

**DOALOS/ UNITAR Briefing on
Developments in Ocean Affairs and the LOS
– 20 years After the Conclusion of UNCLOS –
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Ocean Governance: Towards an Oceanic Circle



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Outline of Presentation

- What is Ocean Governance?
- Elements of the Legal Framework;
- Elements of the Institutional Framework;
- Considerations for Implementation;
- Concluding Remarks.

The Emergence of a New Philosophy

“The Oceans are our great laboratory for the making of a new international order, based on new forms of international cooperation and organization, on new economic theory, on a new philosophy.” (EMB)

The Philosophy of Ocean Governance

- Ocean

Not oceans

This implies the holistic nature of the ocean and thus the recognition that problems are closely interrelated and must be considered as a whole...

- Governance

Not government

This implies the inclusive nature of decision making and implementation.

Although there is no agreed-upon definition...

One can observe the emergence of certain elements which, when combined, could begin to form the necessary basis for a holistic and inclusive ocean regime.

Legal

- Law of the Sea Convention - Seminal Concepts
 - Common Heritage of Mankind (Arvid Pardo)

Legal (cont'd)

- Related developments in International Law
 - Instruments emanating from UNCTAD, IMO, FAO, etc.
 - Developed in a sectoral manner...
 - Earth Summit & WSSD
 - Sustainable Development...
 - Various Regional and International Conventions, Agreements and Programs
 - Each negotiated in a thematic manner
 - Each with its own mandate and Secretariat

Legal (conclusion)

- Created important overlaps which must be addressed...
- As they hinder the effective implementation

Institutional Framework

- Institutions Established by LOSC
 - International Seabed Authority (ISBA)
 - Pioneering – custodian for the Common Heritage of Mankind, but limited in its mandate... emerging issues:
 - Conservation of the deep sea-bed biota with Biodiversity Convention Regime;
 - Deep sea-bed hydrates and Climate Change Convention Regime;
 - Fiber-optic Cables, etc.
 - Commission for the Delimitation of the Continental Shelf (CDC)
 - Regime for the Peaceful Settlement of Disputes and the International Tribunal for the Law of the Sea (ITLOS)

Institutional Framework (Cont'd)

- The Meeting of States Parties (SPLOS)
 - Mandate “limited” to consideration of administrative matters
 - Legal and Institutional framework for Ocean Governance is considerably broader now and its membership may vary from SPLOS
 - Only the GA, with its universal character and broad mandate, would be competent
 - The Informal Consultative Process (ICP) works towards informing the GA, along with the SG’s Annual Report, on OG developments and approaches

Institutional Framework (Cont'd)

- (post-) UNCED developments Guiding the Emerging OG Institutional Framework
 - Extension of the “Constitution for the Ocean” to the land
 - Inevitable as most activities subject to OG originate on land
 - Most directly relevant to the Protection and Preservation of the Marine Environment as 90% of ocean pollution is land based. (Note the work of the UNEP-GPA in this regard)

Institutional Framework (Conclusion)

- Integrated Coastal Management
 - Management of (conflicting) uses and users of ocean space and resources
 - Solutions lie in Pardo’s proposal that problems are closely interrelated and must be considered as a whole
 - Addressing these issues, or implementing OG, necessitates both horizontally and vertically integrated institutions
- (Sub-)Regional Approaches
 - Political space and ecological space do not coincide
 - Cooperation, development and implementation is best tackled on (sub-)Regional scales
 - Approach validated through: Large Marine Ecosystems (LMEs) and the UNEP-Regional Seas (RS), Joint Development Zones
 - Leads to economies of scale and recognizes commonalities of interests above conflict

Considerations for Implementation

- Levels of Implementation
 - OG Cannot be applied in a vacuum. Linkages must be established between all levels:
 - Local
 - National
 - Regional
 - International

Considerations for Implementation (Cont'd)

- Local
 - Community Based Co-Management
 - Participation of Stakeholders
- National
 - Effective linkages between local and national structures
 - Effective cooperation between all government departments and ministries involved in oceans
 - Open to the real participation of stakeholders

Considerations for Implementation (Cont'd)

– National (Cont'd)

- A National OG approach could include:
 - **Wide participation** and an **effective decision making** system linking government, scientists, industry and local communities;
 - A political level consisting of a **“Board of Ministers for the Ocean”** (interdepartmental) which could be advised by a multi-stakeholder Advisory Council;
 - A bureaucratic level consisting of a **“Interdepartmental Commission for the Ocean”** (interdepartmental) composed of senior department officials.

Considerations for Implementation (Cont'd)

– Regional

- As outlined supra
- Strengthening of the Regional Seas and close coordination with the GPA
- Inclusion of Regional Development Banks (RDBs)
- Inclusion of Regional Governmental Organizations (RGOs)
- Assembly, with trans-sectoral and inter-disciplinary mandate, for the (sub-)Regional implementation of all relevant Conventions, Agreements, and Programs
- Particular emphasis on the OPERATIONAL aspects
 - Regional Coast-Guards?

Considerations for Implementation (Cont'd)

– International

- Since the end of UNCLOS 3, there has been no holistic forum where Governments and the UN System can deliberate on the closely interrelated problems of Ocean space, resources and uses
- CSD7 underscored this lacuna
- GA, informed by the Annual SG Report, is the only competent organ, but cannot possibly devote enough time to Oceans
- ICP, as a process of the GA, is participatory and contributes to the GA's work in this area – global model for required Regional “processes”

Considerations for Implementation (Conclusion)

– International (Cont'd)

- Coordination and cooperation at the intergovernmental and inter-agency levels are required and still lacking
- Streamlining and coordination of ocean-related activities of the UN Specialized Agencies and Programs needs to occur
- This development can only come from the GA (informed by the ICP)

Concluding Remarks

- As new pieces of the OG framework evolve, it is imperative to develop and maintain the interconnectedness of all levels

Concluding Remarks (Cont'd)

–The ICP recognized this during its 2nd session:

The importance, at **regional, national and local** levels, of **integrated processes**, which enable all sectors involved to contribute to the formulation of policy... and reminds governments of their **responsibility** to establish such processes, and to **coordinate their strategies** and approaches in different international forums, so as to **avoid the fragmentation** of decision-making on the Oceans

