

Second Plenary Session
Rio de Janeiro
2 - 5 July 1996

IWCO/WP8

**Selection of Issues to be Considered
by the Commission (Agenda items 4 and 5)**

Note by the Secretariat

Background:

From its inception and already during the first meeting of the Commission (Plenary and Executive Committee), its members have given consideration to its objectives and the final results to achieve.

In addition to the impact the Commission should have during its existence, through its meetings and associated activities, it was considered essential that the final report to be published by the Commission and the Lisbon declaration to be adopted during Expo 1998 should reflect a visionary approach to the protection of the oceans and management of its resources for the next century.

In order to ensure that the results of work of the Commission are brought to the attention of the international community, at its most global level of representation, a short report will be submitted to the General Assembly of the United Nations, when it considers the item on the "International Year of the Oceans" in 1998. In this connection, it should be noted that in a letter from the Secretary-General of the United Nations to the President of the Commission, Mr. Boutros Boutros Ghali states that he will be "pleased to ensure that the Commission's findings are brought at the completion of its work, to the attention of the General Assembly".

Members of the Commission are fully aware that the oceans are the subject of concern of numerous agencies and institutions at both thenational and international levels and that a number of the UN system organizations have been devoting all their energy, for several decades, to solving problems confronting ocean space and the use of its resources.

Thus, they consider that it is the role of the Commission to support and complement these efforts without repeating any conclusion or recommendation already widely disseminated. So far, the Members have made it clear in their interventions that they would like the Commission to organize the various subjects it will study under major themes which will transcend the usual approaches.

Major themes and issues for consideration:

It is in this light that the Commission has initially identified, during the Tokyo Session, a number of major themes encompassing a certain number of issues. The Commission is now called upon to widen its approach and select additional themes or issues to be considered.

I The Legal and institutional framework for the use and protection of the ocean

During the past two decades more than 100 conventions have been adopted that have a direct relationship with the preservation of the marine environment and the use of its resources. These conventions serve to illustrate the concern of the international community with the issues at stake.

As far as non-binding instruments are concerned (declarations, programmes of action, resolutions, etc.) they are numbered in the hundreds and cannot even be listed in view of their multiplicity.

Some questions to be considered are related to : the multiplicity of legal instruments; duplications or gaps; additional ways and means to encourage implementation; and a regular and in-depth consideration of all ocean issues.

II Sovereignty, security and peaceful use of the oceans

In the era of post cold war, the geopolitics of the oceans have changed. An illustration of this change can be found in the declassification of data by the US government. New strategic considerations are being adopted. The issue of sovereignty is often linked to economic considerations and little progress has been made on the peaceful uses of the sea. It might be appropriate to look into the possibilities of extending the concept of partnership (e.g., joint development of resources, joint monitoring, joint enforcement of regulations). The generalization of such an approach is predicated upon the wide acceptance of a new set of values.

These values may relate to the "security of mankind" in its broadest sense including the military one, to the promotion of "equity" both in the use of commons and regarding women, children and minority groups and to "ecology", encouraging the environmental aspects of sustainability and a sense of respect for nature including bio-diversity.

III Ocean economics in the context of sustainability

Under the major theme of ocean economics the Commission will of course have to take account of the present state of exploration and exploitation of resources (including the problem of overexploitation of living resources) but it may wish to direct its attention to the goal of sustainability in the future.

Sustainability cannot be considered in isolation. The concept is linked, among others, to:

- knowledge (scientific research)
- management (use of technical tools)
- institutional and legal framework
- public and political acceptance (awareness)

To be successful, sustainability has to be applied in a systematic way and should command a world wide acceptance. While it is a global concept, account should be taken of existing differences in terms of resources as well as regions. The application of sustainability may have to be considered at the regional or sub-regional level.

IV Promises and challenges of science and technology

It is well known that people count very much on science and technology to solve their problems and there is no doubt that discoveries and advances have contributed to development. They have also created disruptions and gaps, in particular between but not limited to North-South. It seems appropriate to look beyond the traditional approaches for solving that problem and to link the promises of science and technology to the challenge of finding their best use for the whole of humanity.

Similarly, science and technology cannot be considered in isolation. Their dependence on human resources and proper infrastructures is well established. However, it might also be appropriate to consider their linkage to sovereignty, national security and international relations.

Of recent acceptance are the concepts of uncertainty and the application of the precautionary principle. It means that States are required to be more cautious when information is uncertain, unreliable or inadequate. The corollary is that the absence of adequate scientific information cannot be accepted as a reason for failing to adopt measures for the conservation and management of resources.

V Awareness, decision making and societal participation

Members of the Commission have strongly emphasized the need to develop a strategy for mobilizing public opinion and for securing the commitment of decision makers. Such an objective has far-reaching implications and calls for action in a number of areas.

The challenge consists in changing the mental attitude of human beings in order to shift their focus from a purely terrestrial surrounding to the marine environment. Beyond the activities of information and dissemination of knowledge at all levels (within and outside educational systems), there is a need to develop all the channels of participation in decision making relating to the oceans.

With the rapid development of means of information it might be appropriate to consider how the new technological facilities may be used to influence public opinion.

Political leaders are sensitive to public opinion. Conversely, public opinion is also shaped by leaders from outside the political arena (non-governmental pressure groups, scientific community,...).

It might be helpful to look into the processes linking these various agents to find out how to ensure that the Oceans take their rightful place.

VI Partnership, solidarity and ocean governance

In his opening statement to the second international Conference on Oceanography, the Chairman of the Commission called for "a new ethic in mankind's relations with the oceans". This should be the ultimate goal of the Commission. The emergence and acceptance of such a new philosophical approach to the relationship between man and the oceans entails the need to face the issues of resource development, use of science and technology and decision making in the context of the legal, political and institutional frameworks.

There is a strong interconnection between all sectors which will have to be underlined. Of overriding importance for achieving these objectives will be the need to relate them to the acceptance of a common set of values.

Also of paramount importance will be the need to reduce the North-South gap, taking into account the issue of 'capacity building'.

Such values will have to be reflected in the institutional frameworks at the national and international levels, on the basis of harmonized and efficient set of legal norms.

One approach to achieving such a global ethic may consist in the promotion of a systematic development of "partnership" at all levels and in all known endeavors related to the oceans. Its attainment is, dependent upon the acceptance, by all actors involved, of the need for self-restraint and common but differentiated responsibilities.

COMMENTS ON IWCO/WP 8

Elisabeth Mann Borgese

WP8 is an excellent beginning and covers most of the fundamental issues.

However, there should be

a *Preamble* perhaps of one page: a very inspiring, exciting and poetic piece of writing that catches the immediate attention of the reader;

an *Introduction*, containing (a) a critical overview of the general world political situation within which the Law of the Sea and ocean development evolved; (b) a very succinct overview of the origins of UNCLOS III in this broader context; (c) the question: what is the significance of the UNCLOS/UNCED evolving process in contemporary history? If Richard Falk could be induced to write Part (a) of this introduction, that would be splendid.

Chapter I, of course, must be far more than an overview of the existing situation. This overview could perhaps be made more graphic by the inclusion of a chart, similar to the one prepared by IUCN on the contributions of various legal (binding and nonbinding) instruments to various aspects of the protection of the marine environment. Our own chart should be focused on our own clusters of key issues. This would facilitate our understanding on the interactions among the most important legal instruments and lead to suggestions as to how we can use them to reinforce each other -- e.g., in the field of "technology transfer." I need not stress my one thousand percent support for the Law of the Sea Convention which I have always (since 1967!) Considered as the first major breakthrough towards a new international/national order; but I think we have to consider it as a living and evolving organism, a process. In 2004, there will be a Review Conference, which will give us (or our descendants!) An opportunity to update some of the Articles, particularly those on the Common Heritage of Mankind, on the management of living resources, and on the management of science and technology, I think we should propose ideas for this Revision.

I will not comment, at this stage, on Chapter 2, which is of fundamental importance. In the near future I will put at the disposal of the Commission the

results of Pacem in Maribus XXIII (Costa Rica, 1995) which may offer a starting point for this chapter.

No need to comment on Chapter III, of equal fundamental importance

Chapter IV, Science and Technology, equally important. No comment at this stage.

I think we need a new Chapter V: *The Emerging Institutional Framework*. In the light of the preceding chapters we should have a systematic look at structures, involving the governmental as well as the nongovernmental sectors, at the *local and national level*, starting with the excellent material put at our disposal by our Brazilian host, but examining, perhaps a dozen cases, both in the developed world (e.g., the Netherlands) and in the developing world (e.g., India, Sri Lanka, and there are other, extremely interesting ones). Our approach to "integrated coastal zone management" should be "people-oriented, not abstract: taking into account the people living in fishing villages and the people living in coastal megacities and port cities. There has been a total lack of dialogue between the urban planning experts and the coastal management experts. How can we speak of "integrated coastal management" if we do not provide for the participation of megacity- as well as the village-people? We should then proceed to the *regional level* and ask ourselves: what are the *institutional implications of moving "from Stockholm to Rio" -- from a sectoral approach to an integrated approach of coastal and ocean management? What are the implications of this widening of the mandate?* The evolution of the Barcelona Convention and the Mediterranean Action Plan could be used as a case study -- but in the light of the preceding chapters, I think we can come up with many new suggestions. Finally, obviously, we have to move to the *global level* the level of changes in the United Nations system. I think that four focal points are already clearly profiling themselves: (1) The role of the General Assembly: It is only here that "integrated ocean policy" can be made -- based on the inputs coming from coastal communities as passed through national and regional structures, within an institutional framework that must be *comprehensive and consistent*); (2) The "competent international organisations" (Specialized Agencies and Programmes) which, I think, should function analogously to Ministries within States, in implementing the integrated policy adopted by the General Assembly; (3) the Commission for Sustainable Development, which has already offered to prepare

basic reports to this effect and to submit them to the General Assembly; and (4) a reconstituted Trusteeship Council, in accordance with the proposal by the Government of Malta.

Certain themes (North-South relations; sustainable development; technology; eradication of poverty; development of human resources; societal participation; bottom-up approach; decision making) will show up in every chapter. And it might be useful to have a Chapter VI, bringing them together in a genuinely interdisciplinary manner.

Chapter VII, I think might list all our proposals, dividing them in short-term and long-term proposals.