinary; economic in the sense that it encourages the development of the ocean; environment in the sense that it calls for conservation; ethical in the sense that it urges that benefit from development should be shared equitably; peaceful in the sense that it calls for the peaceful use of the ocean (Borgese, 2001).

The concept of the Common Heritage of Mankind, although it does not achieve the full results as envisaged by Pardo in the negotiations during UNCLOS due to political compromises; nevertheless, achieve recognition and has made its presence felt by all during the negotiations.

However the second component of Pardo's seminal ideas, that the problems of the ocean are interrelated and need to be considered as a whole is far from being achieved. As mentioned by Borgese, environmental and economic dimensions are inseparable from the peace and security dimension. (Borgese, 1998). Besides that, from the institutional point of view, the concept of the Common Heritage of Mankind put a challenge on the issue of integration in order to considered the interrelated problems of the oceans as a whole (Payoyo, 1994). Therefore, unified approach is needed in the new system of the ocean governance.

2.1.4. FOCAL POINT

Focal Point is a term used in this research to describe an institutional mechanism that has been created or need to be created in order to harmonise various activities

and programmes that affect the ocean and its resources that have been carried out and implemented by various agencies.

In order to be effective, such a mechanism “must be authoritative; able to affect the activities of all agencies and level of government; must be seen as legitimate and appropriate part of the process; and be capable of making “informed” decisions” (Cicin-Sain & Knecht 1998, p.62).

Focal point does not necessarily require the creation of new organisation. It can be in a form of interagency committee or simply a “meeting” which devotes times for the discussion about harmonising activities in its agenda. However, it is vital that a focal point be formally created in order to achieve greater effectiveness and efficiency. Clearly, a focal point in its “ideal” form, although might form or establish a new “point”, undoubtedly will strengthen the existing mechanisms by pulling together all these points in order to proceed in an integrated way.

Freidheim states that, we need intergovernmental organisations that “have an action mandate; have authority to make their writ effective; devoted to achieving sustainable use; based upon shared norms; have effective internal decision machinery; have the appropriate expertise; have resources adequate to their tasks; have machinery to resolve disputes; and that allow broad but orderly participation” (Freidheim, 2000, p.193-194).

In order to understand on what can be regarded as a Focal Point, it is useful to consider the concept of an institution. The concept of an institution is a difficult one as some writers see institutions as “social rules and norms”, therefore, as cultural traits shown by social groups; while others see institution as a specific organisation designated to fulfil a given set of functions (Hall, et.al., 2001). This distinction has been referred to as ‘rule-oriented’ and ‘role-oriented’ institutions (Brinkerhoff & Goldsmith, 1992). The “rule-oriented” institution can be defined as the rules of the games in a society, while “role-oriented” institution can be defined as organisation that have attained special status or legitimacy (North, 1990).

In this regard, it is useful to follow the position taken by Hall (et.al.) that “the term *institution (al)* is used to mean the combined environment of rule of the games and physical organisations and the interplay of the time” (2001, p. 784). Institutional

change, therefore, is “refer to the evolution and dynamic interplay between “rules and norms” and organisation, usually associated with the need to perform a new task or to perform an existing one differently” (Hall, et.al., 2001, p. 785).

The Focal Point in this research will also employ a clearinghouse mechanism. The term “clearinghouse” was originally used in the financial establishment where members banks exchanged cheques and bills among themselves. Today, its meaning has been extended to include an agency that brings together seekers and providers of goods, services or information, thus matching demand and supply. The Global Programme of Action on Protection of the Marine Environment from Land-Based Activities (GPA) describes the clearinghouse mechanism as a referral system for use by decision-makers (Kimball, 1995). The purpose of having a clearinghouse mechanism as an aspect of the Focal Point is to provide all the actors with access and assistance in reaching for information and scientific as well as technical expertise for addressing ocean problems.

2.2. OCEAN GOVERNANCE: AN INTEGRATED MANAGEMENT APPROACH.

Ideas about the management of the ocean have been largely influenced by structuralism (Vallega, 1992). Basically, structuralism takes the view that the best future for the world at large lies with improved institutional structures (Johnston, 1993). However as scientific thought was in a transition phase from structuralism to general systems theory in the 1960s and 1970s, ocean management has also been influenced by this transition (Vallega, 1992). General systems theory on the other hand, views that the best future for the world at large lies with the thorough understanding of every aspect involved, that is to say, with wholeness in a holistic manner (Mandel, 1995). This shift is reflected in the various stages such as pre-UNCLOS stage, UNCLOS stage and post-UNCED stage. Therefore, we can say that in the 1980s and 1990s, ideas are largely influenced by the general systems theory approaches.

As noted above, governance involves multiple actors with diverse interests and background. A common methodology needs to be developed in order to integrate views and inputs from these multiple and diverse actors. Therefore, it can be said

that structuralism is no longer appropriate to continue to provide a conceptual framework as a structuralist approach has not provided an avenue to deeply consider the relationship between ocean uses and its morphogenesis (Vallega, 1992). This is because the main goal of structuralism is the understanding of the structures such as the description of their components and their reciprocal relationships. In contrast, general systems theory encourages multidisciplinary approach and also taking into account the complexity of relationships in ocean uses and changes that have taken place in environment and the need to be cautious (Vallega, 1992). In this regard, general systems theory seems compatible with the concept of ocean governance, in that it enables scientists, policy-makers, and other actors to create a common platform for implementing multidisciplinary views. Besides that, general systems theory enables a multidisciplinary approach to link the complex interaction between the natural worlds with the socio-economic uses of the ocean.

Furthermore, general system theory as it encourages multidisciplinary approach, will be able to facilitate interaction between various science, communities, knowledge and policy. As a result, coordination and, to some degree, certainty can be achieved. Besides that, general systems theory enables systemic analysis, which leads toward a prospective approach, be implemented. This is because, general systems theory is concerned with morphogenesis, therefore, the future is not tied up with the past, that is to say, no determined by the chains of cause and effect relationships.

This research focuses on the institutional aspects of international (global) ocean governance. Integrated management provides an avenue to consider the appropriate mechanisms that need to be created in order to better safeguard the ocean for the benefit of present and indefinite, future generations. This is because, in almost every case, there are two major challenges that must be overcome by governance institutional arrangements in order to be effective. These are the challenge of acting under uncertainty and the challenge of coordination (Rayner, 1999).

Integrated management enables the uncertainty to be managed in the way that it enables diverse actors from diverse background (policy-makers, scientists, etc) to create a common platform and by doing so, facilitate and enhance science-policy

interface. This is because some questions although posed by scientific approach cannot be answered by science alone. As stated by Rayner “while science puzzles over issues such as the contribution of overfishing or pollution to declines in fish stocks, or life cycles of marine birds and mammals, it cannot resolve the essential human problems of sustainability, such as how these stock should be allocated and what institutional arrangement best ensure that ecologically sustainable allocations are implemented efficiently and fairly” (Rayner, 1999, p.262).

The integrated management approach discourages compartmentalisation. As a result, organisation will not be rigidly divided up into fiefdoms and therefore, turf battles will not prevail. Consequentially, organisations need to look at the whole picture and this will encourages cooperation while competition among organisations will be discourages.

CHAPTER THREE

EXISTING INSTITUTIONS IN OCEAN GOVERNANCE

3.1. INTRODUCTION

When we speak about the institutional aspects of ocean governance, largely the discussion will centre on the United Nations system (international intergovernmental organisations (IGOs)), institutions and legal regime associated with the 1982 United Nations Law of the Sea Convention (UNCLOS) and institutions that were established following the United Nations Conference on Environment and Development 1992 (UNCED). In this chapter, a brief discussion about the IGOs, UNCLOS's institutions and UNCED's organisations will be presented. After that, the discussion and description about NGOs will be presented. The purpose of this chapter is to identify organisations/agencies that are specifically involved in ocean governance at global level. As a result of this purpose, organisations that exist and work at a national, sub regional and regional level will not be discussed, although clearly many international organisations also have a presence regionally.

The discussion will concentrate on their mandates, purposes and functions and their relationships with other organisations. The purpose of discussing the NGOs is to consider their role and influence in ocean governance, that is to say, the increased involvement of civil society.

There are a great number of international intergovernmental arrangements that in one way or another affect ocean governance. However, for the purpose of this research, only organisations that are permanently involved in ocean governance are discussed. These organisations are the Intergovernmental Oceanographic Commission (IOC) of the United Nations Education, Scientific and Cultural Organisation (UNESCO); the International Maritime Organisation (IMO); the Food and Agricultural Organisation (FAO); the United Nations Conference on Trade and Development (UNCTAD), the United Nations Environment Programme (UNEP); the International Labour Organisation (ILO); the Global Environmental Facility (GEF) and the World Bank. Besides these organisations, there are numerous other

organisations which might be discussed in passing such as the United Nations Industrial Development Organisation (UNIDO), the International Atomic Energy Agency (IAEA), the World Health Organisation (WHO), the International Telecommunication Union (ITU), the International Hydrographic Organisation (IHO) the World Meteorological Organisation (WMO) and so on.

3.2. INTERNATIONAL OCEANOGRAPHIC COMMISSION OF UNESCO

IOC has been described as the most important intergovernmental body promoting the understanding of ocean processes (Ehlers, 2000). According to Article 1 (1) of the IOC Statutes, IOC is a body with functional autonomy within UNESCO. The purpose of IOC as outlined in Article 2 (1) of the Statutes is “to promote international cooperation and to coordinate programmes in research, services and capacity-building, in order to learn more about the nature and resources of the ocean and coastal areas and to apply that knowledge for the improvement of management, sustainable development, the protection of the marine environment, and the decision-making processes of its Member States” (IOC Statutes, 1999, p.1). Thus, we can say that IOC is concerned with the scientific aspects of the oceans and specifically deals with three main areas, that is to say, scientific research, ocean observations and capacity building (Ehlers, 2000).

The functions of IOC are listed in Article 3 of the Statutes and include, *inter alia*, to recommend, promote, plan and coordinate international programmes in research, observation and the disseminations and use of the results. It is also empowered to recommend, promote and coordinate the development of relevant standards, reference materials, guidelines and nomenclature (Article 3 (1), IOC Statutes).

IOC also has been tasked to make recommendations and to coordinate programmes in education, training and assistance in marine science, ocean and coastal observations and the transfer of related technology. Besides that, IOC also makes recommendations and provides technical guidance to relevant intersectoral activities of UNESCO and may undertake mutually agreed duties within the mandate of the Commission (Article 3 (1) (e), IOC Statutes). In addition, IOC shall as appropriate, undertake any other function compatible with its purpose and functions

(Article 3 (1) (f), IOC Statutes). From the functions listed in Article 3 of IOC Statutes, we can say that IOC concerned principally with the development of programmes in research and observations of the ocean and coastal areas.

However, the functions of IOC are not restricted to just that. Article 3 (1) (c), mentions that IOC as a “competent international organisation”, according to the UNCLOS, the resolutions of UNCED and other international instruments relevant to marine scientific research, related services and capacity-building” (IOC Statutes, 1999). The term “competent international organisation” originally appeared in the UNCLOS and therefore, we can say that marine scientific research in the UNCLOS is now under the auspices of IOC and therefore, IOC is empowered to carry out functions assigned by UNCLOS.

3.3. UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT (UNCTAD)

UNCTAD is a programme under the United Nations and an organ of the General Assembly. It was established by General Assembly Resolution 1995 (XIX) of 30 December 1964. The principal functions of UNCTAD as outlined in Article 3 of General Assembly Resolution are “to promote international trade; to formulate principles and policies on international trade; to make proposals for putting the said principles and policies into effect; to review and facilitate the coordination activities of other institutions within the United Nations system in the field of international trade and related problems of economic development; to initiate action, in cooperation with the competent organs of the United Nations for the negotiation and adoption of multilateral legal instruments in the field of trade; to be available as centre for harmonising the trade and related development policies of governments and regional economic groupings; and to deal with any other matters with the scope of its competence” (UNCTAD, 1995, p. 2-3). Therefore, we can say that UNCTAD has been mandated as a guardian of international trade as a whole and as a result plays an important role in term of establishing rules and procedures in international trade. To date, UNCTAD has 191 member states.

UNCTAD operates with a Secretariat, Conference, Trade and Development Board, Committees and working groups (UNCTAD, 1995). The Conference meets every four years and since the establishment of UNCTAD in 1964, 10 conferences

have taken place. The Trade and Development Board is a permanent organ of the Conference. It meets regularly in annual session to oversee the overall activities of UNCTAD. The Committees and Working Groups report to the Trade and Development Board on their works.

UNCTAD's connection to the maritime field relates to the economic development of shipping and ports (UNCTAD, p. 17). Besides that, UNCTAD has established joint projects with IMO on shipping issues.

3.4. INTERNATIONAL MARITIME ORGANISATION (IMO)

The IMO is a specialised agency under the United Nations system. Organisationally, it is under the Economic and Social Council of the United Nations (ECOSOC). IMO was established in 1948 and at that time it is known as Intergovernmental Maritime Consultative Organisation (IMCO). The name was changed in 1982 to reflect the transformation and change of the organisation. IMO is the smallest specialised agency but is considered as one of the most effective and efficient (Gold, 2001).

Article 1 of the Convention on the IMO states that its purposes are:

“to provide machinery for cooperation among Governments in the field of governmental regulation and practices relating to technical matters of all kinds affecting shipping engaged in international trade; to encourage and facilitate the general adoption of the highest practicable standards in matters concerning the maritime safety, efficiency of navigation and prevention and control of marine pollution from ships; and to deal with administrative and legal matters related to the purposes” (IMO, 1984, p.7).

IMO also has been established to:

“encourage the removal of discriminatory action and unnecessary restrictions by Governments affecting shipping engaged in international trade so as to promote the availability of shipping services to the commerce of the world

without discriminations; assistance and encouragement given by a Government for the development of its national shipping and for purposes of security does not in itself constitute discrimination, provided that such assistance and encouragement is not based on measures designed to restrict the freedom of shipping of all flags to take part in international trade” (IMO, 1984, p.7).

IMO is also empowered to

“provide for consideration by the organisation of the matters concerning unfair restrictive practices by shipping concerns in accordance with Part II; to matters concerning shipping and the effect of shipping and the marine environment that maybe referred to by any organ or specialised agency of United Nations; and to provide for the exchange of information among Governments on matters under consideration by the organisation “ (IMO; 1984, p.7).

Clearly from these articles, IMO is empowered to provide machinery for cooperation among governments. It is also clear that IMO is an organisation that deals specifically with the regulation of the shipping sector.

Article 2 of Part II outlines the functions of the IMO and mentioned that in order to achieve its intended purposes, the organisation shall

“consider and make recommendation; provide for the drafting of conventions, agreement, or other suitable instruments and recommend these to governments and to intergovernmental organisations; provide machinery for consultation among members and the exchange of information among governments; performs functions related to maritime matters and the effect of shipping on the marine environment; and, facilitate technical cooperation within the scope of the organisation” (IMO; 1984, p.8).

Therefore, it can be said that IMO functions are consultative, advisory and law making (convention, agreement, etc).

According to Article 11 of IMO's Convention, IMO consists of "an Assembly, a Council, a Maritime Safety Committee (MSC), a Legal Committee (LC), a Marine Environment Protection Committee (MEPC), a Technical Cooperation Committee (TC) and such subsidiary organs as the organisation may at any time consider necessary; and a Secretariat" (IMO; 1984, p.10). Articles 12--15 deal with the Assembly and states that Assembly consists of all members of IMO and the regular sessions take place biennially. Among others, the functions of the Assembly are to elect the Council, approve work programmes, vote the budget, make recommendations to Members and so on (IMO, 1984, p.10 – 12). The Council consists of 32 members elected by the Assembly with certain criteria as mentioned in Article 17. The Council appoints the Secretary-General, considers the draft work programmes, prepares the budget estimates and the Council performs the functions of the organisation between sessions of the Assembly (IMO; 1984, p.12 – 15).

All the Committees (MSC, LC, MEPC, TC) consist of all Members. These committees perform functions as mentioned in the Constitution. These committees also have their own subcommittees and working groups in order to carry out their respective functions effectively. Article 47-52 deals with the Secretariat and the Secretariat is headed by the Secretary-General, appointed by the Council and approved by the Assembly. The Secretariat maintains records for the efficient discharge of the organisation; prepare, collect and circulate documents; prepare financial statement and budget estimates; and inform the members of the activities of the organisation (IMO; 1984, p.21-22).

3.5. FOOD AND AGRICULTURE ORGANISATION OF THE UNITED NATIONS (FAO)

The Food and Agriculture Organisation of the United Nations (FAO), is a specialised agency under the United Nations system according to Article XII (I) of the FAO Constitution (FAO, 2001). FAO is the organisation that is concerned with nutrition, food and agriculture (FAO, 2001). FAO comes into the picture of ocean governance because Article I of FAO's Constitution states that the term "agriculture"

includes fisheries, marine products, forestry and, primary forestry products (FAO, 2000). Article 1.2 lays down the functions of FAO and mentions that FAO shall promote and recommend national and international action with regard to research, improvement of education, spread of public knowledge and practice, conservation of natural resources; relating to nutrition, food and agriculture, and Article 1.3 states that FAO is also empowered to provide technical assistance to government (FAO, 2001). From the above, it is observed that FAO is concerned with every aspect of food and agriculture and with regard to oceans; FAO deals with the living resources of the ocean, or in other simpler word, FAO is concerned with capture fisheries and aquaculture.

Article III of FAO's Constitution establishes a conference as a venue for member states to deliberate issues. Article III (6) states that "the conference meets once every two years in regular session. Special session may be convened by majority vote; by instruction of the Council or if 1/3 of member states requested so. Simple majority will determine decision at the conference. The conference determines the policy of FAO and approves its budget. It may also make recommendations to member states as well as to international organisations. In addition, the conference adopts General Rules and Financial Regulations of FAO

Besides the conference, FAO is governed by a Council. Council is consisting of 49 member states that are elected by the conference. Besides this, FAO has commissions, joint commissions, committees and working parties. A Director-General who is appointed by the conference for a term of six years and is eligible for reappointment does the day-to-day running of the FAO. Article VII (3) states that the Director-General enjoys full power and authority to direct the works of FAO. However, he or she is subject to general supervision from the conference and the council. The Director-General is assist by a team of staffs that are appointed by the Director-General according to rules and procedures of the conference. Article VIII (2) mentioned that the staffs are responsible to the DG.

FAO involvement in the ocean governance associated mainly with fisheries. FAO has in the past regulates fisheries activities; establishes training institutions; improves the quality of design, construction and equipment of fishing vessels and many more.

3.6. INTERNATIONAL LABOUR ORGANISATION (ILO)

The International Labour Organisation (ILO) has a very long history. It was created in 1919 as a result of the Constitution of the International Labour Organisation that was adopted by the Peace Conference in April 1919 (ILO; 2000). However, the Constitution and Declaration of Philadelphia of 1944 govern the present day ILO. ILO became the first specialised agency of the UN in 1946 (ILO; 2000).

Article I of ILO constitution states that the membership of ILO is open to States which were already members of the Organisation on 1 November 1945, members States of UN or States that has been admit by a vote. In other words, the membership of ILO is open to any States that wish to be part of it.

ILO consists of a Conference, Governing Body and an International Labour Office (ILO, 2000). Article 3 states that the meeting of the conference shall be held at least once a year. It is composes of four (4) representatives for each member: 2 from the government, and 1 from the employer and employee. Thus, it creates a unique tripartite structure within the UN system. The employer, employee and the government delegates participate equally. Article 3 (2) further states that an adviser may accompany the delegates.

Article 7 outlines the Governing Body and states that it consists of 56 persons: 28 representing the governments, 14 for employers and 14 for employees. The government representatives consist of 10 from states of chief industrial importance and the other is appointed by the Conference. Their respective delegates elect the employer and employee representatives. The Governing Body holds the office for 3 years. Article 8 mentioned that a Director-general is appointed by the Governing Body and is responsible for the efficient conduct of the ILO Office.

As indicated in the *Preamble* of the ILO's Constitution and in the *Declaration concerning the aims and purposes of the ILO* as Annex to the Constitution, the purposes and functions of ILO are to formulate international labour standards; promote the development of independent employers and employees organisations respectively and provides training and advisory services to these organisations (ILO Constitution, 2000). In the maritime field, ILO has a strong section. The Maritime Section focuses on maritime matters particularly with the standard of the maritime

labour. ILO has in the past produced conventions, recommendations and guidelines covering broad ranges of issues such as wages, working conditions, hour of works and rest, manning, occupational health and many more.

3.7. UNITED NATIONS ENVIRONMENT PROGRAMME (UNEP)

UNEP is a large programme with the UN systems. It deals with all matter related to the environment. UNEP's mission is "to provide leadership and encourage partnership in caring for the environment by inspiring, informing, and enabling nations and peoples to improve their quality of life without compromising that of future generations" (UNEP, 2000).

UNEP is governed by Governing Council. The Governing Council was established in accordance with GA Resolution 2997 (XXVII) of 15 December 1972. The Governing Council reports to the GA through ECOSOC (UNEP, 2000). The main function and responsibilities of the Governing Council are "to promote international cooperation in the field of environment and to recommend, as appropriate, policies to this end; to provide general policy guidance for the direction and coordination of environmental programmes within the UN system; to receive and review periodic reports from the Executive Director of UNEP, on the implementation of environmental programmes within UN system; to keep under review the world environmental situation; to promote the contribution of scientific communities for the formulation and implementation of environmental programmes; to review the impact of national and international environmental policies; and to review and approve the utilisation of resources of the Environment Fund" (UNEP, 2000).

It is clear that UNEP is empowered to deal with the environment. In maritime affairs, UNEP is responsible for the marine environment and regional seas programme.

Besides that, UNEP also serves as a Secretariat to a number of conventions. Among others, these conventions are Convention on Biological Diversity, Basel Convention, Convention on International trade in endangered species of wild fauna and flora, Climate change and so on (UNEP; 2000).

3.8. GLOBAL ENVIRONMENT FACILITY (GEF)

The GEF was launched in 1991 as an experimental facility and it was restructured after the UNCED in 1992 (GEF, 2001). It was established to forge international cooperation and provide financing for projects in various fields. It addresses 4 critical threats to the global environment: biodiversity loss, climate change, degradation of international waters and ozone depletion. The implementing agencies of GEF are United Nations Development Programme (UNDP), United Nations Environment Programme (UNEP) and the World Bank.

The *Instrument for the Establishment of the Restructured GEF (1994)* governs the GEF. According to the Basic Provision of the Instrument, the participation of GEF is open to any member States of UN and states member of specialised agencies (GEF, 1994). Besides that, GEF membership is open to development institutions, scientific communities, private sector and non-governmental organisations and to date, GEF has 167 member states (GEF, 2000).

Chapter II of the *Instrument* deals with governance and structure and outlines that GEF shall have an Assembly, Council and Secretariat. The Assembly consists of representative from all of the members and they meet once every 3 years. Chairperson for the Assembly is selected among the representatives. The Assembly is tasked to review the general policies of GEF; reviews and evaluates the operations of GEF; reviews the memberships and amends the governing instrument.

Council consists of 32 members: 16 from developing countries, 14 from developed countries and 2 from Central and Eastern Europe and former Soviet Union countries. They serve for 3 years in the Council and are eligible for reappointment. Council is responsible for developing, adopting and evaluating the operational policies and programmes for GEF-financed activities. The Council meet twice a year or as frequently as necessary at the seat of the Secretariat. At each meeting, the Council elects Chairperson among its member for that meeting.

The decision-making process in the Assembly and the Council is based on consensus. In cases where vote is needed, a double weighted majority is applicable. Double weighted majority means 60% of total number of participants and 60% majority of total contributions.

The Secretariat serves and reports to the Assembly and the Council. A Chief Executive Officer (CEO) who is supported administratively by World Bank heads the Secretariat. CEO is appointed to serve for 3 years on a full time basis by the Council on the joint recommendation from implementing agencies.

GEF adopts an open-door policy toward non-governmental organisations and representatives of civil society. This makes GEF unique among international financial institutions.

3.9. 1982 UNITED NATIONS LAW OF THE SEA'S (UNCLOS) INSTITUTIONS

When we speak about ocean governance, we cannot run away from the United Nations Convention on the Law of the Sea. This is because the UNCLOS provides a basis for the legal framework of ocean governance. UNCLOS has been called as the Constitution for the Oceans because it establishes a comprehensive framework for the regulation of all ocean uses and space (UN, 1983). In term of institutional arrangements, UNCLOS established four (4) institutions and these institutions are:

- a. The International Seabed Authority (ISA);
- b. The Commission on the Limit of the Continental Shelf (CLCS);
- c. International Tribunal for the Law of the Sea (Tribunal); and
- d. The Meeting of the State Parties (Meeting).

3.9.1. THE INTERNATIONAL SEABED AUTHORITY (ISA)

The ISA was established on 16 November 1994 after the entry into force of the UNCLOS. It was established by virtue of Subsection 4, Part XI of LOS. Part XI concerns with the Area, which has been defined in Article 1, Part1 of the LOS as “the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction” (UN, 1983, p.2). Article 136 mentioned, “the area and its resources are the common heritage of mankind” (UN, 1983, p.42). Therefore, we can say that the ISBA is the guardian of the principle of the common heritage of mankind, the most important principle, embodied in the UNCLOS.

Article 157 (1) of UNCLOS, stated that the Authority (ISA) “ is the organisation through which State Parties shall in accordance with this part, organise and control activities in the Area, particularly with a view to administering the resources of the Area” (UN, 1983, p.52). Activities in the Area have been defines in Article 1 (3) as “exploration and exploitation of the resources” (UN, 1983, p.1). Resources were defined in Article 133 and mean “all solid, liquid or gaseous mineral resources *in situ* in the Area at or beneath seabed, including polymetallic nodules”(UN, 1983, p.42).

The ISA functions through three principal organs, that are, the Assembly, the Council and the Secretariat. The Assembly consists of all State Members of ISA, the Council consisting of 36 members elected from the Assembly members and a Secretariat.

3.9.2. THE COMMISSION ON THE LIMITS OF THE CONTINENTAL SHELF

The Commission on the Limits of the Continental Shelf was established in 1997, in accordance with the provisions in UNCLOS. The Commission was established by virtue of Article 76 (8) of the UNCLOS which states that “information on the limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured shall be submitted by the coastal state to the commission on the limits of the continental shelf set up under Annex II on the basis of equitable geographical representation” (UN, 1983, p. 28).

The function of the Commission are outlined in Article 3 (1) of Annex II and mentioned that the Commission shall “(a) consider the data and other material submitted by coastal states concerning the outer limits of the continental shelf in areas where those limits extend beyond 200 nautical miles, and to make recommendations... and (b) to provide scientific and technical advice if requested by coastal state concerned during the preparation of the data referred to in subparagraph (a), UN, 1983, p.112).

Article 76 (8) of 1982 LOS mentioned that “.... The Commissions shall make recommendations to coastal states on matters related to the establishment of the outer limits of their continental shelf. The limit of the shelf established by a coastal

state on the basis of these recommendations shall be final and binding” (UN, 1983, p.28). Therefore, we can say that the Commission is a powerful institution.

One of the features of the Commission is that the Commission is a temporary institution as mentioned in Article 8 of Annex II which stated “..., it shall submit particulars of such limits to the Commission along with supporting scientific and technical data as soon as possible but in any case within 10 years of the entry into force of this Convention for that state” (UN, 1983, p.112).

Article 2 of Annex II stated, “the Commission shall consist of 21 members who shall experts in the field of geology, geophysics or hydrography, elected by States Parties to this Convention from among their nationals, ..., who shall serve in their personal capacities” (UN, 1983, p.111). From the above article, it is clear that the memberships of the Commission are very restricted as it only consists of geologist, geophysicists and hydrographer.

3.9.3. INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

The International Tribunal for the Law of the Sea was created by the 1982 UNCLOS as a mean for settlement of disputes regarding the interpretation and application of the provisions of the Convention. Besides the Tribunal, the LOS 1982 also offers other alternative avenue for dispute settlement such as International Court of Justice (ICJ), arbitration, special arbitration tribunal and conciliation commissions through Article 287.

Article 288 of the UNCLOS states that the “primary function of the Tribunal is to provide an avenue for states parties to resolve differences and disputes which may arise between them concerning the meaning and scope of provisions of the convention applicable in specific cases of interest to them” (UN, 1983, p.135).

3.9.4 DIVISION FOR OCEAN AFFAIRS AND LAW OF THE SEA (DOALOS)

Although DOALOS is not directly connected to UNCLOS because it is part of UN Secretariat organ, nevertheless, the creation of the DOALOS is related to the UNCLOS. The DOALOS is a unit under the Office of Legal Affairs (OLA). The DOALOS serves as a secretariat to the UNCLOS; meeting of the states parties to

the UNCLOS, the Commission on the Limit of the Continental Shelf and to the newly created UNICPOLOS (DOALOS, 2001). Over the years, DOALOS has provides information, advice and assistance on the implementation of the UNCLOS. The DOALOS also monitors development in ocean affairs and report annually to the GA. It also formulates recommendations to the GA and other UN organisations with the aim to promote better understanding in the ocean affairs (DOALOS, 2001).

3.10. ORGANISATIONS ESTABLISHED BY UNCED 1992

The United Nations Conference on Environment and Development (UNCED) was convened by the United Nations General Assembly in Rio de Janeiro, Brazil from 3--14 June 1992. UNCED produced a number of documents and these documents are:

- a. Agenda 21,
- b. Rio Declaration on Environment & Development,
- c. Framework Convention on Climate Change,
- d. Convention on Biological Diversity,
- e. Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable of all types of forests.

All of these are important and particularly Agenda 21, which although it is not a binding document charts a programme of action in order to achieve sustainable development. Besides that, all of these documents relate to the ocean to some degree. Chapter 17 of Agenda 21 deals specifically with the oceans. To give effect to all the documents and concepts that emerged from UNCED 1992, Chapter 38 of Agenda 21 identifies the need for a coordinating agencies within the UN system (Agenda 21, 1993). UNGA in 1992, considering the recommendation put forward by UNCED, adopted Resolution 47/191. Resolution 47/191 recommends that the ECOSOC establish such institution and ECOSOC decision 1993/207 established Commission on Sustainable Development.

3.10.1. COMMISSION ON SUSTAINABLE DEVELOPMENT (CSD)

The Commission on Sustainable Development (CSD) is a functional commission of the ECOSOC. The CSD exists as a result of the Resolution 47/191 of the UNGA following the recommendation of the UNCED 1992 that a new body need to be created within the UN system in order to coordinate sustainable development matters. The CSD reports to the UNGA through the ECOSOC. The term of reference for the CSD are extremely broad reflecting the across the board nature of sustainable development objectives. The functions of the CSD are to monitor progress in the implementation of Agenda 21 and activities related to the integration of environmental and developmental goals throughout the UN system; to consider information provided by governments; to review progress of the implementation of the commitments set in Agenda 21; to review the funding adequacy and mechanism; to review and analyse input from competent non-governmental organisations; and to enhance dialogue with NGO and entities outside UN system (Agenda 21, 1993, p 641-644). As a result, the CSD is the principal body for the implementation of the recommendations contained in Agenda 21.

The CSD consists of 53 members elected from states member of UN and members of specialised agencies for a term of 3 years and are eligible for re-election. The allocations of seats are as follows:

- a. 13 seats for African countries;
- b. 11 seats for Asian countries;
- c. 10 seats for Latin American & Caribbean countries;
- d. 6 seats Eastern European countries;
- e. 13 seats for Western European and other countries.

The Commission meets annually for a period of 2 to 3 weeks to deliberate on various issues that fall under its ambit. To date, the CSD has met for nine times.

3.10.2. DIVISION FOR SUSTAINABLE DEVELOPMENT

UNCED 1992 also brought significant changes in the UN Secretariat set-up. The Division for Sustainable Development (DSD) has been created in order to better

respond to the need of the UNCED 1992. The DSD is one of the divisions under the DESA. The mission of the DSD is to contribute for the achievement of sustainable development through facilitating the implementation of the output from UNCED 1992 (UN, 2000). As a result, the works of the DSD mirror the works undertaken by the CSD. The DSD provide secretariat support to the CSD.

3.11. NON-GOVERNMENTAL ORGANISATIONS (NGOs)

As discussed in Chapter Two, the governance of the ocean is no longer the exclusive domain of the state. Various bodies now claim a right to have a role in the governance of the ocean. Going by the name of NGOs, or politely, called civil society. These bodies have become so established that in some instances, they are able to provide an alternative forum for the international community.

The discussion in Chapter Two also revealed that the collapse of communism has seen the widespread of democracy. Therefore, we can say that the world professes to believe in democracy or the voice of the majority. But NGOs are the antithesis of democracy, for they represent the minority or even the individual who seek to impose their views on the people and the government of the majority. Therefore, it is questionable whether the cause of democracy is served. Be that as it may, the fact is the NGOs are here to stay and their role in the governance of the ocean has to be recognised and accepted. This is because in most instances, they serve a useful purpose for they force the IGOs to look more carefully at what they may be doing and to be more circumspect and meticulous.

In the UN system, there is a Section on NGO under the DESA. Besides this, ECOSOC has a Committee on NGO as a Standing Committee. This showed that NGOs are welcomed and very much involved in the works of international organisations. Currently, there are 2091 NGOs that have Consultative Status with ECOSOC (UN; 2000). Besides this figures, IGOs have their own list of NGOs that participate in their works and enjoy special status. In the field of ocean affairs, there are a great number of NGOs involvements. However, in this dissertation, only three NGOs will be discussed.

3.11.1. INTERNATIONAL OCEAN INSTITUTE (IOI)

Professor Elisabeth Mann Borgese of Dalhousie University founded IOI in 1972. It is an independent, non-profit, non-governmental organisation with headquarters in Malta. It has branches all over the world. It was created to promote education, capacity building and research as a means to enhance the peaceful and sustainable use and management of ocean and coastal spaces and their resources.

3.11.2. THE WORLD CONSERVATION UNION (IUCN)

The World Conservation Union (IUCN) was founded in 1948. IUCN is an NGO that concerns with the nature as a whole. The mission of IUCN is “to influence, encourage and assist societies throughout the world to conserve the integrity and diversity of nature and to ensure that any use of natural resources is equitable and ecologically sustainable” (IUCN, 2000, p.1). IUCN has a staff of almost 1000 with headquarter in Switzerland. IUCN has 42 offices around the world. The membership of IUCN comprises of 78 states, 112 government agencies, 735 NGOs, 35 affiliates and about 10000 scientists and experts from 1818 countries (IUCN, 2000). Organisationally, IUCN is divided into 11 programmes and 6 commissions. To finance its projects, IUCN relies on its membership dues and donor form various bodies. (IUCN, 2000).

3.11.3. SHIP & OCEAN FOUNDATION

Ship & Ocean Foundation (SOF) is founded in 1975 as a private and non-profit organisation. SOF is considered to be one of the most important private foundation in Japan (SOF, 2000): Originally, SOF concerns with the research and development of shipbuilding and marine technology and the distribution of maritime information, but, gradually, involves in a broad range of activities (SOF, 2000). Among others, SOF has undertaken various projects in almost all areas of maritime activities including education and training. Currently, SOF administers the Sasakawa World Maritime University Fellowship Programme. Last year, SOF established a Marine

Think Tank in order to initiate researches in ocean governance and other related and important themes (SOF, 2000).

3.12 INSTITUTIONAL AUDIT

As we can see from the description above, there are numerous organisations with competence in maritime issues and these organisations dealt mostly with the traditional uses of the ocean such as shipping, navigation, fishing, protection of living resources and so on. Therefore, we can say that, these organisations have been set-up to deal with specific mandates and responsibilities and as a result, limiting its scope of works. Consequently, these organisations are inherently sectoral in their approaches as a result of their establishment to answer and undertake specific tasks. Therefore, management approaches by these organisations are very sectoral and fragmented.

However, as new needs and problems arise in the ocean affairs, these organisations need to respond particularly if the problems are closely related to their existing sectoral mandates and responsibilities. As a result, more often than not, several institutions answered to those emerging needs, as organisations tend to enlarge its areas of coverage, legitimacy and so on. Consequently, overlapping in responsibilities occurred. Moreover, sometimes in order to respond to new needs and problems, new organisation is set-up. This further complicated the overlapping issues. Overlapping responsibilities become an issue because it used to be associated with waste of resources and destructive competition for the same turf. Besides that, overlap also means that grey areas exist, whereby no organisations have any jurisdictions.

Clearly from the discussion above, there are evidences that these organisations involve in one way or another in ocean affairs. However, each organisation is not confined to one specific purpose and mandate, and as a result, sectoral, fragmentation and overlapping mandate and purpose occurs. These fragmentation and overlap can be summarised as below:

ORGANISATION	MANDATE, PURPOSE
IMO	Shipping and navigation, marine environment
UNCTAD	Shipping
IOC	Marine science
UNESCO	Marine science
ISA	Sea-bed mining (management of non-living resources)
FAO	Fish and aquaculture (management of living resources)
UNEP	Regional sea programme, marine environment, climate change, land-based source of marine pollution
WMO	Ocean-atmosphere interaction and implication
IAEA	Nuclear marine pollution
UNIDO	Marine technology
ILO	Maritime labour
WHO	Ocean-related health problem

Table 7: Organisations and their mandates & purposes

From the table above, clearly there are overlap in mandates and purposes. It shows that ocean uses interact with each other and a sectoral approach to ocean governance is obsolete and impractical. For example, fisheries have an impact on the shipping activities, while oil and gas production has an impact on the fisheries as well as shipping. As can be seen, the interaction is complex and need to be considered as a whole. Besides that, this fragmentation has led toward duplication of efforts as each organisation that possesses the same mandate and purpose will have to fulfil its responsibilities. In the past and until today, these overlap has been resolved by establishing joint work such as Joint Maritime Commission between ILO and IMO. Clearly, in order to consider the problem as a whole, joint work between organisations is not sufficient. More concrete and binding solutions must be explored.

Because of fragmentation and overlap in responsibilities, the only mechanism available is for organisations to cooperate in the areas of overlap and this cooperation need to be monitor by other to reduce rivalry and so on. This is among others, why, the Focal Point to be established.

CHAPTER FOUR

INTERNATIONAL COORDINATING ORGANISATIONS

4.1. INTRODUCTION

In Chapter Three, organisations that involve specifically in ocean governance have been identified. However, the discussions in that chapter revealed that there exists an overlap in mandates and purposes of those organisations. Besides that, there exist grey areas where no organisation has mandates to deal with issues that are cross-sectoral in nature, and require cooperation and coordination in order to address these issues effectively. As a result, governance of such issue has been ignored. As a result, there is a need to link and coordinate the works of all these organisations.

This Chapter will examines steps that have been taken by the world communities to resolve this problem particularly within the UN system as almost all of these organisations belong to the UN system either as Program or Specialised Agencies.

4.2. ADMINISTRATIVE COMMITTEE ON COORDINATION (ACC)

The Administrative Committee on Coordination (ACC) is a body under the Economic and Social Council (ECOSOC) and was established in 1946 by Resolution 13 (III) of ECOSOC (ACC, 2000). It was established “as a standing committee to supervise the implementation of the agreement between the United Nations and Specialised Agencies” (ACC, 2000). To date, 25 United Nations system organisations, comprising of United Nations funds and programmes, specialised agencies, World Trade Organisation (WTO) and the Bretton Woods institutions participate in the work of ACC. The ACC meeting is attended by the Executive Heads of those organisations. Therefore, it can be said that, organisationally, ACC is the highest inter-agency body of United Nations. The organisations that participate in the work of ACC are:

- International Labour Organisation (ILO),
- Food and Agriculture Organisation of the United Nations (FAO),
- United Nations Educational, Scientific and Cultural Organisation (UNESCO),
- International Civil Aviation Organisation (ICAO),
- World Health Organisation (WHO),
- World Bank,
- International Monetary Fund (IMF),
- Universal Postal Union (UPU),
- International Telecommunication Union (ITU),
- World Meteorological Organisation (WMO),
- International Maritime Organisation (IMO),
- World Intellectual Property Organisation (WIPO),
- International Fund for Agricultural Development (IFAD),
- United Nations Industrial Development Organisation (UNIDO),
- International Atomic Energy Agency (IAEA),
- World Trade Organisation (WTO),
- United Nations Conference on Trade and Development (UNCTAD),
- United Nations Environment Programme (UNEP),
- United Nations Development Programme (UNDP),
- United Nations Population Fund (UNFPA),
- United Nations Children's Fund (UNICEF),
- World Food Programme (WFP),
- United Nations International Drug Control Programme (UNDCP),
- Office of the United Nations High Commissioner for Refugee (UNHCR), and
- United Nations Relief and Works Agency for Palestine Refugee in the Near East (UNRWA).

ACC is mandated to “promote cooperation within the system in pursuit of the common goals of Member States and encompasses the whole range of substantive and management issues facing the United Nations system” (ACC, 2000). The main function of ACC nowadays is to facilitate coordination of the programmes approved

by the governing bodies of various organisations of the United Nations systems. ACC meets twice a year and is chaired by the Secretary General of the United Nations. The decisions of ACC are adopted by consensus. ACC is responsible to ECOISOC and reports its activities to the ECOSOC through its Annual Overview Report (ACC, 2000). ACC comprises of five committees and these are:

- a. The Organisational Committee (OC)
- b. The Consultative Committee on Administrative Question (CCAQ)
- c. The Consultative Committee on Programme and Operational Questions (CCPQC)
- d. Inter-Agency Committee on Sustainable Development (IACSD)
- e. Inter-Agency Committee on Women and Gender Equality (IACWEE).

Except for IACWEE, all the other committees have their own subsidiary bodies. The following diagram shows the ACC and its subsidiary bodies (As of May 2001).

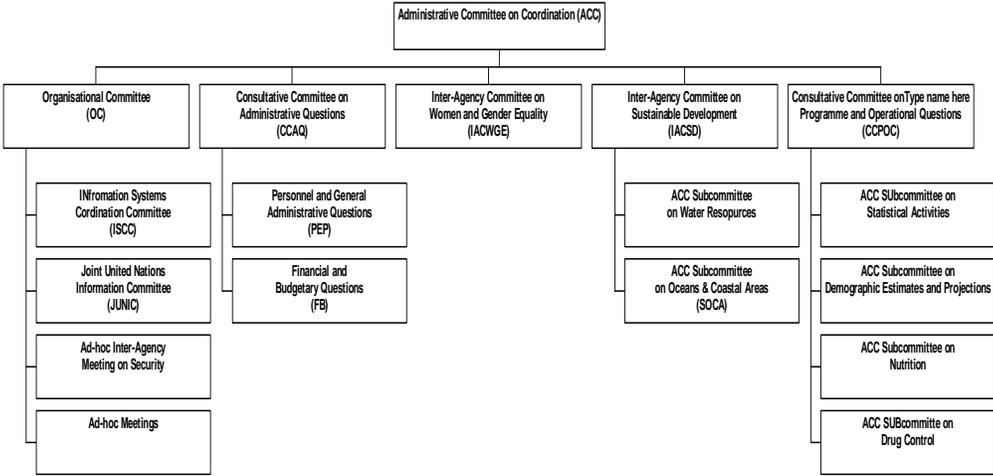


Figure 3: Organisational Structure of Administrative and Coordination Committee

This study is concerned with the ocean governance. Therefore, it will focus on Inter-Agency Committee on Sustainable Development (IACSD) that has two subsidiary bodies. The subsidiary bodies are Subcommittee on Water Resources and Subcommittee on Oceans and Coastal Areas.

4.3. INTER-AGENCY COMMITTEE ON SUSTAINABLE DEVELOPMENT (IACSD)

IACSD was established in October 1993 by ACC following the United Nations Conference on Environment and Development (UNCED) in 1992. Therefore, we can say that IACSD is concerned with the coordination in the area of sustainable development and the implementation of Agenda 21. As a result, IACSD has focused on functions such as allocating responsibilities for the implementation of Agenda 21 in the United Nations system by adopting a system of “task-managers” and utilising the concept of competitive advantage; supporting ACC in issues related to sustainable development and supporting the Commission on Sustainable Development (CSD). IACSD is mandated to “identify major policy issues relating to the follow-up of UNCED; and to advise ACC on ways and means of addressing major policy issues in order to ensure cooperation and coordination of the United Nations system” (ACC, 2000, p.1).

IACSD meets twice a year and reports directly to ACC. The meeting of IACSD is open to all members. However, the memberships of IACSD are not limited to those in ACC. The memberships of IACSD include other organisations as well as region-based organisations. Currently, the members of IACSD are:

- International Labour Organisation (ILO),
- Food and Agriculture Organisation of the United Nations,
- United Nations Educational, Scientific and Cultural Organisation (UNESCO),
- International Civil Aviation Organisation (ICAO),
- World Health Organisation (WHO),
- World Bank,
- International Monetary Fund (IMF),
- International Telecommunication Union (ITU),
- World Meteorological Organisation (WMO),
- International Maritime Organisation (IMO),
- World Intellectual Property Organisation (WIPO),
- International Fund for Agricultural Development (IFAD),
- United Nations Industrial Development Organisation (UNIDO),

- International Atomic Energy Agency (IAEA),
- World Tourism Organisation,
- United Nations Children’s Fund (UNICEF),
- United Nation Conference on Trade and Development (UNCTAD),
- United Nations Development Programme (UNDP),
- United Nations Environment Programme (UNEP),
- United Nations Population Fund (UNFPA),
- World Food Programme (WFP),
- United Nations Centre For Human Settlements (UNHCS) (Habitat),
- United Nations High Commissioners for Refugee (UNHCR),
- United Nations University (UNU),
- Economic Commission for Africa (ECA),
- Economic Commission for Europe (ECE),
- Economic Commission for Latin America and the Caribbean (ECLAC),
- Economic and Social Commission for Asia and Pacific (ESCAP),
- Economic and Social Commission for Western Asia (ESCWA),
- ACC Subcommittee on Oceans and Coastal Areas (SOCA),
- ACC Subcommittee on Water Resources,
- Secretariat for Convention on Biological Diversity,
- Secretariat for United Nations Framework Convention on Climate Change (UNFCCC),
- Secretariat for United Nations Convention to Combat Desertification (UNCCD), and
- United Nations Department for Economic and Social Affairs as the secretariat.

4.4. SUBCOMMITTEE ON OCEANS AND COASTAL AREAS (SOCA)

SOCA stands for the Subcommittee on Oceans and Coastal Areas. It was established in 1993 by the Administrative Committee on Coordination ACC) based on proposal forwarded by Inter-Agency Committee on Sustainable Development (IACSD). IACSD is one of the five committees act as subsidiary bodies to the ACC.

The primary purpose of SOCA is to meet the coordination needs as defined in Chapter 17 of Agenda 21 of UNCED (ACC, 2000). Specifically, SOCA monitors and reviews progress in the implementation of relevant parts of Chapter 17 of Agenda 21, with the goal to promote sustainable utilisation and conservation of the marine environment and its resources, both in the ocean and coastal areas. Therefore, we can say that SOCA is the guardian of Chapter 17 of Agenda 21. SOCA also acts as an inter-agency body facilitating mechanism for the implementation of the Global Programme of Action for the Protection of the Marine Environment from land-based activities.

The objectives of SOCA can be divided into two aspects, namely integrating and promoting. SOCA integrates relevant sectoral activities addressing environment and development in oceans and coastal areas at the national, sub regional, regional and global levels. SOCA promotes effective information exchange and institutional linkages between institutions dealing with environment and development. Besides that, SOCA also promotes regular intergovernmental review and consideration of environment and development issues within UN system and promotes effective operation of coordinating mechanisms for the components of UN system dealing with issues of environment and development.

For years, SOCA members cooperate on issues related to the programme areas of Chapter 17. SOCA is involved in Program A to F and relevant parts of Programme Area G. SOCA works on these issues by allocating the Programme Areas to subtask manager(s). In addition, SOCA also appoints the participating agency/agencies and associated agencies. The allocations of the Programme Areas are as follows:

PROGRAMME AREA	SUBTASK MANAGER(s)	PARTICIPATING AGENCIES	ASSOCIATED AGENCIES
Programme A Integrated management and sustainable development of coastal areas, including EEZ	UN UNEP	WMO, IOC, IAEA, FAO, Habitat, UNESCO	IMO, World Bank, UNDP, ITU
Programme B Marine environmental protection: - sea-based pollution - land-based pollution	IMO UNEP	WMO, IOC, IAEA	IFAD, UN, World Bank, UNDP

Programme C Sustainable use and conservation of marine living resources of the high sea	FAO UNEP	UNEP	UNDP, IOC, World Bank
Programme D Sustainable use and conservation of marine living resources under national jurisdiction	FAO	UNEP	UNDP; World Bank, IOC, UN
Programme E Addressing critical uncertainties from the management of the marine environment and climate change	IOC	WMO, IAEA, FAO	World Bank, UNDP, UNEP
Programme F Strengthening international, including regional cooperation and coordination	SOCA	UN/CSD, WMO, FAO, UNESCO, IOC, IMO, IAEA, UNCTAD, UNIDO, ILO, WHO, IFAD	UNDP, World Bank
Programme G Sustainable development of small islands	CSD	WMO, UNESCO, IOC, FAO, IMO, IAEA, UNEP, Habitat, WTO	UNDP, ITU, World Bank

Table 8: Programme Areas of SOCA

Source: SOCA

SOCA meets once a year and reports to ACC through IACSD. The chairing responsibility for of SOCA rotates among its participants. Currently, SOCA has 16 members. The members are:

- International Labour Organisation (ILO),
- Food and Agriculture Organisation of the United Nations (FAO),
- United Nations Educational, Scientific and Cultural Organisation (UNESCO),
- World Health Organisation (WHO),
- International Telecommunication Union (ITU),

- World Meteorological Organisation (WMO),
- International Maritime Organisation (IMO),
- International Fund for Agricultural Development (IFAD),
- United Nations Industrial Development Organisation (UNIDO),
- International Atomic Energy Agency (IAEA),
- World Trade Organisation (WTO),
- United Nations Centre For Human Settlements (UNHCS) (Habitat),
- United Nations Environment Programme (UNEP),
- United Nation Conference on Trade and Development (UNCTAD),
- World Bank, and
- United Nations
 - i. Division for Ocean Affairs and Law of the Sea (DOALOS),
 - ii. Department of Economic and Social Affairs (DESA).

4.5. UNITED NATIONS INFORMAL CONSULTATIVE PROCESS ON THE OCEANS AND THE LAW OF THE SEA (UNICPOLOS)

The establishment of United Nations Informal Consultative Process on the Oceans and the Law of the Sea (UNICPOLOS) is regarded as a breakthrough in the process of creating a global system of ocean governance (Borgese, 2000). The birth of UNICPOLOS originated from a proposal put forward by the Commission on Sustainable Development (CSD) to the General Assembly. The seventh session of CSD, which was held in 1999, was dedicated to the ocean affairs. CSD7 recognised the importance of the oceans to the world's climate and resources. CSD7 also stated that the United Nations Convention on the Law of the Sea provides the legal framework for the oceans; Chapter 17 of Agenda 21 provides the programme of action in order to achieve sustainable development of oceans and the Programme for the Further Implementation of Agenda 21 identifies the needs for urgent action with regard to oceans (CSD, 1999). The result of deliberation at CSD7 was documented and is known as Decision 7/1 of Oceans and Sea, 1999 (Dec. 7/1, 1999). Decision 7/1 covers areas such as capacity-building, marine resources, marine non-living resources, land-based activities, marine science, other marine activities and international coordination and cooperation. Item E in Part III of the decision is concerned with international coordination and cooperation. CSD called

for a greater collaboration of various relevant institutions associated with oceans with a view to enhancing coordination and effectiveness. Para 38 of decision 7/1 further states that integrated approach is required at intergovernmental and interagency levels and subsequently the Commission invites the Secretary-general of the UN to take measures to ensure better coordination of UN's work on oceans and seas; improve the effectiveness, transparency and responsibility of ACC's SOCA. It also requests the Secretary-General to complement his annual reports to General Assembly (GA) with suggestions on initiatives to improve coordination and integration. It further recommends the GA to establish an open-ended informal consultative process under the aegis of the GA.

Based on the proposal by the CSD, the GA at its Fifty-fourth (54) session adopted resolution 54/33 entitled "Results of the review by the commission on sustainable development on the sectoral theme of "oceans and seas": international coordination and cooperation. The GA resolution endorses recommendations made by CSD and established an open-ended informal consultative process. The purpose of the process is to facilitate the annual review of development in oceans affairs by the General Assembly in an effective and constructive manner by considering the Secretary-General's report on ocean and the Law of the Sea and by suggesting issues to be considered by the General Assembly. The emphasis is to identify and enhanced coordination and cooperation at the intergovernmental and interagency levels.

The GA resolution also sets out the term of references for the process. The meetings of the process will be open to all states members of United Nations, states members of specialised agencies, all parties to Law of the Sea, observers in the works of GA and intergovernmental organisations with competence in ocean affairs. The meeting will be held for once a year for duration of one week and two co-chairpersons will coordinate the meeting. The President of UNGA will appoint the co-chairpersons in consultations with member states by observing the need for representation from developed and developing countries. The co-chairpersons are tasked to elaborate the format of the discussions in consultation with the delegations, in accordance with the rules of procedure and practices of the GA in order to ensure the opportunity to receive input from representative of major groups.

The UNICPOLOS is to deliberate on the Secretary-General report on ocean and the law of the sea, resolution or decisions of the GA, relevant special reports of the SG and relevant recommendations of the CSD with an emphasis on identifying areas of coordination and cooperation without prejudicing the differing characteristics and need of different regions of the world. However, the process is not empowered to pursue legal or juridical coordination among different legal instruments.

The process may propose elements for the consideration of GA. The effectiveness of the process will be reviewed at the 57 session of the GA. In order to ensure smooth running of the process, The Division for Ocean Affairs and the Law of the Sea (DOALOS) of the Office of Legal Affairs (OLA) of the United Nations Secretariat has been assigned as the Secretariat for the process. DOALOS is expected to work together with other relevant parts of the United Nations Secretariat, notably the Division for Sustainable Development of the Department of Economic and Social Affairs (DESA).

As a result of this resolution 54/33, UNICPOLOS has been established. It was first known as UNICPO but during the first meeting that was held at the UN headquarters in New York from 3 May to June 2000, the name has been changed to UNICPOLOS. Members of UNICPOLOS comprising of all members States of GA, members states of specialised agencies, parties to Law of the Sea, observers in GA, intergovernmental organisations, regional organisations as well as major groups.

The process is call open-ended as there is no limit, restriction or aims set in advance. It is tasked to consider the issues of ocean as a whole and to draw from expertise from everybody in order to safeguard and achieve the desired coordination and cooperation.

UNICPOLOS takes advantage of the universal membership and broad mandate of the GA. This is the basis why the CSD suggested that the process should be put under GA, as it is competent to deal with this huge complex of issues. However, it is also recognised that GA does not have the time to deliberate in detail this complex issue. Thus a mechanism must be created and as result, UNICPOLOS was born.

However, UNICPOLOS is not a negotiating forum but a consultative process whose outcome was not to prejudice the decisions made in other forum including the GA (Borgese, 2000). In addition, UNICPOLOS's position vis-à-vis the GA and

meeting of states parties to Law of the Sea convention should be considered together. This is because, although CSD is initiated by CSD, it is established by the GA. Therefore, UNICPOLOS can be viewed as the effective linkages between the different processes under different conventions (Borgese, 2000).

As a result, UNICPOLOS can be viewed as a way to undertake three interrelated tasks, that is to study development in ocean affairs under the framework of Law of the Sea and Agenda 21; against the backdrop of overall developments of all ocean issues; to identify particular issues to be considered by the GA and while identifying such issues, places an emphasis on areas where coordination and cooperation at the intergovernmental and inter-agency levels should be enhanced (DOALOS, 2001). Further, UNICPOLOS is expected to apply an integrated approach to ocean issues as it will ensure an overview of various relevant aspects of ocean and seas will be taken into account, to determine the transsectoral issues and integration of various relevant aspects of oceans and seas.

The birth of UNICPOLOS therefore establishes the only body in the UN system with mandate to consider the closely interrelated problem of ocean space as a whole (Borgese, 2000). UNICPOLOS is seen "as an opportunity to exchange information and ideas, and to give the SG's report on oceans and Law of the Sea some consideration in advance of the GA that is usually held at the end of the year. It should energise and inform the GA's considerations of oceans and enhance the ability of the GA to carry out its annual review of ocean affairs and law of the sea" (Borgese, 2000, p.10). However, as GA session is at the end of the year and UNICPOLOS session is held in May or June, it might pose a problem to facilitate the attendance of experts from capitals and the needs of small delegations (Borgese, 2000).

Clearly, the creation of IACSD, SOCA and UNICPOLOS for coordinating activities of these organisations has provided a first step towards strengthening the coordination among these organisations. However, none of these have comprehensive responsibilities. Therefore, the more appropriate, integrated and comprehensive coordination must be explored if we really want to safeguard the ocean. This will lead us to the Chapter Five where several proposals for improving coordination and cooperation among organisations are discussed.

CHAPTER FIVE

SOLUTIONS/PROPOSALS/RECOMMENDATIONS SO FAR

5.1. INTRODUCTION

From the discussion in Chapter Three and Chapter Four, there is clear evidence that there are too many institutions involved in the governance of the ocean. The involvement of these organisations creates a complex interrelationship and therefore, numerous proposals and recommendations have been put forward in order to solve this problem.

This chapter will describe and then analyse proposals and recommendations that have been proposed and recommended so far. Recommendations that will be discussed in this chapter are:

- (a) Transformation of the Trusteeship Council in the United Nations;
- (b) Formation of an Ocean Assembly;
- (c) The establishment of the Commission for Comprehensive Security and Sustainable Development; and
- (d) Lisbon Principles for sustainable ocean governance.

5.2. TRANSFORMATION OF TRUSTEESHIP COUNCIL

The Trusteeship Council is one of the main organs of the United Nations. The then Foreign Minister of Malta, Dr Guido de Marco, in his address to the General Assembly in 1994 proposed the transformation of the Trusteeship Council (Borgese, 1995). The proposal came into being as the fact that the Trusteeship Council has completed its task of monitoring decolonialisation with the independence of Palau in 1994 (Borgese, 1995). The proposal called for the new task of the Trusteeship Council, that is, to be the guardian of the principle of the common heritage of mankind (Borgese, 1998). However, the principle is not restricted only to the ocean, but to all the global commons, that are, the oceans, the international seabed, outer space, and the Antarctic (Borgese, 1998).

Borgese in her book, *Ocean Governance and the United Nations* (1995), further elaborated the concept and suggested that “the new Trusteeship Council consists of 53 elected members elected by the General Assembly on the basis of equitable geographical representation and each member of the Trusteeship Council shall designate one specially qualified person of high moral standing and the representative shall serve in his/her personal capacity” (p.236). She goes further and suggests that the Trusteeship Council could “consider reports submitted by Members States of the United Nations, the Specialised Agencies and Programmes, as well as International Seabed Authority and competent non-governmental organisations; accept petitions and examine them in consultation with the agency or institution concerned” (Borgese, 1995, p.236). She concluded her proposal by saying that the Trusteeship Council “shall act as the conscience of the United Nations and the guardian of future generations” (Borgese, 1995, p.237).

The Commission on Global Governance also adopted the concept of transforming the Trusteeship Council, in its report, *Our Global Neighbourhood*. The CGG stated “new trusteeship is needed to exercised power over global commons for the interest of humanity and the future generations” (CGG, 1995, p. 150?).

However, the proposal has not received significant attention. One of the reasons is that it requires amendment to the United Nations Charter, an exercise that is difficult to achieve and, the expanding concept of common heritage to include outer space, and so on, might be too radical (Borgese, 1998).

The concept has been further elaborated by Borgese, and proposed that the composition of the “new Trusteeship Council” will be enlarged to 53 and on basis of geographical representation. This means that, the five permanent members will not necessarily be elected. Therefore, the proposal has not received support from these five permanent members. Besides that, the call for the non-governmental organisations to participate in the “new Trusteeship Council” might be one more hindrance for the acceptance of the proposal. This is because, although the world acknowledges the importance and contribution of NGOs, but to have these organisation as equal in global set-up on permanent basis might be too early to be accepted as the traditional concept of sovereignty still very much prevailing in countries around the world. Besides that, NGOs system is not in fact a democratic representation as they are the antithesis of democratic practices.

Borgese also suggested that states that have been elected to serve in the “new Trusteeship Council”, should elect “qualified individual of high moral standing and serve in his personal capacity”. This sound very interesting, however the proposal also posed some problems. Firstly, it is a very abstract concept. What or how can we define high moral standing?. Taking into account different regions and cultures of the world, this abstract concept may means different thing for different people. Secondly, who will bear the cost of those people who serve on their personal capacity?. States certainly will not wiling to pay for services that they don’t really see the benefits.

The idea of transforming the Trusteeship Council has also been discussed by the Secretary-General of United Nations, Mr. Kofi Annan in 1997 (Borgese, 1998). He elaborated the new concept of the Trusteeship Council in his report to the 51st session of the GA and proposed that the Trusteeship Council be reconstituted as a forum to exercise trusteeship to a global commons and to link the UN and civil society (Annan, 1997).

Borgese further stated in her book, *Oceanic Circle*, that the “new Trusteeship Council” with its limited membership but with a broader mandate, can be imagined as “a senate of wise persons watching and deliberating on the new concept of common heritage, and its application; and to advise the General Assembly on emerging and evolving issues of the oceans” (Borgese, 1998, p.166).

However, although the purpose of the “new Trusteeship Council” to look at all the global commons can be considered as a wise move, its contribution towards the governance of the ocean will be limited in that, the “new Trusteeship Council” in order to balance and ensure compatible approach to all of the global commons, will not pay enough attention required by the oceans. As a result, its proposal or recommendations to the General Assembly on oceans-related issues will be limited and as consequences, might not be enough to sustainably govern the oceans. Besides that, as noted by Borgese, General Assembly is the only body in the United Nations capable of generating integrated ocean policy. Therefore, it would be better if the “new Trusteeship Council” acts as an advisory body and in the same time receive guidance from the General Assembly in discharging its functions.

5.3. OCEAN ASSEMBLY

Borgese, Alexander Yankov and Mario Ruivo have also put the proposal of the concept of an Ocean Assembly forward. According to Yankov and Ruivo, the concept of Ocean Assembly have to be considered in the light of the need to have new integrated arrangements or adjusting and strengthening existing institutions which perform coordinating functions (Payoyo, 1994). The idea of Ocean Assembly is derived from the need to have a forum to deliberate issues on the oceans more effectively.

The purpose of the Ocean Assembly as proposed are:

“to promote integrated policies in ocean affairs and the peaceful uses of the oceans; to be a world forum of discussions, exchange of information and experience of global character; to serve as catalyst of coordination and cooperation between states in the implementation of international rules, standard and programmes for the protection of the marine environment and sustainable development of its resources; to act as a centre for harmonising the activities of states, intergovernmental and non-governmental organisations on ocean environment and development issues; and to strengthen the legal and institutional framework for cooperation and coordination on ocean-related matters” (Payoyo, 1994, p.341-342).

In order to carry out the purposes outlined above, the author suggested that the Ocean Assembly equipped with powers and functions as follows:

“to set out guidelines, general standards, and economic instruments on integrated ocean management and ocean protection of ocean resources by the promotion of new concepts of liability for environmental harm and precautionary approach; to advance new strategic planning for integrated ocean management; to facilitate the elaboration of general principles and guidelines for the progressive development of the international law of the sea and encourage the universal adherence to the 1982 Convention; and wider recourse to dispute settlement procedures; the elaboration of model rules and establishment of funding and coordinating mechanisms with the participation of competent agencies from the donor community; to review the implementation of general agreed principles, standards, and the accomplishment of multilateral programmes in the field of the uses of oceans and their resources; and,

to supervise the functioning of existing institutional adjustment or improving their structure and functioning” (Payoyo, 1994, p.342).

The participant in the Ocean Assembly are States, UN bodies involves in ocean affairs, organisation and institution from UN system, donor agencies, international NGO in ocean affairs, and international organisation interested in marine scientific research, ocean services, and training. Clearly, its memberships are broad and include all actors in ocean governance. The proposal further stated that national delegation to the Assembly should be represented by all actors (civil society).

The proposed Assembly consists of Plenary Session and meeting of subsidiary bodies. The sessions are to be called by GA every 4 or 5 years and the Assembly are “empowered to adopt recommendations, guidelines, model rules, long-term programmes or other instruments” (Payoyo, 1994, p.343). The decisions of the Assembly and subsidiary bodies are based on consensus of the participating states.

However, this proposal has not received any significant attention. Borgese has further elaborated the proposal in 1998 and proposed that the “GA should establish the Committee of the Whole to devote the time needed for the making of an integrated ocean policy” (Borgese, 1998, p. 194).

5.4. COMMISSION FOR COMPREHENSIVE SECURITY AND SUSTAINABLE DEVELOPMENT (CCSSD)

The proposal for the establishment of the Commission for Comprehensive Security and Sustainable Development (CCSSD) has been proposed by Borgese in 1995. The CCSSD is intended to replace the Security Council of the United Nations. The underlying concept in this proposal is that the concept of security that concerns with military security is no longer appropriate to be advanced as the new concept encompassed economic and environment as well. The new concept of security is also inseparable from the concept of sustainable development (Borgese, 1995, p. 71). Therefore, CCSSD will replace the Security Council as the central organ and executive body to the UN system.

The proposal further stated that the “GA shall meet in four regular annual sessions of three weeks and one regular session every second year, shall be devoted to ocean affairs” (Borgese, 1995, p. 231). The CCSSD consists of 21 members of UN, elected by the GA on the basis of equitable regional representation and serve for three years and are not eligible for the immediate re-election (Borgese, 1995).

This proposal is quite radical in that it requires almost complete amendment to the UN Charter. This is very hard to achieve, as traditional superpowers particularly the permanent members of the Security Council will not accept reduced presence in the global stage easily.

CHAPTER SIX

RECOMMENDATION AND CONCLUSION

“The world’s problems cannot be solved by designing institutions. They must be solved by people. People will design the institutions they think they need; and the kind of institutions they will build will depend on the kind of culture they were born into. But without building institutions, people would not be able to solve their problems, and if institutions are out of phase with the problems of the real world, an “institutional gap” will open. The likely response of people to the appearance of an institutional gap is violence

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The Oceanic Circle*

Chapter Three showed that there are a number of organisations that involved in ocean governance. The involvement of these organisations was appropriate at the time of their creation, but no longer the case now. The involvement of so many organisations has posed problems. To remedy the situation, at the global stage, the creation of IACSD, ACC’s SOCA and UNICPOLOS has been undertaken. However, these newly created organisations are unable to coordinate works by UN related organisations effectively, and as a result, the fragmentation in ocean governance remains. Moreover, these coordinating mechanisms are only able to coordinate organisations under the umbrella of UN systems. As a result, organisations that are situated outside the UN system such as International Whaling Commission (IWC) and many more, although play a significant role in ocean governance are left out. Therefore, the holistic approach that is very much needed in the ocean governance is not fulfilled.

Chapter Five has discussed several proposals that have been put forward by scholars with the view to improve the state of ocean governance. However, these proposals as discussed in Chapter Five, showed that the ideas, concepts and vision presented by these proposals remains in the academic world and no concrete steps have been taken to make the proposals a reality.

Indeed, the current structure of ocean governance is limited in terms of representation. The UNCLOS, although has attracted a huge number of states to become its signatory, has yet to hold the universal character as many states are not yet to members, particularly, the United States of America. Similarly, other organisations, such as IMO and ILO are still not universal in memberships and therefore, cannot be used as a vehicle to coordinate works on ocean governance. Clearly, new mechanism needs to be created to meet modern needs.

This chapter will put forward recommendation on the state of ocean governance that hopefully will be able to be realised. This dissertation has argued that the most possible solution is that the creation of a Focal Point.

At this stage, the discussion about Focal Point in Chapter Two is worth mentioning. First of all, the Focal Point needs to be within the UN system and must be related to the GA in order to achieve universal representation. The Focal Point need to be in the UN and related to the GA in order to enable the GA to be at the centre. By the nature of its centrality, Focal Point will be able to provide a unique opportunity for providing the cooperation setting to bring together all the institutions to participate.

Although some might argue that be in the UN system particularly within the GA will not be able to provide the Focal Point with an authority to make legally binding decisions, nevertheless, the philosophy of ocean governance, as discussed in Chapter Two requires a complete change in the ways of thinking, attitudes, etc, this Focal Point will gain influence through competence and relevance and acquire the standing in relation to ocean matters.

The Focal Point should not create another agency or organisation but is either a transformation of one of current organisation or the merger of several organisations in order to avoid future overlap and inefficiencies. The Focal Point needs to employ clearinghouse mechanism, and finally, the Focal Point, in order to be effective, must transcend multidisciplinary approach.

The Focal Point needs to continuously assess the overall state of the world's ocean and the interaction between humans and ocean. It also will provide long term strategic planning framework in order to provide balanced, stable and sustainable development of the ocean. More importantly, the Focal Point will secure consistency

between policy goals of international organisations and provide an avenue for consensus-building dialogue between governments.

This Focal Point will also be involved in the educational aspects of ocean governance. Education is indeed one of the ways to achieve compatibility among humans. Through education, people around the world can develop similar perceptions and by having control over the educational aspects, the Focal Point will be able to provide common platform. Recent study has showed that the more we know about the ocean, the more uncertain we are about the future and about the successfulness of plans that we implemented.

By having one Focal Point, cost effective measures in deploying resources mainly monetary resources could be enhanced. This is because by having universal coverage and manage the ocean governance issues in totality, the focal point will be able to determine the areas that need to be further investigate or the areas that need urgent action. As a result, waste of resources can be avoided and therefore, more works can be done.

The Focal Point can become a valuable tool in which it could address problems for which there is no clear mandates or problems that are not belong to one particular subject, that is to say, problem that are cross-sectoral. Besides that, as been discussed in Chapter Two, the focal point can cover issue that fall under grey areas by clearly identifying responsibilities of each organisations.

Focal Point will be able to represent both conservation and use. As a result, short-term requirements can be balance with intergenerational needs. Besides, resources scarcity will be able to be detected, and adaptive responses in face of uncertainty will be enabled.

Ocean governance embodies concepts such as sustainability and equity. As a result, planning for the well-being of future generations is become one of the core functions for ocean governance's institutions. However, it is difficult to perform this task as individual organisation normally works within its own sectoral mandates and consequentially tend to change policy and programme frequently to satisfy short-term change and target because "these organisations are not capable of looking beyond the limits of their specialisation and competence" (Borgese, 1995, p. 151). Focal Point, on the other hand, will encourage long-term planning as responsibility for future generations is very much observed.

Some international instruments clearly assigned responsibility to international organisations. However, assigning responsibilities without first ensuring its consistency with the mandate and responsibilities of those organisations is not going to improve the situation. GPA for example, has assigned the task of maintaining clearinghouse mechanism to several organisations while those organisations clearly do not have the responsibilities in that particular areas such as IMO for oil and hydrocarbons (Kullenberg, 1999).

To successfully carry out its task, the Focal Point needs to become the focus of coordination and cooperation among various organisations. Therefore, Focal Point needs to ensure that coordination will be applied to all organisations that have responsibilities in ocean affairs. Although it might be burdensome at the initial stages, it will, nevertheless, pay off in the long run.

Financing institutions, such as United Nations Development Programme (UNDP), and the World Bank, which traditionally provide sectoral assistance, need to be educated about the process and benefit of coordination and to become comfortable with the mechanism.

The Focal Point, therefore, should have juridical, technical and economic function.

6.2. CONCLUSION

As a result, the governance of the ocean has been fragmented, with institutions defending and enlarging their mandates, functions, and areas of responsibilities independently. Therefore, in order to strengthen the ocean governance, the tendency to fragmentation must be counteracted because ocean governance requires multi-disciplinary approach in order to be successful. This demand cannot be met only by the convergence of various institutions. Ocean governance needs something more binding: a Focal Point. To this end, institutions involve in the governance of the ocean should agree on a unique conceptual framework and a common view of reality. In other words, they need to create an appropriate isomorphism.

Ocean is a vast area and knows no boundary. As a result, ocean establishes shared responsibilities among nations. Consequently, what we need is a growing sense of shared responsibility among institutions. Clearly, integration is the key to the well-being of the ocean. Strengthening the institutional aspect of ocean governance clearly contribute toward achieving better integration. Ocean governance requires cooperation from every actors involved. This is because the interconnectness of the issues in the ocean resulted in no single agency can be assigned to perform all the tasks alone.

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