A Sketch of the Concept of Ocean Governance and Its Relationship with the Law of the Sea

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Introduction

Scientists, economists, politicians, lawyers, seafarers, maritime industry representatives, as well as non-governmental organization (NGO) campaigners all talk about oceans. They do so using different terms reflecting their diverse academic and professional background. Even among academics, the disciplinary divide makes inter-disciplinary communication difficult. Sometimes, similar terms are used differently in different disciplines or even in the same discipline.

For highly complex legal instruments such as the United Nations Convention on the Law of the Sea (LOSC),¹ whose negotiations involved perspectives from, inter alia, oceanography, geology, hydrography, geophysics, fishery sciences, economics, political science as well as law, a dialogue between legal and non-legal disciplines is inevitable for effective implementation. Article 76 of the LOSC on the definition of the continental shelf is an illustrative example where lawyers and geologists need to work together as they have different understandings of certain terms.

Inter-disciplinary communication is even more challenging when it comes to newly developed concepts. The term “ocean governance”² has gained increasing currency in contemporary discussions on ocean affairs and is widely used by lawyers and non-lawyers alike. Discourse on “ocean governance”

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² For the purpose of this contribution, the term “ocean governance” is used as a synonym for terms such as “marine governance” and “maritime governance,” despite slightly different connotations among these terms. To the extent the present author is aware, not only the last term but also the first two terms are aimed at the governance of human activities in the marine environment, rather than that of the marine environment as such. While the term “maritime” may have a sectoral connotation in some countries, it is not the only way to use it. See L. Juda, “The European Union and Ocean Use Management: The Marine Strategy and the Maritime Policy” (2007) 38 Ocean Development and International Law 270–271.
appears to pertain to the law of the sea, but its relationship with the law of the sea is unclear, *inter alia*, because the concept is often not precisely defined and is employed with different connotations by different authors. In the context of ocean affairs, is “law” part of the broader concept “governance?” Or do the concepts law and governance exist in parallel and separately, serving different purposes? Furthermore, is there any particular reason which calls for using this concept, instead of, or in addition to, the law of the sea? Or, put differently, is there anything wrong with the law of the sea which necessitates a new concept to address the problems of ocean space and its use?

This contribution examines the concept of ocean governance with a view to depicting its contour and relationship with the law of the sea. The next section briefly discusses the concept of governance. The third section of this chapter analyzes the concept of ocean governance as used by international organizations. The fourth and fifth sections of the chapter discuss the concept of ocean governance or the concept of governance in an ocean affairs context, by looking at the literature in, *inter alia*, the law of the sea and ocean policy. They focus on: what content is given to the concept, how the law of the sea is linked to ocean governance, and what implications the concept of ocean governance may have for the law of the sea. The chapter concludes with some remarks on the advantages and disadvantages of using the concept of ocean governance and the continued relevance of the law of the sea.

**Governance**

The concept of governance has been in use in political science as well as economics and, recently, has also been used quite frequently in legal research. While a simple interdisciplinary transfer of the concept is problematic, it is worth analyzing the concept used in other disciplines, particularly with regards to international relations.

The term governance has been defined in various ways in national and international contexts. In a national context, for example, it is defined “broadly as the traditions and institutions by which authority in a country is exercised,” including

1. The process by which governments are selected, monitored and replaced,
2. The capacity of the government to effectively formulate and implement

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3 K.-H. Ladeur, “Governance, Theory of” (September 2010) *Max Planck Encyclopedia of Public International Law*, available at <http://opil.ouplaw.com/home/epil>. For example, as of January 2014, 293 entries containing the word governance are found in 1638 entries in the *Max Planck Encyclopedia of Public International Law*.

4 Ibid.