

RECEIVED NOV 12 1996

Secrétariat de la Commission
14, Avenue de Joli-Mont,
1209 Genève,
Suisse.

Tél : + 41-22-710 07 11
Fax : + 41-22-710 07 22

Ms. Elisabeth Mann Borgese
1226, LeMarchant Street
Halifax
Nova Scotia
Canada B3H3P7

Geneva, 28 October 1996

Elisabeth,

Dear Ms. Mann Borgese,

I herewith have the pleasure to send you a copy of :

- An International Sea-Bed Authority for the twenty-first century,
by Elisabeth Mann Borgese and Luis Preval
- Draft Report of the Study Group on Legal and Institutional Framework,
held from 9 to 11 October 1996 in Geneva

The first document was, much to our regret, not circulated during the session of the Study Group, as Elisabeth Mann Borgese had requested.

The draft report was handed out during the closing lunch of the Study Group but we have enclosed it for all participants.

Yours sincerely, *Warmest regards! And see you soon!*

Layashi Yaker

Layashi Yaker
Secretary General

c.c. : M. Jean-Pierre Lévy, Executive Secretary

1ES/INZO
RECEIVED NOV 12 1996

Study Group on
the Legal and Institutional Framework
for the Use and Protection of the Oceans

Geneva, 9-11 October 1996

DRAFT REPORT

1. Opening

The meeting was convened at the International Conference Center in Geneva under the chairmanship of Ambassador Luiz Filipe de Macedo Soares. It met from 9 to 11 October 1996. The list of participants is attached as Annex 1.

2. Adoption of the Agenda

The draft agenda was adopted without change as Annex 2.

3. Discussion and Recommendations

In its substantive discussions, the group followed the agenda in a flexible manner. As a general matter, participants were aware in making their recommendations of the general international climate and the need to make the best possible use of existing institutions, procedures, and norms. They agreed that international legal and institutional aspects of sustainable ocean use could not be easily distinguished. They suggested that the Commission's recommendations could take both a short-term and a long-term perspective, pointing the way from incremental changes toward a vision for the future. Recommendations should be directed not only to governments but also to non-governmental entities, including the private sector. The group viewed the engagement of individuals and affected groups as fundamentally important at all levels and a vital legacy of the UN Conference on Environment and Development and Agenda 21.

A. Implementing and Enforcing the Legal Framework

The group recognized the UN Convention on the Law of the Sea as the international legal framework for the oceans to which are associated many global and regional conventions. Together with numerous non-binding instruments such as actions plans and declarations, these represent if anything an overabundance of international legal norms for use and protection of the oceans which should be considered sufficient. Members believed they should concentrate on the implementation of existing norms rather than the creation of new ones, while of course noting that it is necessary to address at the appropriate time such gaps as may exist (e.g., liability and compensation, airborne pollution of the marine environment, offshore operations, modification of the environment in time of armed conflict, and the status of maritime wrecks other than historical objects). They believed it important to specify that they construed implementation as constituting both legal and institutional

aspects at all levels, national, regional, and global. They viewed the further development of executive norms, as distinguished from directive norms, as an important aspect of implementation; that is, the elaboration of rules, regulations, procedures, and recommended practices.

The group did not identify any major incompatibilities among existing norms and recognized that some degree of overlap was inevitable. The situation that different states are bound by different global and regional conventions was unlikely to change, but there was concern that the use of reservations, declarations, and objections not be allowed to fragment the unity established by the original instruments. Ratification of existing agreements should be encouraged, and it was considered essential that international norms be adopted at national and, as appropriate, local levels.

In deciding to concentrate on implementation, as considered in the following sections, the group noted that states generally enter into commitments in good faith but their capabilities for action differ. Recommendations should focus on how to help states assume their obligations, including a better understanding of the totality of requirements under the different conventions, the means available for meeting them, and the benefits of implementation at the national level. While recommendations entailing major new costs for the international community should be approached with caution, it was important to consider where preventive measures might reduce costs in the long run and where existing resources might be used more cost-effectively. The provisions of recent conventions linking legal obligations with technical and financial assistance, and setting forth goals and timetables for national implementation, offered models for implementing the oceans conventions. Existing international institutions could be better utilized in support of these conventions.

Recommendations:

1. States should be encouraged to progressively develop international law concerning the oceans by translating non-binding international instruments into binding agreements and adopting more detailed rules, regulations and procedures pursuant to general agreements of regional or global scope.
2. States should be encouraged to undertake national legislative and administrative actions to give effect to international instruments which further the sustainable use and protection of the oceans. Such actions should encompass financial and operational programs for implementation, supported by efforts to promote awareness, involvement, and motivation on the part of national officials, local authorities, and non-governmental interests. In the short term, states should determine priorities for implementation and enforcement measures.

B. National Arrangement of Oceans Affairs

The group affirmed that the expansion of international legal norms creates a need for every state to obtain a clear picture of the commitments into which it has entered. It is incumbent on all

states to develop national policies, strategies, and measures to implement the the Law of the Sea Convention and the wider field of obligations contained in related conventions on the protection, conservation, and sustainable development of marine environment and the living resources of the sea. This includes conventions on navigational issues, the marine and coastal aspects of the UN Framework Convention on Climate Change, the Convention on Biological Diversity, and international conventions on protected areas and species, and international conventions on river basin management. States must take into account new measures adopted at meetings of the contracting parties as well as non-binding instruments, in particular the principles articulated in the Rio Declaration and the program laid down in Agenda 21.

There is a need also for coordination of sectoral policies and programs at all levels. At the national level, as new obligations have arisen, responsibility for them has often been assumed by government agencies *ad hoc*. A thorough review could shed light on current departmental responsibilities and help ensure that they are appropriately allocated and effectively fulfilled. A national strategy for implementing all oceans-related responsibilities, based on coherent national policies, would provide a basis for judging whether the policies and programs supported by a government's representatives in different regional and global fora are mutually consistent and give expression to the strategy.

The group stressed that national authorities need to develop oceans policies and programs in consultation with the local authorities which have to implement them. National authorities should take the views of relevant local authorities into account in developing positions for international fora, communicate the results to them, and ensure that local authorities are provided with any advice and assistance required to effectively implement their responsibilities. Local authorities should also be involved in promoting awareness of the needs and aims for protection and sustainable use of the oceans, and the benefits thereof, at local, national, regional, and global levels.

The group reaffirmed the need in developing oceans policies and programs to consult with affected non-governmental groups drawn from the private sector, the scientific and academic communities, other concerned experts, and environmental and other pressure groups. It stressed that decisions must be based on the best available scientific and technical information and other specialized advice.

In order to achieve consistent national oceans policies and an integrated approach to oceans management, the group believed that many states would require new institutional arrangements. Members generally favored the idea of a national commission for the oceans established by governments, which would allow for participation by non-governmental groups. Such a body would help institutionalize national consultations on inter-related oceans issues as a routine matter. Its relationship with a more comprehensive national sustainable development commission would have to be carefully considered. The group supported also the designation of national focal points in each state for oceans policy issues and related scientific and technical aspects. Inquiries would be directed to one or more focal points, facilitating access to information, internal communications, and communications with other governments and international institutions.

The group stressed the need to review and evaluate national oceans policies, strategies, and programs to ensure coherence and effectiveness. They endorsed the idea of a periodic national report on these matters. In preparing such reports, states should take into account their value for educational purposes and creating awareness among both governments officials and the public. The reports would serve as an inventory of efforts to implement the oceans-related conventions and identify any difficulties. In this context, the group reaffirmed the importance of motivating national interest and involvement in meeting policy commitments, based on the benefits derived from using national resources sustainably and common international concern for environmental life-support systems. States should also consider the usefulness of national reports in promoting exchange of information and experience among states and through international organizations. Further attention should be devoted to the appropriate international recipients of such reports and the possibilities and means for independent review.

There was a suggestion that a questionnaire be developed to ascertain governments' views on the appropriate means of developing integrated policies and programs for implementation and the problems which they encounter in this respect. This would also assist in reviewing policy and program effectiveness from an integrated perspective. However, difficulties might be experienced in determining the appropriate recipients of such questionnaires, tailoring the questionnaire to different states, or determining whether the responses received were indeed representative. Other options could be to initiate discussion with correspondents in a selected group of countries to obtain further information on these issues, or to promote research programs thereon through UNESCO, its Intergovernmental Oceanographic Commission (IOC), or other appropriate organizations. In keeping with the need to assist governments to assume their international obligations, it was suggested that an inventory could be prepared of the areas in which governments need to take actions, combined with examples of effective measures and lessons learned. This would help guide governments in their efforts while recognizing that different options may be effective in different national circumstances. Any such inventory would be undertaken as an objective, independent research project.

Recommendations:

1. In the short term, each government should identify all the relevant global and regional treaties to which it is a party, take stock of its obligations, and develop integrated national strategies for putting them into effect. It should institute an internal review of existing implementation measures, including national laws, other statutory instruments, and administrative documents, and determine where revisions are needed, or additional measures to fill the gaps.
2. Each government should undertake a review of the responsibilities of national departments and local authorities for oceans policies and programs and determine where adjustments would result in a more effective allocation. To ensure adequate communication and consultation at the national level, among all government authorities and with experts and affected groups, each government should establish a national commission for the oceans and appropriate contact points for collection and dissemination of information.

3. Each government should prepare at regular intervals a report on the measures it has taken to adopt and implement integrated oceans policies and an integrated approach to ocean management. The results of these measures should be considered at the national level by government officials and national constituencies. The mechanisms for international exchange and review of these reports may require further consideration, as addressed below.

C. Regional and Global Arrangements, including Monitoring and Review

The group noted that the incipient shift toward more integrated approaches at the national level should be reflected at regional and global levels and appropriate linkages and correspondences established between these levels. It considered that at regional and global levels, there was also a need to review consistency among the policies and programs adopted pursuant to different oceans-related conventions and programs and their effectiveness. The review of scientific and technical issues and recent developments, analogous to the functions of the Intergovernmental Panel on Climate Change (IPCC), was an additional requirement.

The discussion of international review mechanisms covered several utilized by conventions in other fields as well as institutional procedures encompassing more than one convention. The latter included both regional and global oceans mechanisms; specifically, the periodic ministerial conferences in the North Sea or the UNGA's annual review of oceans and the law of the sea. As with the national commission, most members believed that an intergovernmental review process was necessary, and that it should provide for participation by experts and non-governmental groups. There was support also for a consultative forum, as opposed to an intergovernmental organization, as the most effective means of obtaining an overview and evaluation of progress made in implementing convention objectives and recommending concrete steps to achieve a vision of sustainable ocean use, drawing on participants from governments and other stakeholders.

The group generally favored maintaining the comprehensive annual review of ocean affairs and the law of the sea in the UNGA, but members agreed on the value of a more specialized, periodic intergovernmental review concentrated on sustainable ocean use. The relationships between these mechanisms and (i) the review by the Commission on Sustainable Development (CSD) of the oceans (and related) chapter(s) of Agenda 21 and (ii) the intergovernmental mechanism to be convened by UNEP to review the Global Programme of Action on Protection of the Marine Environment from Land-Based Activities (GPA) would require further thought. (The June 1997 special session of the UNGA to review Agenda 21 will consider how to integrate the GPA review with the broader CSD review.) The options for secretariat support of these review functions were considered, for example, the Division of Ocean Affairs and the Law of the Sea (DOALOS) of the UN secretariat and/or joint support by more than one international agency on the model of the IPCC.

Common criteria and standards for data collection were considered essential in order to synthesize regional and global assessments and determine the effectiveness of implementation efforts. They are also necessary for establishing integrated information systems and provide the basis

for progress toward harmonized national measures, both pursuant to individual conventions and, as necessary and appropriate, among them. International initiatives to establish a global ocean monitoring system should be supported. The group believes that additional means are needed to ensure the exchange of information on effective national approaches to ocean management and among specialists in scientific and technical matters.

Specifically in relation to reviewing national oceans reports and the possibility of verification, the group took note of options and models pursuant to other conventions and considered which body(ies) might be appropriate to receive the reports. It stressed that while monitoring and evaluation are essential aids for effective implementation and enforcement of international agreements, they should be understood in a constructive sense and not solely as a prelude to the imposition of sanctions. That is, they enable states to share and exchange information and experience and to take stock of individual and collective achievements (and failures). Monitoring and evaluation serve as tools to assist states and publics to understand the nature of problems and how to overcome them, and they help motivate focused actions on their part to reach agreed goals.

The group endorsed the regional seas initiatives as potentially the most comprehensive legal and institutional framework for oceans cooperation and a vital link between national concerns and activities and the worldwide legal and institutional framework. Initiated in the Baltic Sea and Northeast Atlantic by countries bordering these regions, and expanded by UNEP following the Stockholm Conference on the Human Environment, they necessarily reflect the sectoral approach which prevailed at the time. Between 1972 (Stockholm) and 1992 (Rio) global awareness moved from a sectoral to a comprehensive approach, from the protection of the environment to sustainable development. In 1995, the Global Programme of Action on Land-Based Activities (GPA) was adopted at an intergovernmental meeting convened by UNEP, as contemplated in Agenda 21. The GPA addresses the major problems impinging on the quality of the marine and coastal environment and the integrity of their ecosystems. It emphasizes implementation through the regional seas initiatives. The IOC through its regional subsidiary bodies and the global programs of relevance to the regions offer encouraging means of providing the scientific basis for global and regional management of the oceans. The regional seas programs of UNEP and those of the IOC, if more effectively interpreted, would greatly facilitate the future implementation of both the Law of the Sea Convention and the instruments adopted at UNCED.

The need for a comprehensive approach to sustainable development has a number of implications for the nations involved in each region, affecting the substantive and geographic scope of the conventions and participation in them. The ecosystem approach to the conservation and sustainable use of living species, endorsed pursuant to the Convention on Biological Diversity and reflected in recent international legal instruments on fisheries, requires that marine species and critical habitat be considered in the context of the regional agreements on marine and coastal issues. More integrated approaches to coastal zone and watershed management will necessarily involve hinterland states as well as megacities and coastal villages. Changes may be desirable in the institutions established by and associated with the conventions and in the linkages among national, regional, and global bodies. In the Mediterranean region, a promising beginning has already been

made with the revision of the Barcelona Convention and its protocols and Action Plan in 1995-96, including establishment of a regional commission for sustainable development of the Mediterranean as a subsidiary body of the contracting parties to the Convention.

The long-term possibility of revisiting the structure and functions of the International Seabed Authority established by the Law of the Sea Convention was suggested, in relation both to its existing mandate regarding the mineral resources of the deep seabed and in relation to cooperation in research and development activities with the global conventions on biodiversity and climate change.

Recommendations:

1. In relation to international review of national oceans reports, existing mechanisms should be utilized in the short term. DOALOS could prepare a comprehensive synthesis of key points and emerging issues related to implementation of the oceans-related conventions, including difficulties encountered by states, for consideration by the UNGA. The synthesis would be drawn from the reviews prepared pursuant to individual conventions and institutional mechanisms, which are based on national reports. The comprehensive report on implementation of the LOS Convention prepared for the 51st UNGA could be updated relatively easily in a first stage.
2. In the long term, a high-level intergovernmental body should meet at regular intervals to consider reports on the implementation of the oceans-related conventions from an integrated perspective, including support provided by international institutions.
3. Given the central importance of regional, ecosystem-based approaches to protecting and sustainably using the oceans, states and non-governmental constituencies should take advantage of relevant intergovernmental and private conferences to advance the shift toward comprehensive regional seas initiatives and consequent legal and institutional adjustments. IWCO members may wish to give further consideration to their own means for doing so, including the possibility of regional and global consultations on the subject.
4. In relation to the International Seabed Authority, a meaningful plan of work should be prepared for the remaining years of this century which concentrates on the development of human resources, technology cooperation, and study of deepsea marine ecosystems and potential impacts on them. The plan should promote cooperative initiatives with other international organizations and the private sector in marine research and technology. Over the longer term, more ambitious cooperative programs might be envisaged.

D. Conflict Avoidance and Settlement of Disputes

The group acknowledged that differences may arise regarding the uses of the oceans and their management, as well as the the preservation and protection of the marine environment. It underlined the importance of conflict avoidance as well as dispute settlement in promoting sustainable ocean use. For this purpose, it would be desirable not only to have but also to use effectively procedures for identifying and resolving disputes early on. The group agreed that LOS Convention provisions on dispute settlement were quite adequate. There were gaps in other oceans-related conventions, however, and it was important that future conventions incorporate the most forward-looking developments. The group noted that many oceans disputes stem from conflicts over maritime claims and related resources, and it was suggested that states could be encouraged to “freeze” conflicting claims pending their resolution and to consider joint development schemes in these circumstances.

While regretting the loss of time and foregone opportunities resulting from long-standing disputes, members sought to avoid recommendations that might be interpreted as addressing existing conflicts. Rather, they supported general references encouraging states to undertake consultations and exchange information in order to avoid potential disputes and environmental damage; to consider elaborating options for consultations, information exchange, and other confidence-building measures as a means of implementing LOS Convention provisions; to settle disputes arising outside the LOS Convention in accordance with the means provided in the United Nations Charter; and to consider including dispute avoidance and dispute settlement provisions in future conventions relating to sustainable ocean use, especially provisions on binding adjudication. In the long term, recommendations could suggest models for dispute avoidance and dispute resolution to be included in existing and future conventions. These might include references to compulsory conciliation and choice of binding settlement procedures as well as the expanding range of consultative and conciliatory options being developed in other fora.

Recommendations:

1. In the spirit of the obligation flowing from Article 2 (3) of the United Nations Charter and in the light of the Secretary-General’s “Agenda for Peace”, states should seek to avoid disputes relating to the Law of the Sea and to the protection and preservation of the marine environment. To this end, they shall make use of any means of dispute avoidance contained in relevant agreements. States shall also exchange pertinent information and engage in consultation at an early stage.
2. Effective use should be made of the means of dispute settlement provided by the Law of Sea Convention and by other agreements relating to the protection and preservation of the marine environment.
3. Where such agreements do not contain provisions for the effective settlement of disputes, the parties shall have recourse to peaceful means, in particular those enumerated in Article 33 (1) of the United Nations Charter.

4. Provision should be made, in future agreements relating to the law of the sea or the protection and preservation of the marine environment, for effective dispute settlement, especially through binding adjudication.

4. Closing

The final meeting of the group was held in the presence of H.E. Dr. Mario Soares, Chairman of the Commission. Chairman De Macedo Soares briefed Dr. Mario Soares on the working group's deliberations and indicated that its report and recommendations would form an important contribution to the work of the Commission. Working group members then highlighted key concerns and suggestions for addressing them.

Study Group on the Legal and Institutional Framework
for the use and the protection of the oceans

9 - 11 October 1996, Geneva

Provisional List of Participants

Mohammed Bedjaoui*	Algeria	
Patricia Birnie	United Kingdom	
Elisabeth Mann Borgese*	Canada	
Lucius Caflisch*	Switzerland	
Carl-August Fleischhauer	Germany	
Stephan Keckes*	Croatia	
Lee Kimball	U.S.A.	Rapporteur
Luiz Filipe de Macedo Soares*	Brazil	Chairman
Ahmed Mahiou	Algeria	
Thomas Mensah	Ghana	
Alexander Yankov*	Bulgaria	
	Secretariat of IWCO	
Layashi Yaker	Algeria	Secretary General
Jean-Pierre Lévy	France	Executive Secretary
Dieter Poortman	Netherlands	Assistant

* Member of IWCO

Annexe II

9-11 October 1996

SG/LEG/1

Study Group on
The Legal and Institutional framework
for the use and protection of the ocean

Draft Agenda

1. - Opening
2. - Adoption of the Agenda
3. - Overview of the Legal and Institutional framework
4. - Issues relating to implementation and enforcement
5. - Issues relating to international conflict and dispute settlement
6. - Institutional shortcomings
 - a) At the national level
 - b) At the regional level
 - c) At the global level
 - d) Issues common to all levels
7. - Conclusions and recommendations
 - a) General discussion
 - b) Drafting
 - c) Review
8. - Closing