

OCEAN GOVERNANCE – FROM A GLOBAL VISION TO A REALITY

**Address by Elisabeth Mann Borgese to the
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Panel 1. Global Vision and Reality

Ocean Governance as a System

What does "Ocean Governance" mean?

"Ocean Governance" is the means by which ocean affairs are governed, not only by governments, but also by local communities, industries and other "stake holders."

"Ocean Governance" includes national and international law, public and private law as well as custom, tradition and culture and the institutions and processes created by them. Obviously this makes for an extremely complex interaction of individuals and institutions, at all levels, the sum of which forms a complex system.

Three Components of the Ocean Governance System

From this complex system, one can begin to recognize three critical components, with somewhat blurring boundaries between them: The legal framework, the institutional framework and the tools of implementation.

1. The Legal framework

The Legal framework, has as its origins the United Nations Convention on the Law of the Sea, which was all comprehensive when it was opened for signature in 1982. This Constitution for the Oceans governed all major uses of the seas and oceans. It introduced a number of highly innovative concepts and principles, the most important of which are:

(1) The principle of the Common Heritage of Mankind. This revolutionary regime applies to the mineral resources of the international sea-bed area which cannot be appropriated by any State, legal or natural person, and must be managed for the benefit of mankind as a whole. Furthermore, it is reserved for exclusively peaceful purposes and all activities undertaken must take due consideration for the conservation of the Environment; and

(2) The concept that the problems of ocean space are closely interrelated and need to be considered as a whole.

The United Nations Convention on the Law of the Sea is a framework convention which subsumes other international law, in particular international environmental law developed by UNEP and diplomatic conferences, shipping law, developed in particular by IMO and UNCTAD, and fishing law, as developed by FAO and diplomatic conferences.

International environmental law has experienced unprecedented development since 1982, especially since the Rio Earth Summit in 1992 which spawned a number of Conventions, Agreements and Programmes. All of these have important ocean related

components which must now be considered in their interaction with the Law of the Sea Convention. The whole legal framework thus can be considered in three major parts:

- (1) The United Nations Convention on the Law of the Sea, 1982;
- (2) Other international law subsumed by the Convention; and
- (3) The ocean-related parts of the post-1992 Conventions, Agreements and Programmes which now interact with the legal system.

2. The Institutional Framework

Institutions are needed to implement the laws and regulations generated during the last half century. The Law of the Sea Convention itself created four global institutions:

- (1) The International Seabed Authority in Jamaica, to manage the Common Heritage of Mankind;
- (2) The International Tribunal for the Law of the Sea, for the peaceful settlement of disputes arising from the implementation and interpretation of the Convention;
- (3) The Commission on the Limits of the Continental Shelf; and

(4) The meeting of the States Parties.

A fifth institution, mandated by the Convention, but not yet implemented should consist of regional centers for the advancement of marine science and technology.

The Convention has not established any new institutions for other major uses of the seas and oceans, such as fishing, shipping, marine scientific research, etc. It relies, for their regulation and management, on "the competent international institutions," that is, in particular, the U.N. Specialized Agencies, each with its own secretariat and its own sectoral mandate.

One should add to this already complicated system, the secretariats and sectoral mandates of the UNCED Convention regimes, and it becomes obvious that it has been extremely difficult to move in the direction of "integrated management" within an institutional framework as splintered and sectoralized as that generated by the UNCLOS/UNCED process.

Only the General Assembly, with its universal membership and broad, intersectoral mandate, would have been able to exercise some integrating and harmonizing function, but the General Assembly simply did not have the time to do justice to this extremely demanding task.

With the establishment of the "Consultative Process on Oceans and the Law of the Sea" (UNICPOLOS) the situation has greatly improved. An institutional order is evolving that

reaches from the local community through the State government to the level of regional seas, and to the United Nations, responding to the guide lines established by the Report of the United Nations Commission on Environment and Development (1987) and further elaborated especially by Agenda 21.

3. The Tools of Implementation

Tools are needed by the institutions for the effective implementation of the laws and regulations, for not even the best legal framework, with the best institutional framework, would be capable of effective implementation without such tools. These tools include technologies, funding and means for compliance and enforcement.

Problems of technology "transfer" and of funding obviously are closely interrelated. New and additional sources of funding are needed to assist poor countries to obtain the technologies they need for the effective implementation of the Conventions and action programs.

Furthermore, there are fundamental differences between traditional technologies and the high technologies of today, which are information- and knowledge based, and cannot be "bought," but must be learned. The most effective way to achieve this is through joint ventures in Research and Development. This also will provide a framework to facilitate synergies between public and private investments in R&D at the international, especially regional, level.

Other "innovative ways" to generate "new and additional funding" need to be explored, including some variations on the famous "Tobin Tax" - a concept introduced by the Nobel Laureate economist James Tobin in 1978. Pilot projects should be undertaken: such as the levy of very modest taxes on tourists as well as on the fibre-optic cables crossing the international seabed area. Considering the enormous financial and political power of the corporate sector and the rights it is enjoying to participate in the decision-making processes of the United Nations system as "major groups," it would only be fair to expect that this sector should make its share of predictable and reliable contributions to the system, just like States, which, in most cases today, are smaller and weaker than the industrial giants.

The final requirement, and perhaps the most important today, is that of effective compliance and enforcement mechanisms. It is often said that regulations are only as good as the enforcement power behind them. Sustainable development, furthermore, is simply unattainable without peace and security. Thus, ways and means of enhancing regional compliance and enforcement measures, through enhanced cooperation at all levels including considerations for the establishment of regional coastguards is necessary. This would be in accordance with Principle 25 of the RIO Declaration which states that Peace, development and environmental protection are interdependent and indivisible.