PART ONE

PRINCIPLES AND OBJECTIVES OF THE LEGAL REGIME
GOVERNING AREAS BEYOND NATIONAL JURISDICTION
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1. Regime and Machinery

The idea of ‘governance’ does not belong to common legal parlance, even though lawyers, under the pressure of political scientists, have started using it. ‘Governance’ at least as far as the present writer understands it, contains something more than ‘government’. It includes the idea of ‘good’ government, government for the general interest of those governed, on the basis of commonly shared values and with the involvement of stakeholders. Also the idea of ‘government’ encompassed in that of governance does not coincide with the concept used under that name by lawyers. It has no reference to doctrines such as the separation of powers. It alludes to all forms of regulation and of the enforcement of such regulation in a given area or on a given subject. Sometimes the domestic law concept of ‘government’ is echoed in the use of the expression ‘governance gaps’ as against ‘regulatory gaps’ in opposing the lack of a competent organization to the lack of substantive legal rules in a geographical area or on a given subject. The latter distinction has been proposed recently on subjects concerning the oceans.1

Although expressed by other words, this distinction has been present since the beginning of the negotiations leading to the conclusion of the United Nations Convention for the Law of the Sea (LOS Convention).2 The 1970 Declaration of Principles Governing the Seabed and the Ocean Floor, and the Subsoil thereof, beyond the Limits of National Jurisdiction, a key starting point of that negotiation, as regards the mineral resources of the deep seabed, makes a distinction between a ‘regime’ and a ‘machinery’.3 It is clear that

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2 Adopted on 10 December 1982; 1833 UNTS 396.

3 UN General Assembly resolution 2749 (XXV) of 17 December 1970. Article 9 states in...