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Yen-Chiang Chang

# Ocean Governance A Way Forward



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# Ocean Governance

A Way Forward

 Springer

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# Preface

Ocean—a source of life, has been overused and heavily polluted. While the traditional approaches may not be able to solve the complexity of the ocean governance issues, there is a need to adopt a new way of thinking in order to deal with the current problems. This book emphasises the importance of law and policy while generating ocean governance initiatives. “Good Ocean Governance” as a new way of thinking, needs to be supported by legislation and decision makers. It is, therefore, necessary to examine whether the idea of good ocean governance exists within the international legal system and is subsequently subject to transfer into the domestic law. During this transaction process, a number of examples provided from the United States, Canada and Australia demonstrate the broad picture. The picture would not be entirely clear without discussions on the governance of marine resources, ship recycling and marine pollution, the impact of maritime clusters as well as social and culture impact of ports. The ultimate aim of this book is to tease out more new ideas and talks on ocean governance issues.

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# Chapter 1

## Getting Into a New Era: Good Ocean Governance

**Abstract** This chapter proposes eight elements which are the more commonly accepted as elements which contribute to the concept of good governance, these being, the *rule of law, participatory, transparency, consensus based decision making, accountable, equitable and inclusive, responsive and coherent*. The chapter also provides examples from international treaty and State practice for each element of good governance. The aim of this exercise is to distinguish each individual element of good governance for the purposes of establishing criteria for a further examination of practice. The outcome also provides an illustration as to what the elements of good governance may look like in international treaty and State practice. It can be concluded that each element of good governance is, to some extent, supported by international treaty and State practice.

**Keywords** Good ocean governance · Sustainable development · The rule of law · Transparency

### 1.1 Introduction

The current policy development in relation to oceans governance at international level is that existing mechanisms provide only sectoral governance structures. There are no clear mechanisms or policy approaches in place to foster cooperation and coordination in a way that could comprehensively and effectively address the conservation of marine ecosystems.<sup>1</sup> There are, rather, various bodies, which have specific objectives of their own.

The World Bank, for example, is considered to be a powerful instrument in fostering sustainable use of marine ecosystems, due to its role in international cooperation and global partnerships. While relevant marine ecosystem components

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<sup>1</sup> UN, *Report of Secretary-General*, 62nd Session 2007, A/62/66/Add.2, pp. 75.

are included in the design of the World Bank's projects, it is the fact that the latter is mindful of the difficulties in implementing good ocean governance policy at the national, regional and global levels.<sup>2</sup>

At the European level, the current shortcomings of a sectoral based approach have been identified<sup>3</sup> and, as a result, a more holistic good ocean governance approach is being encouraged.<sup>4</sup> As the *EU Maritime Green Paper* states, "Principles of good governance suggest the need for a European maritime policy that embraces all aspects of the oceans and seas."<sup>5</sup> The European Commission further explains that good governance and an integrated approach could help to move towards a more overarching strategy, which would more effectively unite the present sectoral policies for maritime activities and environmental policy.<sup>6</sup> Unfortunately, the European maritime policy does not seem to indicate clearly how good ocean governance might be achieved.

The current policy proposals in the UK also do not set out a clear approach as to how good ocean governance can be achieved. In 2002, the UK Government published *Safeguarding Our Seas*,<sup>7</sup> which sets out its vision for "clean, healthy, safe, productive and biologically diverse oceans and seas." In particular, it emphasizes the importance of stakeholder involvement and good fisheries governance.<sup>8</sup>

In Scotland, *Sea the Opportunity*<sup>9</sup> states that one of the key elements of maritime strategy is "promoting good governance."<sup>10</sup> *A Sea Change—A Marine Bill White Paper*<sup>11</sup> referred to the aforesaid proposal and it also emphasizes the importance of "promoting good governance" as an overarching approach to achieving the UK's sustainable development goal.<sup>12</sup> Unfortunately, none of the

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<sup>2</sup> UN, *Report of Secretary-General*, 61st Session 2006, A/61/63, pp. 56–57.

<sup>3</sup> Commission of the European Communities, *Towards a future Maritime Policy for the Union: A European Vision for the Oceans and Seas*, COM (2006) 275 final, Vol. I, pp. 4.

<sup>4</sup> Commission of the European Communities, *An Integrated Maritime Policy for the European Union*, COM (2007) 575 final, pp. 3–5; Commission of the European Communities, *Commission Staff Working Document*, SEC (2007) 1280, pp. 2.

<sup>5</sup> Commission of the European Communities, *Green Paper—Towards a future Maritime Policy for the Union: A European Vision for the Oceans and Seas*, COM (2006) 275 final, Vol. II-ANNEX, pp. 5.

<sup>6</sup> Commission of the European Communities, *Commission Staff Working Document*, SEC (2007) 1278, pp. 10.

<sup>7</sup> DEFRA, *Safeguarding Our Seas—A Strategy for the Conservation and Sustainable Development of our Marine Environment*, 2002.

<sup>8</sup> *Ibid.*, pp. 57.

<sup>9</sup> Scottish Executive, *Sea the Opportunity—A Strategy for the Long Term Sustainability of Scotland's Coasts and Seas*, August 2005.

<sup>10</sup> *Ibid.*, pp. 6.

<sup>11</sup> DEFRA, *A Sea Change—A Marine Bill White Paper*, March 2007, Cm 7047.

<sup>12</sup> *Ibid.*, pp. 8.

aforementioned proposals indicate clearly what elements contribute to ‘good governance’.

The central issue to be considered throughout this chapter is how best to govern the marine environment. ‘Sustainable development’, is of primary importance when considering marine environmental protection. The concept of sustainable development, however, has been criticized as being too vague and imprecise in content<sup>13</sup> and as a result, a clear and workable indicator is essential if progress is to be achieved.

‘Good governance’, is considered to be a positive and constructive element of sustainable development.<sup>14</sup> It is an open decision-making process which should involve public participation, the release of environmental information and access to environmental justice.<sup>15</sup> While there is a great deal of literature which considers the issue of ‘good governance’, what constitutes the elements of good governance is still the subject of debate. This chapter will, therefore, review literature in relation to good governance, in order to establish the elements which are required in order to constitute good governance. The paper will then draw conclusions as to which elements are essential to the concept of good governance.

Succinctly, it is proposed that there are eight elements which appear to be accepted as being the essential elements of good governance, which are, rule of law, participatory, transparency, consensus based decision making, equity and inclusiveness and responsiveness and coherence. These elements of good governance are considered, to some extent, to overlap.<sup>16</sup> Examples from international treaty and State practice will be provided to support each element of good governance. The aim is to distinguish each individual element of good governance for the purposes of establishing criteria for a further examination of practice.

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<sup>13</sup> Todd B. Adams, “Is there a Legal Future for Sustainable Development in Global Warming? Justice, Economics, and Protecting the Environment”, *The Georgetown International Environmental Law Review* (2003–2004): 16; Nancy Nelson, “Sustainable Development”, *Colorado Journal of International Environmental Law and Policy* (1997): 59–61; Lynda M. Warren, “Sustainable Development and Governance”, *Environmental Law Review* (2003): 79–81.

<sup>14</sup> Konrad Ginther and Paul J. I. M. de Waart, “Sustainable Development as a Matter of Good Governance: An Introductory View”, in Konrad Ginther, Erik Denters and Paul J. I. M. de Waart (ed), *Sustainable Development and Good Governance*, (London: Martinus Nijhoff Publishers, 1995), pp. 9.

<sup>15</sup> See Preamble of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus) 25 June 1998, came into force on 30th October 2001, 38 ILM 517 (1999).

<sup>16</sup> Organisation for Economic Co-operation and Development, *Improving Policy Coherence and Integration for Sustainable Development: A Checklist* (2002), pp. 2; Francis N. Botchway, “Good Governance: The Old, The New, The Principle, and The Elements”, *Florida Journal of International Law* (2001) no.13: 180–183.

## 1.2 The Elements of Good Governance

This section aims to explore the constituent elements which contribute to ‘good governance’. Before tackling ‘good governance’, there is a need to explore the term ‘governance’. There is no single definition of ‘governance’ and different approaches may be taken when considering its implication. Although the word ‘governance’ has to be generally understood as referring to actions dominated by government,<sup>17</sup> it is also commonly used in relation to private companies such as corporate governance.

The United Nations Development Programme (UNDP) defines governance as “the exercise of economic, political and administrative authority to manage a country’s affairs at all levels. It comprises the mechanisms, processes and institutions through which citizens and groups articulate their interests, exercise their legal rights, meet their obligations and mediate their differences.”<sup>18</sup> Similarly, the European Commission interprets governance as something that “concerns the state’s ability to serve the citizens. It refers to the rules, processes, and behaviours by which interests are articulated, resources are managed, and power is exercised in society.”<sup>19</sup>

The World Bank captures the economic dimensions of governance as being “the manner in which power is exercised in the management of a country’s economic and social resources for development”<sup>20</sup> The Asian Development Bank in considering its operation and defining the term governance as “the manner in which power is exercised in the management of a country’s economic and social resources for development.”<sup>21</sup>

Other writers interpret governance as “the way in which stakeholders interact with each other in order to influence the outcomes of public policies.”<sup>22</sup> Rotberg perceives governance as “the term used to describe the tension-filled interaction between citizens and their rulers and various means by which governments can either help or hinder their constituents’ ability to achieve satisfaction and material prosperity.”<sup>23</sup> Rhodes understands governance as “a change in the meaning of government, referring to a new process of governing; or a changed condition of

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<sup>17</sup> See *Concise Dictionary* (Harper Collins Publishers, 2001), p. 623; see also *Longman Dictionary of the English Language* (Viking, 1995), p. 682.

<sup>18</sup> UNDP, *Governance for Sustainable Human Development—A UNDP Policy Document*, January 1997, available from: <http://mirror.undp.org/magnet/policy/> last visited date: 21/12/2007.

<sup>19</sup> The European Commission, *Communication on Governance and Development*, October 2003, COM (03) 615.

<sup>20</sup> The World Bank, *Governance and Development*, Washington, 1992, p. 1; UNDP, *Governance Indicators: A User’s Guide*, p. 3, available from: <http://www.undp.org/oslocentre/docs04/UserGuide.pdf> last visited date: 21/12/2007.

<sup>21</sup> Asian Development Bank, *Governance: Sound Development Management*, August 1999, p. 3.

<sup>22</sup> Tony Bovaird and Elke Löffler, “Evaluating the Quality of Public Governance: Indicators, Models and Methodologies”, *International Review of Administrative Sciences* (2003), 69 no. 3: 316.

<sup>23</sup> Robert I. Rotberg, “Strengthening Governance: Ranking Countries Would Help”, *Washington Quarterly* (Winter 2004–5), 28:1, p. 71.

ordered rule; or the new method by which society is governed.”<sup>24</sup> Kjær promotes governance as “a mechanism that will help aid projects to promote economic growth and reduction of poverty, by becoming transparent, accountable and by following the rule of law.”<sup>25</sup> Pierre states that governance “is a rejection of the New Right’s claim that market mechanisms should substitute for political steering whenever possible.”<sup>26</sup>

Based on the aforesaid, governance can be perceived as being the relationship between a society and its government.<sup>27</sup> The concept of governance, therefore, encompasses not only law and the public authorities but also relates to government policies and its implementations.<sup>28</sup> It is now seen as the key that locks policy making and policy implementation together.<sup>29</sup> In an environmental connotation covering both human actions and environmental consequences, it comprises both “a series of technical and generally well defined measures governing physical interactions between human activities and marine environment; and [...] a general management dimension encompassing co-ordination of technical management measures, organisational decision-making, policy and strategic planning aspects.”<sup>30</sup>

The literature in relation to the development of the concept of good governance across time is also reviewed. The World Bank, in particular, has put a great deal of effort into developing indicators for evaluating the utility of development assistance and endorsing ‘good governance’ as a core element of its development strategy.<sup>31</sup> It has used an aggregate approach to identify three governance indicators, these being *government effectiveness*, *rule of law* and *grafi*.<sup>32</sup> This

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<sup>24</sup> R. A. W. Rhodes, “The New Governance: Governing without Government”, *Political Studies* (1996): 652–3.

<sup>25</sup> A. M. Kjær, *Governance* (Cambridge: Polity Press, 2004), Introduction.

<sup>26</sup> Jon Pierre ed., *Debating Governance: Authority, Steering, and Governance* (New York: Oxford University Press, 2000), pp 264.

<sup>27</sup> Peter Rogers and Alan W Hall, *Effective Water Governance*, Global Water Partnership Technical Committee, The Background Papers, No. 7, February 2003, p. 4.

<sup>28</sup> Marie Besançon, *Good Governance Ranking: The Art of Measurement*, World Peace Foundation Report, Number 36, 2003, p. 1, 7 and 8; see also Robert I. Rotberg, *supra* note 23, p. 71; Peter Rogers and Alan W Hall, *ibid*, p. 4.

<sup>29</sup> Andrew Allan and Patricia Wouters, ‘What Role for Water Law in the Emerging “Good Governance” Debate?’, available from <http://www.dundee.ac.uk/water/Documents/Conferences/2004/woutersGovernancearticleforAWRA.pdf>. last visited date: 18/03/2008.

<sup>30</sup> Hance D. Smith and Jonathan S. Potts, ‘People of the Sea—The British Maritime World’, in Hance D. Smith and Jonathan S. Potts (ed), *Managing Britain’s Marine and Coastal Environment—Toward a Sustainable Future* (London: Routledge, 2005), p. 14.

<sup>31</sup> Patrick Molutsi, “Tracking Progress in Democracy and Governance Around the World: Lessons and Methods”, available from: <http://unpan1.un.org/intradoc/groups/public/documents/un/unpan005784.pdf> last visited date: 22/12/2007; Carlos Santiso, “Good Governance and Aid Effectiveness: The World Bank and Conditionality”, *The Georgetown Public Policy Review* vol. 7 no. 1 (Fall 2001): 2.

<sup>32</sup> Daniel Kaufmann, Aart Kraay, Pablo Zoido-Lobaton, *Aggregating Governance Indicators*, The World Bank Policy Research Working Paper 2195 (October 1999), pp. 1–2, 5–7.