

# **The Ford Foundation, NGOs, and the United Nations Convention on the Law of the Sea**

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## Abstract

While not well known among the general public, the 1982 United Nations Convention on the Law of the Sea remains one of the most important global environmental agreements ever reached. Under the auspices of the United Nations, delegates from over 150 nations worked for almost a decade to develop a comprehensive legal regime to govern the oceans. Yet these delegates did not discuss and debate alone. They were joined by a transnational network of activists, lawyers, scientists, and other professionals concerned with humanity's changing relationship with the oceans. Between the late 1960s and early 1980s, nongovernmental organizations (NGOs) brought these different groups together in conferences, workshops, and other informal gatherings to advance scholarship, shape policy, and educate the public. But without the direct sponsorship of participating states, NGOs had to look elsewhere for the resources necessary to realize their mission. Philanthropic organizations, such as the Ford Foundation, often supplied a crucial source of funding. With the financial backing of wealthy foundations, smaller NGOs could explore ideas, establish relationships, and highlight voices left out of the official negotiations.

# **The Ford Foundation, NGOs, and the United Nations Convention on the Law of the Sea**

Outside of policy circles or legal studies, not many have heard of the United Nations Convention on the Law of the Sea.<sup>1</sup> Yet the Convention remains one of the most important global environmental agreements ever reached. Drafted under the auspices of the United Nations (UN), it was completed in 1982 and entered into force in 1994. The main forum for negotiations, the Third United Nations Conference on the Law of the Sea, opened at UN headquarters in New York City in December 1973 and closed nine years later in December 1982 with a signing ceremony in Montego Bay, Jamaica. Over the course of eleven sessions, delegates from over 150 nations, representing all areas of the world, developed a comprehensive legal regime that outlined the rights and responsibilities of states in their use of the oceans. Consisting of 320 articles with nine annexes, the Convention codified traditional legal principles and set out new rules and regulations covering everything from territorial limits and scientific research to environmental conservation and natural resource use. At the Convention's signing ceremony, Tommy T.B. Koh, president of the Conference, called it simply: "A constitution for the oceans."<sup>2</sup>

During the many Conference sessions, thousands of national delegates descended on UN buildings in New York and Geneva to carry out their work. But they did not discuss and debate alone. To a striking degree, they relied on the efforts of a transnational network of activists, lawyers, scientists, and business interests. The lengthy list of intergovernmental organizations (IGOs) and nongovernmental organizations (NGOs) attending the Conference sessions testifies to their important role in the negotiations. In his concluding remarks at the signing ceremony, President Koh noted that NGOs, in particular, supplied the Conference with an independent source of information, helped reduce the technical gap between developed and developing countries, and provided alternative spaces to discuss some of the Convention's most intractable issues.<sup>3</sup> But without the direct sponsorship of participating states, NGOs had to look elsewhere for the financial

support to carry out this important work. Private organizations, such as the Ford Foundation, often provided a crucial source of funding. With the financial backing of wealthy foundations, smaller NGOs could explore ideas, establish relationships, and facilitate negotiations outside of official channels.

The financial support given to NGOs and other organizations working on the Convention reflected a larger interest among private foundations to explore issues around the environment, in general, and the oceans, in particular. In a 1970 memorandum to Ford Foundation President McGeorge Bundy, David E. Bell, the head of Ford's Office of European and International Affairs, outlined the reasons behind this new focus. For much of human history, Bell maintained, humanity had to content itself with moving across the ocean's surface or drawing resources from shallow, coastal waters. But during the 1950s and 1960s, advances in scientific understanding and technological capacity had upended the traditional human relationship with the oceans. New deep-water technology created "staggering opportunities" for resource extraction, while ocean science simultaneously revealed that human activities could exploit natural resources to the point of "permanent depletion" and "seriously damage" the marine environment altogether. In addition, the desire of national governments to capture ever-growing yields of natural resources, as well as use the seabed to advance national security concerns, pushed states to make "ominous extensions" of national sovereignty over their coastal waters. Given this "crescendo" of ocean issues, Bell argued, the Ford Foundation should approach the marine sciences field "cautiously and experimentally," placing a priority on "improving the contributions of social scientists" and developing the expertise necessary to "deal with the looming policy issues."<sup>4</sup>

Alongside his memorandum to Bundy, Bell recommended that the Ford Foundation provide funding for two projects that would address this new area of concern. The first grant, amounting to \$226,000 over three years, would go to the Scripps Institute of Oceanography at the University of California, San Diego, to help establish a new Center for Marine Affairs. The Center would bring together researchers at Scripps, experts in the marine sciences, with social scientists and other professionals concerned with the growing range of ocean issues. In the

words of the grant precis, the Center would “provide a training ground” for academics and professionals eager to address the “political dimensions of the oceans,” a service that Bell noted was sorely needed. The second grant, amounting to \$139,000 over three years, would go to the Law of the Sea Institute at the University of Rhode Island to support the Institute’s efforts to expand international participation in conferences and workshops on the Law of the Sea Convention and other related ocean issues. The wide range of concerns combined with the diversity of national interests and sovereign claims meant that advancing scholarship and public policy on the oceans required the participation of academics and professionals from around the world.<sup>5</sup>

A closer look at the Law of the Sea Institute’s project illustrates the concrete ways funding from private foundations underwrote the intense debate and discussion around the Law of the Sea Convention. Founded in 1965 at the University of Rhode Island, the Law of the Sea Institute brought together lawyers, scientists, governmental officials, and other people interested in presenting research and offering commentary on key issues concerning the use of the oceans. Initially led by John Knauss, Lewis Alexander, and William Herrington, the Institute held an annual summer conference and published the conference proceedings alongside other research materials. With the grant from the Ford Foundation, the Institute sought to expand its activities by sponsoring foreign participation in the annual conference, convening specialized workshops, funding Ph.D. fellowships, and covering its publication costs. Based on the subsequent reports filed with the Ford Foundation, the Institute used the foundation’s funds with great success.

In spring 1971, Lewis Alexander reported to the Ford Foundation on the first year of the Institute’s grant. Alexander noted that, as proposed, the funds were primarily used to bring foreign participants to its annual conference at the University of Rhode Island and for the convening of a specialized workshop on bilateral issues between the United States and Canada. Held in the summer of 1970, the Institute’s annual conference focused on the prospect of securing a comprehensive agreement on the oceans at the upcoming Third UN Conference on the Law of the Sea. According to Alexander, the conference participants concluded that the prospects for a new ocean agreement appeared dim. Pronounced differences between nations in the Global North and South—“the

‘haves’ vs. the ‘have nots’—would pose a serious obstacle. Nations in the Global South, Alexander emphasized, believed that the oceans could help them grow their national economies and solve the pressing issue of hunger, if only they had access to new ocean technology. The nations of the Global North, in contrast, refused to relinquish their historical control over large swathes of the oceans, which largely resulted from their own control over leading technologies. Yet despite the gloomy view about securing a new ocean agreement, Alexander noted that participants viewed the annual meeting as “most productive,” largely due to the increased participation of people from outside of the United States.<sup>6</sup>

The specialized workshop on the bilateral disputes between the United States and Canada also proved useful. In his report, Alexander noted that the format of the workshop led to “candid discussion” and a “free give and take” among the participants. The attendees met around a single table and engaged in open debate rather than offering formal readings of prepared papers. In addition, the organizers did not have a verbatim transcript made so as to encourage forthright conversations. In Alexander’s view, the workshop provided one of the first opportunities for proponents of differing, and even controversial, positions on bilateral issues concerning the oceans “to create better mutual understandings and at the same time identify mutual interests.”<sup>7</sup> The foreign participants in the Institute’s activities largely agreed with Alexander’s assessment. In remarks included with the report sent to the Ford Foundation, Donald Kaniaru, one of Kenya’s delegates to the United Nations, praised the informal character of the meetings and the Institute’s commitment to considering the interests of Global South nations. In Kaniaru’s estimation, the ability of government officials to speak their minds, as well as the presence of scientists and scholars who emphasized issues other than political or economic concerns, greatly enriched the overall discussions.<sup>8</sup> In the report’s conclusion, Alexander signaled that the Institute planned to build on this success by featuring even more diverse voices in the future.

Beyond enriching the academic and policy conversation around ocean issues, funding from private foundations often helped NGOs participate directly in the Third UN Conference on the Law of the Sea. Financial support from the Ford

Foundation for the US Advisory Committee on the Law of the Sea reveals how vital private sources of funding were to expanding and diversifying participation in the lengthy negotiations over the Convention. The US Advisory Committee was founded in 1972 with the purpose of advising the US Department of State and the White House's National Security Council (NSC) on official ocean policy. The committee was led by the chairman of the NSC's Interagency Task Force on the Law of the Sea, who named various members of the public to serve on the committee and reported directly to the US secretary of state. The members generally numbered around sixty and were organized into subcommittees on different areas, such as the maritime industry, marine science, international law and relations, and the environment, among others. The committee usually met twice a year for the duration of the Conference to give advice and input on the US government's changing policy positions and negotiating tactics.<sup>9</sup>

In the summer of 1973, the American Society of International Law (ASIL), a nonprofit educational organization founded in 1906 to foster the study of international law, sought funding from the Ford Foundation to ensure that some members of the US Advisory Committee could attend the Conference, which was set to begin later that year. Although the US government sought input from committee members on its ocean policy, it provided no funds for the members to attend the Conference in person. While members representing private industry had easy access to the necessary resources, members serving on the environment and international law and relations subcommittees, who were often academics, had greater difficulty paying their way. ASIL sought to rectify this imbalance, and further its own research on ocean law in the process, by helping several leading experts to attend some of the Conference sessions. In its grant proposal, ASIL emphasized the high stakes of the project. The Third UN Conference on the Law of the Sea, the proposal asserted, "promises to be one of the stormiest and most bitter international negotiations in modern history." Not only would it cover "particularly sensitive issues" in the relations between nations in the Global North and South, but it would address a number of "vital national interests" concerning strategic, economic, and environmental issues. As a result, ASIL had concluded that sending select members of the US Advisory Committee to the Conference would be "extremely valuable and crucial." Administrators at the Ford

Foundation found this case convincing, ultimately agreeing to fund the proposal over several years.<sup>10</sup>

In the final report on the grant, John Lawrence Hargrove, writing for ASIL, deemed the project a great success. Hargrove described how the funding allowed certain members of the US Advisory Committee to attend the first three Conference sessions held in Caracas, Geneva, and New York, respectively. Placing a precise value on their attendance, Hargrove warned, would be “a bit speculative and subjective.” But based on his general impressions, the attendees supplied a valuable “pool of insight and expertise” that made a “marked impression” on the formulation of US policy. One of the attendees, Louis Sohn, an economist at Harvard University, was even made an official member of the US delegation. The committee members also helped further ASIL’s own work on ocean issues by providing “a continuing source of direct experience” from the Conference. The written reports and informal advice from those in attendance contributed to several scholarly publications organized by ASIL. In Hargrove’s view, the project proved useful, even if the Conference ultimately lasted longer than the funding.<sup>11</sup>

As Hargrove’s report suggests, NGOs working on the Law of the Sea Convention could not always count on the support of private foundations. While the Ford Foundation played a crucial role in funding research on the Convention, administrators there sometimes cast a critical eye on such projects. In early 1982, Ford received grant proposals from Duke University and the Law of the Sea Institute, now housed at the University of Hawai’i. Duke University sought to bring together high-profile members of the Conference, such as President Tommy Koh and James Malone, chief of delegation for the United States, to participate in an international research symposium. The Law of the Sea Institute proposed a similar gathering of scholars and officials, though this time focused on facilitating discussion between the United States and West Germany over their mutual interests in the Law of the Sea. Yet in a letter to outside readers, Enid C.B. Schoettle, program officer in charge for the International Affairs Program, noted that the Ford Foundation had entered a period of “financial stringency.” As a result, only the “most competitive and important projects” could receive funding. Therefore, Schoettle asked two outside readers, Deborah Shapley, an editor at the

prominent science journal *Nature*, and John Temple Swing, vice president and secretary of the Council on Foreign Relations, to comment on the two proposals. In particular, Schoettle asked the readers to consider the expected contributions to scholarship, the policy implications, and the appropriateness of the proposed budgets and participants.<sup>12</sup>

Both readers discussed the symposium at Duke University with a general ambivalence. Deborah Shapley described the proposal as “well researched and well informed,” emphasizing that it appeared to be a serious effort to engage key figures at the Conference. Yet she also noted that prominent officials rarely wrote useful papers for the public, which cast doubt on the meeting’s scholarly contributions. She suggested encouraging the university to attract outside scholars who could write well and “produce some good, thoughtful, long-term looks on the situation.”<sup>13</sup> For his part, John Temple Swing questioned the hosts’ credentials and the proposed list of participants. He noted that for an “international” symposium, only one participant appeared to be from outside the United States. Moreover, none of the professors organizing the event seemed to have any special expertise on the Law of the Sea. In his view, the project failed to address any of the criteria laid out by Schoettle, offering little more than an educational opportunity for the local Duke community.<sup>14</sup>

The skeptical comments on Duke University’s proposal paled in comparison to the withering critique leveled at the one from the Law of the Sea Institute’s. Although Swing viewed the Institute favorably, he wrote that despite reading and re-reading the proposal several times, he could not find “even a prime facie [*sic*] case” to justify the project. He pointed out that as close allies, the United States and West Germany would have little to debate, their positions were already well known, and the aspects of the Convention slated for discussion had long been settled.<sup>15</sup> Shapley added insult to injury, contending that the organizers seemed uninformed about their own project and appeared not to have even proofread the document. She went on to contend that the proposed topics for papers were unclear, and more importantly, “five papers in three days, with a tour of Bavarian castles, does not suggest a lot of work will be done.” “The idea is good,” she offered, “but the execution poor.”<sup>16</sup> While funding from the Ford Foundation had once

flowed freely, financial constraints and a waning interest in the Conference served to stymie continued support for projects on the Law of the Sea.

Critical readers and budget constraints aside, private foundations played an important role in supporting NGOs working on the Law of the Sea Convention. While national delegates warred over minute changes in language during the negotiations, NGOs created alternative spaces to discuss and debate ocean issues in a free and open environment. The members of these organizations formed a transnational network between the late 1960s and early 1980s, and their efforts largely succeeded in advancing scholarship, shaping public policy, and educating the public. With their conferences and workshops, NGOs expanded the range of actors and extended the list of questions needed to place the Law of the Sea Convention in a wider context and longer historical trajectory. In their informal meetings and published papers, they explored pressing ocean issues, such as the changing relationship between human societies and the marine environment, the unequal relations between nations in the Global North and South, and the perils and prospects for the oceans created by advances in science and technology in the decades after 1945. Much of this work would have been difficult, if not impossible, without the generous support of philanthropic organizations like the Ford Foundation. Although regular funding could sometimes disappear, and internal priorities often prevailed over idiosyncratic projects, the flow of money and web of contacts made possible by private foundations allowed NGOs to productively weave themselves between closely-guarded delegates and the formalities of multilateral institutions.

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<sup>1</sup> Text of the convention is available at:  
[https://www.un.org/depts/los/convention\\_agreements/convention\\_overview\\_convention.htm](https://www.un.org/depts/los/convention_agreements/convention_overview_convention.htm) (accessed 20 July 2020).

<sup>2</sup> United Nations Conference on the Law of the Sea, *The Law of the Sea: Official Text of the United Nations Convention on the Law of the Sea with Annexes and Index: Final Act of the Third United Nations Conference on the Law of the Sea: Introductory Material on the Convention and the Conference* (New York: United Nations, 1983), xxxiii. Koh's remarks are also available at the web address listed above.

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- <sup>3</sup> United Nations, *Law of the Sea*, xxvi.
- <sup>4</sup> Memorandum, David E. Bell to McGeorge Bundy, 9 June 1970, Ford Foundation records, Grants U-Z, University Of Rhode Island (07000438), 1970 July 15–1975 March 31, Reel 113, RAC.
- <sup>5</sup> Bell to Bundy, 9 June 1970, RAC.
- <sup>6</sup> Letter, Lewis M. Alexander to Alessandro Silj, 31 August 1971, Ford Foundation records, Grants U-Z, University Of Rhode Island (07000438), 1970 July 15–1975 March 31, Reel 113, RAC.
- <sup>7</sup> Alexander to Silj, 31 August 1971, RAC.
- <sup>8</sup> “Impressions of D.W. Kaniaru In Brief,” Donald Kaniaru, 6 July 1971, Ford Foundation records, Grants U-Z, University Of Rhode Island (07000438), 1970 July 15–1975 March 31, Reel 113, RAC.
- <sup>9</sup> U.S. Congress, Senate, Committee on Commerce and The National Ocean Study Policy, *The Third U.N. Law of the Sea Conference*, 94<sup>th</sup> Cong., 1<sup>st</sup> sess., 1975, S. Res 222, 48-49.
- <sup>10</sup> Memorandum, David E. Bell to McGeorge Bundy, 23 July 1973, Ford Foundation records, Grants S-Thel, The American Society of International Law (07300632) 1973 May 01–1976 July 31, Reel 3044, RAC.
- <sup>11</sup> Letter, John Lawrence Hargrove to Bruce Bushey, 17 May 1977, Ford Foundation records, Grants S-Thel, The American Society of International Law (07300632) 1973 May 01–1976 July 31, Reel 3044, RAC.
- <sup>12</sup> Letter, Enid C.B. Schoettle to John Temple Swing, 16 March 1982, Ford Foundation records, Grants U-Z, University of Hawaii Foundation (08350346) 1983 March 01–1986 February 28, Reel 4584, RAC. *An identical letter was also sent to Deborah Shapley.*
- <sup>13</sup> Letter, Deborah Shapley to Enid C.B. Schoettle, 15 April 1982, Ford Foundation records, Grants U-Z, University of Hawaii Foundation (08350346) 1983 March 01–1986 February 28, Reel 4584, RAC.
- <sup>14</sup> Letter, John Temple Swing to Enid C.B. Schoettle, 30 March 1982, Ford Foundation records, Grants U-Z, University of Hawaii Foundation (08350346) 1983 March 01–1986 February 28, Reel 4584, RAC.
- <sup>15</sup> Swing to Schoettle, 30 March 1982, RAC.
- <sup>16</sup> Shapley to Schoettle, 15 April 1982, RAC.