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New and Emerging Challenges to Ocean Governance

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Over the last ten years we have witnessed a paradigm shift in ocean governance that is the result of new and emerging challenges that were unforeseen in the eighties and nineties. The paradigm shift is imposing on all stakeholders a major departure from the conventional wisdom that the established ocean governance architecture can respond adequately to these new challenges as well as to the systemic governance deficit inherent in flag state jurisdiction, scope of application of the common heritage principle and ineffective international and regional enforcement of international agreements to safeguard the health of the ocean and the sustainability of its resources.

We can identify three overarching new and emerging challenges namely climate change, security (economic, human, ecological and political) and the global economic and financial crisis. The convergence of these three factors in time and space has created the proverbial *perfect storm*. What is particularly new is that they have proven not to be discreet and independent parameters that impact specific sectors but that they co-relate and are interdependent in their cause and effect. The consequences of these developments thus go to the heart of the issue of global peace and security. The undeniable interlinkages of climate change, food security and illegal migration or the linkages of global economic crisis, failed states and emerging global piracy can only be compared with fisheries policies (subsidies, unfair access agreements) leading to food scarcity and economic asylum seekers or to the nexus of climate change and melting of the ice caps, emerging seabed claims and counter claims and rising political tension. The vicious circle then develops into a spiral of global confrontation. Conversely, when land and sea borne pollution change the chemistry, temperature and currents of the ocean, the ensuing extreme weather of hurricanes, storm surges, flooding and desertification lead to massive population displacements. When the ocean becomes a catalyst in the state of global peace and security, the governance *status quo* becomes an exercise in futility. It seems that the rollback of the so called early promise of globalisation has perhaps ushered in the new age of *Maribus*.

Addressing the *lacuna* in Ocean Governance: A call for coherence

Colleagues, what the evidence is telling us are that the “*deteriorating health of the ocean is a profound distortion of humanity’s purpose on earth*”¹. To correct that distortion there is a need for a change of mind-set, as the governance architecture has failed to protect the ocean and its resources to the detriment of our humanity. Governance of the ocean is a complex web of inter-related, interdependent, converging, conflicting and competing demands and interests. There is no silver bullet solution as there is not a one-size-fits-all solution. National and regional ocean policies have proved inadequate for the simple reason that current policies produce incoherent sectoral solutions that are irreconcilable and ineffective as is evidenced in current fisheries policies. The contradiction and disconnect between environment and fisheries policies of some of the most developed countries is profoundly perplexing.

At the international level there is an urgent need to balance the ecological, social, cultural, economic, legal and technical parameters of policy perspectives in the management of the ocean. Ocean governance at the international level is a vast collection of binding and non binding rules, protocols and all other forms of hard and soft agreements. These are diffused among a myriad of sectoral, international and regional organisations that have the responsibility for monitoring implementation but lack the means and authority to ensure compliance and enforcement and above all incapable of ensuring coherence.

Calls for coordination and cooperation among all relevant parties and stakeholders are frequently sounded. In the context of the UN System, UN-OCEANS was established for such a purpose. The problem is that coordination and cooperation do not address the root cause but the symptoms. In most cases, the absence of enforceable mechanisms that ensure coherence and compliance has contributed to the current unacceptable situation of turbulence and uncertainty in managing the ocean and the interdependent consequences of dynamics of the three challenges: climate change, security and recurrent financial and economic crises.

It is not the absence of an enabling legal environment that is the problem; having a constitution does not automatically result in compliance or coherence of policies. Institutional coherence in implementation is evidently lacking - the environment, uses, health and resources of the ocean are fragmented among numerous bureaucracies. The international institutional governance architecture lacks the capacity of a single overarching entity that can create holistic paradigm for ocean governance that extends and promotes universal jurisdiction with an institutional oversight.

There is no doubt that the complex nature of the oceans and divergent sectoral interest and demands of all actors make coherence a difficult goal to achieve, but the side effects can be to a large extent mitigated by policies and measures that promote partnerships among stakeholders and an inclusive environment for the interaction of civil society – the advocacy, the business community, the scientific community and policy makers. A culture of partnership of all stakeholders may contribute to a more coherent implementation of policies at national and international levels, and promote mutual appreciation of each others’ interests. For that to work the international community is in need of a new institutional mechanism that can provide the necessary oversight.

IOI has, for the last four years, echoed the conclusions of the Oceans Commission and has called for the appointment of a Special Representative of the United Nations Secretary General for the Ocean, albeit, a goodwill ambassador or ombudsman. The establishment of such a high office in

¹ A. Behnam, IOI Annual Report, 2005. <www.ioinst.org>

the UN may provide solutions to many areas where contradictory policies are either formulated or implemented. Such a Representative would have authority to make direct representation to those with the power to effect change while at the same time giving a voice to civil society.

IOI has - in partnership with Mare - embarked on a major project to contribute to the current dialogue on the oceans by commissioning the World Ocean Review (WOR) that aims at putting together the latest results in research on a large variety of marine sciences by engaging some one hundred independent scientists from all disciplines. "The Future Ocean", a partner network of 5 faculties and 26 institutes, amongst them for example the Leibniz Institute of Marine Sciences IFM-GEOMAR and the Kiel Institute for the World Economy will be contributing to this project

In "The Future Ocean", experts from diverse specialist areas will combine their expertise so that lawyers and geoscientists will work together to investigate issues of how and who has the right to exploit resources on the seafloor, climatologists and economists will collaborate on the question of what conditions make CO₂ storage on the seafloor a relevant option; marine scientists, medics, mathematicians, chemists, engineers and social scientists are dedicating themselves to further questions.

The review will cover such themes as the consequences of the climate change on the ocean, marine natural resources and overfishing, seafloor resources and energy, transport and logistics, anthropogenic influences and marine pollution, sea level rise and coasts at risk, marine medicine and law of the sea.

The Review will be first published in autumn 2009 and the corresponding website from which all articles may be downloaded free of copyright will be concurrently available. Subsequent annual publications will emphasise different topics of relevance. The initial circulation will be 20,000 copies and will be available at no cost for use by journalists, policymakers, teachers and the interested general public.

The participation in this process of civil society, and particularly non-governmental organizations such as the IOI, is indispensable: civil society brings community groups to the centre of the decision-making process, provides facts and information, monitors compliance with, and implementation of decisions, and consequently safeguards grassroots collective interests. The Informal Consultative Process of the UN General Assembly (ICP) which the late founder of IOI, Elisabeth Mann Borgese, was instrumental in creating has provided a unique opportunity for civil society to have a voice in multilateral dialogue on ocean affairs. While the ICP does not provide an institutional oversight, it remains the only UN forum that gives a voice to the ocean and civil society. The United Nations General assembly session held on 4th December of 2008 adopted a resolution on the topic of focus of the next meeting of the UN Open-ended ICP on Oceans and the Law of the Sea as the: *"Implementation of the outcomes of the Informal Consultative Process, including a review of its achievements and shortcomings of its first nine meetings"*. The ICP is an acquired right of the civil society to have a say on ocean issues in the UN forum which must be safeguarded.

In conclusion, governance of the oceans is a collective as well as an individual responsibility. There is no dearth of governance tools to comply with, what appears to be lacking is the political will and commitment at all levels to ensure implementation and compliance and above all, a knowledge based institutional oversight that gives a voice to the Ocean.