

# OCEAN GOVERNANCE

Edited by **PETER BAUTISTA PAYOYO**

Sustainable  
Development  
of the Seas

# Ocean governance: Sustainable development of the seas

Edited by Peter Bautista Payoyo



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# Preface

Elisabeth Mann Borgese

The lapse of time since the staging of *Pacem in Maribus XIX* provides an opportunity for assessing the results of the conference in a somewhat more historic perspective.

These have been turbulent years of dramatic change in the international system, wrought by apparently conflicting, but in reality probably complementary trends of intranational disintegration and international integration, causing displacements, and untold human sufferings and deaths.

Environmental concerns reached an apex in the Rio Conference on Environment and Development of 1992, but have been on the decline since, under the impact of economic recession and turmoil and crisis management in too many places.

The real integration of environment and development concerns has not yet been achieved in people's minds or reflected in institutions, whether national or international. The task is still ahead of us. *Pacem in Maribus XIX* was intended to, and we feel, succeeded in, laying the foundations for our subsequent efforts, articulated in *Pacem in Maribus XX* and *XXI*.

Looking at the institutional evolution analysed by *Pacem in Maribus XIX*, *PIM XX* began to look at the wider applicability of the

basic principles of the Law of the Sea Convention to sustainable development in general. Are there lessons to be learned from the ocean experience for the governance of other global, regional, and national issues? That the oceans are our great laboratory for the making of a new international order, has been a motto of the IOI since its very beginning over two decades ago.

*Pacem in Maribus XXI* is devoted to the implementation of sustainable development at the regional level which, it would appear, is the most important one in the whole global system of governance. A great deal of new thinking is needed to bring the Regional Seas Programme up from a still sectoral approach limited to the protection of the environment to an integrated approach covering ocean development together with the protection of the environment (horizontal integration) and to articulate the proper linkages between coastal management and national regimes on the one hand, and the emerging new structures at the level of the United Nations, on the other.

An informal meeting on “Agenda 21 for the Mediterranean” was held in Malta on 11–13 February 1993. Among the many facets of the new tasks this Agenda imposes, the meeting dealt explicitly with the institutional implications of moving the Mediterranean Action Plan and its institutional framework in the Barcelona Convention from “Stockholm” to “post-Rio.”

Serious thought should be given to creating a regional Mediterranean United Nations entity that could be inspired and regulated, perhaps in its initial phases, from and through an expanded Barcelona Convention with terms of reference encompassing not only environment but social and economic interactions that will promote a process of sustainable development in the Mediterranean Region.<sup>1</sup>

With the Barcelona Convention of 1976 and its Plan of Action and Protocols, the Mediterranean nations have been leaders in regional cooperation in the protection of the environment. They could now take the lead in shaping the new and coming phase of evolution of the regional seas programme. The Malta-based International Ocean Institute hopes to play its role in this process, and, it would seem, has laid a sound basis for this new work in *Pacem in Maribus XIX*.

“Governance in the twenty-first century” has become a widely and intensely discussed subject. The Club of Rome is studying it. The United Nations University is fostering projects on the subject. There is a spate of new publications on the concept of the Common Heritage of Mankind, from Ph.D dissertations<sup>2</sup> to lecture series<sup>3</sup> to new books<sup>4</sup>

New thinking on sustainable development, and new thinking on the Common Heritage concept are drawing closer together. Since the publication of *Our Common Future*,<sup>5</sup> it is becoming clearer to more people that sustainable development is simply not attainable without some reconceptualization of traditional concepts of ownership and sovereignty. To put it more bluntly: sustainable development must be based on the concept of the common heritage of mankind, which integrates development and environment, together with disarmament (reservation for peaceful purposes).

Since ideas and ideals do not work in a vacuum, but only if and when they coincide with economic interests, it is well to remember that in any case, sovereignty is not what it used to be, in our age of globalized production, banking systems, and the information and communication revolution, and that "ownership" is no longer a key factor in these systems, ever since the days of James Burnham's *Managerial Revolution*.<sup>6</sup>

In the meantime, the Rio Conference on Environment and Development has begun to make its impact on the restructuring of the United Nations system. A whole new division has been added to take care of sustainable development: a Commission for Sustainable Development (CSD) within the Economic and Social Council of the United Nations; a Secretariat headed by a new Under-Secretary-General, and mechanisms for integrating the policies of all the specialized agencies involved have been strengthened in the Administrative Committee for Coordination (ACC) and its Inter-Agency Committee.

Whether the CSD will have the clout to cope effectively with the enormous issues of sustainable development and the implementation of Agenda 21 will depend, on the one hand, on the success or failure of restructuring and revitalizing the ECOSOC as a whole, and, on the other, on the strength of the leadership of CSD's own "High-Level Segment," that is, a meeting of Ministers, associated annually with the Commission and aspiring to a "High Political Profile" and a decision-making function. This might be seminal. This might be the beginning of something new.

Chapter 17 of Agenda 21, dealing with sustainable ocean development – probably the strongest of all the chapters – is the link between the UNCED and the UNCLOS processes. Sustainable ocean development is a crucial part of the whole agenda. It cannot be implemented without the implementation of the Law of the Sea Convention which provides the necessary jurisdictional framework, the

enforcement power and the dispute settlement system. The Law of the Sea Convention comes into force in November 1994, but the linkage between the CSD and the institutions emerging from the UNCLOS process, at global, regional, and national levels, is not yet clearly defined. There is a lot of work to be done.

It would appear that Pacem in Maribus XIX "holds water." It certainly has made its contribution to the preparation of UNCED and Chapter 17 of Agenda 21. As part of the more free-wheeling and unconstrained NGO sector, it could raise its sights over a somewhat longer term and wider horizon than governments can. But the developments of the last two years would seem to indicate that we are on the right track. From now on, the UNCLOS and the UNCED processes will evolve together, and they will largely determine the restructuring of the United Nations system and the emergence of a new world order. The NGO community will play an increasingly important role in this process and must throw all its weight into the effort to keep supranational integration ahead of, or in balance with intranational disintegration and to enhance sustainable development and comprehensive security intranationally and internationally, regionally, and globally. Pacem in Maribus hopes to remain in the avant-garde of this effort.

## Notes

1. Minister Guido de Marco of Malta, as quoted in MEDWAVES, News bulletin of the MAP Coordinating Unit. Athens: Spring, 1993.
2. For example, Payoyo, Peter, Dalhousie Law School.
3. For example, MccGwire, Michael, Cambridge University; St John Macdonald, Ronald, University of Toronto.
4. For example, Pardo, Arvid, *The Common Heritage* (Genoa, Ocean Change Publications, 1993).
5. The World Commission on Environment and Development, *Our Common Future* (Oxford/New York, Oxford University Press, 1987).
6. Burnham, James, *The Managerial Revolution* (New York: Harper & Row, 1952). Burnham stressed, that it is not ownership, but management privileges and profit sharing, that determine power in business.

# Editor's introduction

This is the report of the Pacem in Maribus XIX held in Lisbon, Portugal, on 18–21 November 1991. The Conference adopted for its theme “Ocean governance: National, regional, global institutional mechanisms for sustainable development in the oceans.”

Pacem in Maribus (PIM) is the annual conference of the International Ocean Institute (IOI), a non-governmental organization established in 1972 dedicated to the systematic and integrative understanding of the oceans as common heritage of humankind. The term, which translates to “Peace in the Oceans,” is a paraphrase of Pope John XXIII’s famous encyclical *Pacem in Terris*, or “Peace on Earth,” and indicates the broad inspiration it takes in relation to the purposes of the IOI. So far, there have been 18 PIM Conferences held in various locations around the world. One was even held on a vessel! The themes for these conferences have been as varied as they were momentous, each responding to the perennial challenges of the oceans, or, in the words of Professor Elisabeth Mann Borgese – founder of the IOI and the moving spirit behind PIM – the knowledge and truth that can make a difference on Planet Water.

PIM XIX’s theme logically emerges from an appreciation of the ocean experience that has gone before and will come after another landmark in contemporary world history: the 1992 United Nations



Conference on Environment and Development (UNCED). While the theme meditates on the lessons of the 1982 United Nations Convention on the Law of the Sea in the area of “ocean governance” – a term that accepts the fundamental necessity for planning and management in the oceans as elaborated in PIM XIX’s Background Paper – it also looks forward to the rearrangement, creation, or evolution of institutions implied in the promise of sustainable development in the ocean sphere. Thus, the theme invites both reflection and practical strategy on the objectives and requirements of ocean governance. In the language of the Background Paper, PIM XIX has studied “the institutional requirements of sustainable development in the marine sector and of ocean governance in the twenty-first century.”

The Background Paper for PIM XIX argues for the integration of ocean concerns at the institutional level. The framework for sustainable development in the oceans that demands this integration is defined by fundamental principles articulated in the 1982 Law of the Sea Convention and the 1987 Report of the World Commission on Environment and Development, *Our Common Future*. The 1982 Convention endorses the notion of the Common Heritage of Mankind and the concept that “the problems of ocean space are closely interrelated and need to be considered as a whole.” *Our Common Future* advances the proposition that boundaries between sectoral concerns, between public and private sectors, and among territorial boundaries – national, regional, and global – have become so porous that it is no longer feasible to maintain the traditional distinctions if the problems are to be dealt with meaningfully. Institutional and policy responses to these problems must, therefore, consider the need to integrate sectoral (horizontal integration) and territorial (vertical integration) spheres.

Within this framework of integration PIM XIX, after reflecting on the “existing framework” of ocean management, explored the institutional implications of ocean governance on three levels: national, regional, and global. Indeed, the format of the Conference followed this characterization of levels of governance in order to project more adequately and fully appraise the institutional mechanisms involved. The ensuing Conclusions and Recommendations of PIM XIX, also structured according to the three levels of ocean governance, express an overall vision of, and agenda for, sustainable development in the oceans. No doubt PIM XIX will continue to contribute to the post-UNCED process.

Seventy-five participants from 35 countries attended the Con-

ference. Inasmuch as special attention has invariably been given to the role played by developing countries in ocean governance, in general, and the IOI, in particular, 18 developing countries, or 51 per cent, have been represented in PIM XIX. There were, however, only 29 (39 per cent) out of 75 participants from these developing countries.

PIM XIX was organized jointly by the IOI and the United Nations University. Funding for the Conference was extended by the following sponsors, to whom grateful acknowledgements must be given: John D. and Catherina T. MacArthur Foundation; United Nations University; United Nations Environment Programme; the United Nations Conference on Environment and Development; International Oceanographic Commission; the World Bank; Canadian International Development Agency; and various Portuguese sources. A special note of appreciation goes to Portugal and the Conference's Portuguese hosts, especially Dr Mário Ruivo. As well, the success of the conference was due in large measure to the fine team of session Chairmen – consisting of Layashi Yaker, Carlos Sergio Duarte, Frank Njenga, Mário Ruivo, and Alexander Yankov – and Rapporteurs – Nico Schrijver, Aldo Chircop, Sidney Holt, Uwe Jenisch, and Anna Mallia. The ever-dynamic role of Jan van Ettinger, coordinator of PIM XIX, is likewise warmly remembered. Finally, it must be mentioned that this volume is a joint contribution of the United Nations University and the International Ocean Institute to the on-going process of the United Nations Conference on Environment and Development, a historic unfolding of which PIM XIX has modestly taken part.

## **Report on the conference**

The papers presented for discussion during the conference have been organized around four main themes, each projecting unique yet closely-interwoven institutional implications for sustainable development in the oceans:

- I The existing framework for ocean governance
- II Ocean governance – National level
- III Ocean governance – Regional level
- IV Ocean governance – Global level

Six papers were read under the first theme. These papers examine various current aspects of the international setting from which a new

era of ocean governance is emerging. In his paper, Ambassador Pinto enumerates the institutional implications of implementing “sustainable development” in marine affairs and argues that the Law of the Sea Convention supplies the needed approaches to institutional development, having anticipated the concept of sustainable development in many ways. UN Under-Secretary-General Satya Nandan for his part identifies global and regional institutions and mechanisms for cooperation and coordination in marine matters. In “Existing institutional framework and mechanisms” he notes the need to revitalize international institutions and their activities, this to be coupled with a comprehensive approach to the management of the oceans and their resources. He concludes with the suggestion that there be created within the UN General Assembly framework a new global forum where all ocean issues can be discussed periodically with the participation of all relevant international institutions.

The paper of Ambassador Njenga of the Asian-African Legal Consultative Committee urges the ratification of the Convention by all states and underlines the necessity of preserving the total integrity of the 1982 Convention before its entry into force. Ratification and entry into force of the Convention, he further asserts to rebut contrary claims, do not entail a colossal financial cost on the part of State Parties. In “The role of indigenous peoples in ocean governance,” Professor Van Dyke recounts the perspectives and claims of native peoples to offshore waters and resources. The ocean management approach of indigenous peoples built upon harmony, he argues, is certainly something to learn from.

In the floor discussion that followed, two general points are worth recalling. First, there was a general agreement concerning the need to establish a new global forum within the UN General Assembly framework where all oceans issues can be discussed. Certain caveats were, however, articulated. In the first place attention was called to three problems arising from the proposal. One, the question of power: whether the forum will have decision-making functions or whether it will be limited to consultative and advisory functions. Two, the problem of finding a suitable location for the forum. And three, the issue of the objectives of the forum, e.g., whether it will be involved in the implementation of the Law of the Sea Convention. Then, it was explained that the overall international picture characterized by rapid technological advances, on the one hand, and increasing regionalization outside the UN framework, on the other, must be reckoned with by any organization of ocean governance built

upon the Law of the Sea Convention. This was followed by the crucial role of the private or parastatal sector in policy-making being emphasized. Second, the debate about making the 1982 Law of the Sea Convention “universal” in character was revived. Different reactions put forward about the on-going efforts to make the Convention universally acceptable, nevertheless acknowledged the necessity for new ideas to address this predicament.

Two sets of papers were presented for the sessions devoted to the theme “Ocean governance – National level.” The first deals with overview considerations on the nature of and problems associated with national institutions that address ocean concerns. Thus, Stella Maris Vallejo analyses a broad cross-section of national experiences in integrated ocean policy and concludes that there are no fixed institutional models in managing coastal, near-shore, and ocean environments but only options that should be tailored to the circumstances and institutional traditions of each country. For their part Ernst Lutz and Mohan Munasinghe invite attention on the prospects of environmental accounting which ought to inform national economy-wide policies for sound natural resource management, including managing the marine sector. On account of its supplementary explanations, the reaction of Dr Max Börlin to the paper of Lutz and Munasinghe during the conference, which elaborates further the concept on environmental accounting in the marine sector, is included in this volume as an addendum to the main paper.

The second set of papers consist of case-studies on national ocean governance. The situation in India was presented by Dr Saigal who, among others, called the attention of the conference to the Ocean Policy Statement of the India Department of Ocean Development. The Indian model is impressive because it succeeded in proceeding from a fact-finding phase to the implementation of various R&D programmes within a period of only 12 years. Professor Tsutomu Fuse in presenting the next paper showed the characteristics of Japanese decision-making in ocean governance. The age-old tradition of consensus-making underlies the Japanese model.

Some major trends in the discussion on ocean governance at the national level can be identified. First, it was not doubted that marine affairs should be raised higher in the national political agenda. The importance of leadership in generating the political priorities deserved by the oceans was underlined. Second, the widely-practised coastal area management can serve as a starting point in shaping national marine policy, provided that its linkage with ocean manage-

ment is not ignored. Third, there was reiterated concern that scientific research, education, and training are national capabilities that call out for emphasis in policy-making and the widest possible constituency. Accordingly, a brief on the Portuguese initiatives on the establishment of an interdisciplinary marine centre and the joint Portuguese–UNESCO project on promoting ocean education, research, and teaching of particular significance to developing countries was welcomed by the Conference. Fourth, although it was stressed that governments are compelled to intervene in order to safeguard basic environmental interests, the creative role of the private sector in national ocean governance was, however, amplified. Lastly, the need for a new accounting framework in national marine accounting systems logically calls also for supranational ocean accounting. The participants concurred that difficulties in the implementation of new accounting schemes should be an urgent item for study.

An African perspective on national ocean governance was shared by Ambassador Abdul Koroma. He reported that although some success has been achieved in the field of regional cooperation, African states are not yet reaping the benefits envisaged by the 1982 Law of the Sea Convention.

The most numerous papers received by the Conference dwelt on the subject of ocean governance at the regional level. This indicates in fact the consensus that the regional level in marine affairs is a most crucial bridge joining the national and global levels of sustainable development in the oceans. As at the national level, papers presented may be delineated into two sets: those that address the significant dimensions of regional governance, and case-studies.

Stjepan Keckes recalled the Regional Seas Programme experience of UNEP. In his paper, he makes a forecast of what lies ahead for existing regional action plans and the role that UNEP will play in the future. Among the many insights of Jean-Paul Troadec, he maintains that poor performances in fisheries, including inefficiencies in resource conservation, are caused by deficiencies in institutions regulating access. It is not, therefore, economics that need to be reconciled with ecology but those institutions that need to be adjusted to the new conditions of resource scarcity. Professor Vicuña's paper evaluated the role of joint development or joint management zones as a mode of regional cooperation in the exploration and exploitation of non-living marine resources and commended its expanding use. Drawing heavily from the initiative involving the Mediterranean Centre for Research and Development in Marine In-

dustrial Technology, Dr. Saigal's paper formulates the institutional ingredients for regional centres for marine science and technology. The paper by Gunnar Kullenberg and Agustin Ayala-Castañares addressed regional cooperation in marine science from the global framework provided by the International Oceanographic Commission. Finally, the peculiarities and possibilities of regional ocean governance in the Baltic Sea and the Indian Ocean are provided by Nikolaus Gelpke and Hiran W. Jayewardene respectively.

There was prolific discussion during the regional level Conference sessions. Because the papers presented highlighted the undisputed common denominator of indispensable regional approaches to ocean governance, the participants deliberated on the diverse aspects or possibilities of regional action. Initially, the difficulty of distinguishing regional and local scales was pointed out. This notwithstanding, management initiatives could still be realized. A Charter of Scientific Cooperation among developing countries containing a strategy for networking and cooperation among marine science and technology institutions was, for instance, proposed. Secondly, the intensifying regional focus of international organizations inside and outside of the UN system was acknowledged and commended. Thirdly, modalities for inviting and encouraging the participation of land-locked and hinterland states in marine environmental arrangements were put forward. Last but not the least, PIM XIX was informed of efforts in the European Community to formulate an integrated ocean policy; an *aide-mémoire* by Uwe Jenisch of Germany concerning ocean governance at the European level was submitted as part of the Conference records.

Six papers were presented under the Conference theme "Ocean governance – Global level." In the paper "Ocean governance and the global picture" the authors propose the application of the principle of the common heritage of mankind and its institutional implications to other areas of global concern: energy, food, atmosphere, and outer space. Dr Thomas Mensah in his paper argues that there are certain changes, both internal and external, that have to take place with reference to competent international organizations if these institutions are to effectively discharge the new roles assigned to them by the 1982 Law of the Sea Convention. The contribution of Jacques Richardson suggests some practical approaches and guidelines for improved public communication about the law of the sea. Specific proposals are made on a medium intended to evoke both public reaction and decision-making concern at the highest governmental and intergovernmental levels.

Joseph Morgan, whose paper described navies and their peacetime roles, expresses apprehension about the world environment that continues to call on the combat mission of navies. The paper on the "Question of financing" by Dr Ruben Mendez proposes a system of international taxes, user fees, and other automatic revenue-generating mechanisms that could fund ocean-related programmes. Finally, Professors Alexander Yankov and Mário Ruivo develop the idea of a global ocean forum. An Ocean Assembly, they maintain, is the institutional response to the demand for integration in ocean governance.

The prevailing view that emerged from the subsequent discussion was that the regime for integrated management of ocean space in the 1982 Law of the Sea Convention, founded upon the common heritage of mankind principle, in many respects can serve as a model for the evolution of corresponding regimes for the governance of other natural entities, like food and energy systems, outer space, or atmosphere and climate. An appreciation of the deep interrelationships of these entities was communicated to the UNCED and the PIM XX held in November 1992. Also, it was perceived that the ambitious goal of developing new international institutions – arising from a recognition of the holistic character of the environment – like a Biosphere Security Council, international taxation, or the Ocean Assembly could only be feasible in the context of understanding the overall political features of the present world and the ways these might be evolving.

## **Reports from the UN system**

An essential ingredient in the deliberation on institutional mechanisms for ocean governance at all levels has been the collective contribution of the United Nations agencies responsible for implementing, directly or indirectly, an ocean mandate. Their respective reports provide an insider's account of institutional perspectives, practices, and problems relevant to the subject of sustainable development in the oceans.

Not long before the Conference actually took place, questionnaires were sent to different UN bodies – particularly the Food and Agricultural Organization, the International Maritime Organization, the International Oceanographic Committee of UNESCO, and the United Nations Environment Programme – for them to react to three questions:

1. The Brundtland Report stresses the concept “sustainable development” has institutional implications. Do you anticipate that your organization will have to make internal adjustments to cope with these implications as well as the new tasks accruing from the UN Convention on the Law of the Sea?
2. Do you think the existing mechanisms for inter-agency cooperation are adequate for the formulation of an integrated ocean policy and a strategy for sustainable development? How could they be improved? Are new mechanisms needed?
3. Do you think the present financial infrastructure is adequate to pay for expansion of your activities? We hear more often now that the time has come for systems of international taxation. Would you agree? What are the alternatives?

Certain other UN agencies – the International Atomic Energy Agency, International Labour Organisation, United Nations Conference on Trade and Development, United Nations Development Programme, United Nations Industrial Development Organization, World Health Organization, and World Meteorological Organization – were asked to focus their contribution on survey question 2 above. Finally, three UN Economic Commissions, viz., for Africa; Latin America and the Caribbean; and also Asia and the Pacific, were requested to respond to this question:

Should your Economic Commission create a special “marine sector” division? In any case, how would your Economic Commission interact with the regional offices of the FAO, IOC/UNESCO, IMO, and UNEP so as to maintain at the regional level integration when implementing “an integrated ocean policy and a strategy for sustainable development”?

Ten out of fourteen agencies turned in reports. The reports are noticeably quite heterogeneous in quality and uneven in the way they have answered the question/s asked, perhaps revealing the diversity of approaches adopted by the agencies concerned to the issues of sustainable development and institutional integration in the oceans. Moreover, most reports have not altogether bothered to give a direct answer to the questions indicated, which are admittedly quite sensitive. Nevertheless, to the extent that they can be integrated into a common stream, these UN reports do overwhelmingly reveal the thesis of institutional integration, and confirm it as an idea whose time has come. The concrete problems of horizontal and vertical integration clearly emerge from these accounts. The highlights of each report are given in Annex I of this volume.



## **Arrangement of the volume**

Following the programme of PIM XIX, this volume organizes its chapters basically into four parts. Part One consists of the papers on the “Existing framework for ocean governance.” This part necessarily sets the context of the overall problem of institutional mechanisms for sustainable development in the oceans. Parts Two, Three, and Four are made up of those papers that expand on the meaning of ocean governance at the national, regional, and global levels, respectively. Due to space limitations, not all papers and documents circulated during the Conference have been reproduced. The Conclusions and Recommendations, which forms the gist of the PIM XIX is included before the main text in order to provide the reader with an overall impression of the discussions and debates that went into the Conference. The “Background paper” – the document which initially contemplated the general themes of PIM XIX – is included as Annex II.