

UNEP input to the EU public consultation on International Ocean Governance

1. Context

The EU Consultation on international ocean governance stipulates that: “[T]here is no internationally recognised definition of ‘international ocean governance’. The term ‘ocean governance’ includes rules, institutions, processes, agreements, arrangements and activities carried out to manage the use of oceans and seas in an international context. Today’s international ocean governance framework is based on an overarching legal framework (the ‘Law of the Sea’) under which a combination of jurisdictional rights, institutions, and specific frameworks have been set up. A significant number of global actors are making the case that the current international ocean governance framework is not effective enough in ensuring the sustainable use of oceans and their resources for the future, and have announced initiatives to improve this.”

Oceans are of vital importance to the international community. Not only for their living and non-living resources, or the shipping and other maritime uses they facilitate, but also for the key role they play in the global climate and weather system. The marine environment, its resources and its biodiversity are under increasing threat by human activities – both maritime and terrestrial. Anthropogenic climate change, other forms of sea-based and land-based pollution, habitat destruction, accidental or intentional introductions of alien species, over-exploitation of renewable resources and destructive fishing practices are among the most serious threats. While each of these threats requires dedicated, separate attention, there is increasingly wide support for more holistic and integrated governance approaches that take due account of the spatial dimension and functioning of ecosystems. This paper uses the concept of ecosystem-based management (EBM) to refer to such approaches.

2. General Problem Definition

“Recent discussions and initiatives”, the EU consultation paper stipulates, “conclude that the current framework for international ocean governance is not effective enough in ensuring the sustainable management of oceans and their resources. Also, the sheer number of oceans-relevant international institutions and sector-specific agreements and rules complicates or even hampers implementation, the paper states.”

A holistic approach to oceans management was explicitly stimulated by Agenda 21, as developed at the 1992 United Nations Conference on Environment and Development (UNCED or Rio Summit). Chapter 17 of this action plan for the 21st century observes that the marine environment, including the oceans and all seas and adjacent coastal areas, form an integrated whole. Marine and coastal area management therefore requires an integrated approach in

content, at the national, (sub-) regional and global levels. Such an integrated approach requires the involvement of all sectors for efficient coordination between organizations, compatibility between policies and activities, as well as a balance of uses¹ as reflected in the provision of the United Nations Convention on the Law of the Sea (UNCLOS)² which provides the international basis for the protection and sustainable development of the marine and coastal environment and its resources. At Rio+10 in Johannesburg, 2002, the commitments to the Rio Principles and Agenda 21 were reaffirmed. The Johannesburg Plan of Implementation (JPOI) paid much attention to the three components of sustainable development (economic development, social development and environmental protection) as interdependent and mutually reinforcing pillars³.

At Rio+20, in Rio de Janeiro, 2012, the earlier commitments were reaffirmed again in the oceans section of the outcome document 'The Future We Want'⁴.

The post-2015 framework for sustainable development has just been finalised at the United Nations. It aims to include a number of Sustainable Development Goals, aimed directly or indirectly at the conservation and sustainable use of the oceans, seas and marine resources for sustainable development. Most notably the package of ocean and seas issues reflected in SDG 14⁵: "Conserve and sustainably use the oceans, seas and marine resources for sustainable development", with its seven targets and three provisions on means of implementation is a very important one. The goal itself, its targets and means of implementation reinforce and give renewed focus and urgency to existing international prescriptions on oceans and seas emanating from the 1992 United Nations Conference on Environment and Development, the 2002 World Summit on Sustainable Development, the 2012 United Nations Conference on Sustainable Development (Rio+20), and the United Nations Convention on the Law of the Sea, which came into force in 1994.

The Post-2015 framework and in particular the implementation and monitoring of SDG 14 should therefore assist in framing and guiding the future governance framework of the oceans.

The provisions in the UNCLOS on the protection and preservation of the marine environment and fisheries are complemented by a large number of global instruments and bodies aimed at the conservation of marine biodiversity in general, the conservation of specific marine species and habitats, and addressing specific threats to marine biodiversity. The CBD and its Cartagena and Nagoya Protocols are the principal global instruments on the conservation of biodiversity in

¹ Earth Summit. Agenda 21: The United Nations Action Programme from Rio, para. 17.5(a). Available at: <http://sustainabledevelopment.un.org/content/documents/Agenda21.pdf>

² Montego Bay, 10 December 1982. In force 16 November 1994, 1833 *United Nations Treaty Series* 396; <www.un.org/Depts/los>.

³ World Summit on Sustainable Development (2002), Plan of Implementation. Available at http://www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/WSSD_PlanImpl.pdf

⁴ UN doc. A/CONF.216/L.1, of 19 June 2012.

⁵ <https://sustainabledevelopment.un.org/sdgsproposal#goal14>

general. Article 22(2) of the CBD specifies that its Parties shall implement it with respect to the marine environment consistently with the rights and obligations of states under the law of the sea.

2. 1 Do you agree or disagree with this general problem definition?

No, the above definition is not comprehensive enough.

2.2 Please explain why!

The section defining the scope of “international ocean governance” is very general, not providing the necessary detail on the actual challenges associated with international ocean governance frameworks. The proposed statement may thus be complemented by a more detailed general problem definition.

Moreover, the definition of “international ocean governance” is addressing governance solely “in an international context”. The definition of international ocean governance does not make specific reference to regional or national governance frameworks. Different countries and regions have varied levels of application of international policy and legislation frameworks as well as ratification and implementation of international agreements. The proposed definition would benefit from being modified to clarify that international ocean governance includes the implementation of relevant rules and regulations at the national or regional levels. Ratification of relevant agreement is often related to national level competences and the current statement does not link the national level ratification and implementation with the international instrument implementation.

In particular, regional ocean governance plays an important role in international ocean governance. In the area of marine environmental protection, UNCLOS (Article 197) stipulates that “[S]tates shall cooperate on a global basis and, as appropriate, on a regional basis, directly or through competent international organizations, in formulating and elaborating international rules, standards and recommended practices and procedures consistent with this Convention, for the protection and preservation of the marine environment, taking into account characteristic regional features.” In implementing this clause, for example through the Global Programme of Action for the Protection of the Marine Environment from Land-based Activities (GPA)⁶, and regional seas programmes⁷, different states have shown different levels of progress in the relevant actions designated under the international instruments and programmes.

⁶ GPA: <http://www.gpa.unep.org>
<http://www.unep.org/regionalseas> ⁷

When considering the linkage between the international level governance frameworks and national/regional level implementation, priority issues and processes for addressing these are very different depending on the geographical level of implementation. The general problem definition would therefore greatly benefit from this differentiation at the international, regional and national levels.

3. Specific Problem Definition: what causes the overall problem?

The causes of ineffective international ocean governance could be explained by:

- Gaps in the existing international ocean governance framework
- Inefficient use and implementation of the existing international ocean governance framework, or insufficient coordination among its components
- A lack of knowledge about the oceans

(i) Do you agree with the list of specific problems?

No, the definition is not comprehensive enough.

(ii) If you do not agree, please explain why!

The above elements are certainly part of a problem definition for international ocean governance but the definition would benefit from further elaboration.

For example, the statements such as *“gaps in the existing international ocean governance framework”* may need to be elaborated and analysed to provide additional clarity. As At this moment additional information and assessment is needed on what type of governance gaps exist at the international level with concrete proposals on how these gaps can be bridged. On many of the ocean related issues, there are international level forum(s) where collective international decisions can be made (for example, IMO for navigation issues. GPA for land-based sources of pollution, etc.).

The need for enhanced coordination among these fora and their components is crucial for effective ocean governance. There are also important gaps in the implementation of the international agreements and programmes at the regional and national levels which need to be addressed.

Even though there is an increasing level of knowledge about the oceans, part of the problem statement should be addressing the general lack of knowledge-sharing of existing information, and effective frameworks for improved learning and knowledge enhancement.

(iii) Which specific problems would you add?

We would consider the following as problem definition:

- Lack of or limited nature of the implementation and enforcement mechanisms of the UNCLOS, except those parts related to specific implementation agreements;
- Duplicating and/or overlapping mandates and scope of programmes under international and regional organisations for oceans, their environment and resources;
- Insufficient use of regional ocean governance frameworks, taking into account that regional cooperation is widely recognised as an effective means of ocean governance, and seen as an integral part of international instruments. The states that are parties or members of international agreements are also members of these regional ocean governance frameworks (particularly regional seas programmes and regional fisheries bodies) where issues can be addressed in more detail at a regionally relevant level with validation of national interests and priorities.
- Modern governance principles, such as the ecosystem approach, the polluter pays principle, the precautionary approach, sustainable consumption and production approach, etc. have not been sufficiently integrated into the international ocean governance framework.
- There are different ocean governance structures and processes at global, regional and national levels. These processes and structures are not sufficiently connected with each other, not working in synergies and not building on the comparative advantage of each of its key stakeholders, thereby hampering the effective implementation of action at these three levels and the necessary leveraging of resources.

(iv) If you were to rank the list of specific problems by priority, which one would come first?

- The problem of often duplicating and/or overlapping mandates and scopes of programmes of international and regional organisations with respect to ocean governance seems to be the most important priority to address.

3.1 The existing international Ocean Governance Framework

Regional oceans governance mechanisms operate under the global framework for the law of the sea, whose cornerstone is the United Nations Convention on the Law of the Sea (UNCLOS) and its two Implementing Agreements (on deep-sea mining and fish stocks). A new Implementing Agreement on marine biodiversity in areas beyond national jurisdiction – which

may culminate in a legally binding obligation on EBM – is currently considered under the auspices of the United Nations General Assembly (UNGA).

A large number of global and regional instruments and bodies either implement the UNCLOS and its Implementing Agreements, complement them, or do both. Chapter 2 provides an overview of relevant key features of the UNCLOS and its Implementing Agreements as well as other related global instruments and bodies. Separate subsections focus on the ‘protection and preservation of the marine environment’, ‘fisheries’, ‘conservation of marine biodiversity’ and ‘EBM’. Each devotes specific attention to obligations on regional cooperation and implementation laid down in global instruments.

There are different types of the Regional Seas programmes, some of which are directly administered by UNEP which serves as a secretariat: that is the case in the East Asian Seas, Mediterranean, North-West Pacific, Western, Central and Southern Africa, Western Indian Ocean, and Wider Caribbean regions⁸. Others were developed independently but are associated with the UNEP RSP. The Regional Seas programmes generally have an Action Plan which serves as the basis for regional cooperation. Moreover, 15 of them also have a framework convention complemented by issue-specific protocols⁹. As a cornerstone for action, the convention typically provides general terms and conditions and an overall direction for states to follow. However important such principles may be, they usually remain insufficient and too imprecise to lead to decisive actions, and parties must therefore negotiate specific agreements in various domains.

The Regional Seas Programme, launched in 1974, is one of UNEP’s most significant achievements in the past four decades. The Programme aims to address the accelerating degradation of the world’s oceans and coastal areas through an integrated and “shared seas” approach – namely, by engaging neighbouring countries in comprehensive and specific actions to protect their common marine environment. Today, more than 143 countries have joined 18 Regional Seas Conventions and Action Plans for the sustainable management and use of the marine and coastal environment. In most cases, the Action Plan is underpinned by a strong legal framework in the form of a regional Convention and associated Protocols on specific problems. All individual Conventions and Action Plans reflect a similar approach, yet each has been tailored by its own governments and institutions to suit their particular environmental challenges.

Because “not every international environmental problem needs to be dealt with on a global level” (Alheritiere 1982), the regionalisation of international environmental legislation and management has emerged as an important trends in recent years. In terms of marine and

⁸ UNEP, through its Regional Office for Europe, serves on an interim basis as the secretariat of the Framework Convention for the Protection of the Marine Environment of the Caspian Sea (Tehran Convention), following a formal request by the respective Conference of Parties.

⁹ There are no framework conventions and protocols in the East Asian Seas, North-West Pacific and South Asian Seas regions. In Arctic, although there is no regional sea convention as such, a binding agreement on cooperation on marine oil pollution preparedness and response was adopted in May 2013.

coastal issues, this is mainly taking place within the Regional Seas programmes and Regional Fisheries Bodies (RFBs).

3.1.1. What is missing to close the gaps in the existing ocean governance framework (e.g. new institutions, new rules, new agreements, new arrangements)?

Main priorities to address in order to close these gaps are:

- The Implementation and enforcement mechanisms for UNCLOS,
- Further development of existing mechanisms such as the regional ocean governance frameworks as vehicles for international ocean governance. Compared with the global approach of oceans management, the added value of regional oceans governance mechanisms is that (i) the uniqueness of a marine ecosystem or a fish stock is taken into account, applying appropriate legal and management tools; (ii) going beyond general principles to fight specific threats to nearby marine areas (e.g., oil spills from ships or land-based wastewater pollution, to managing specific regional fisheries; and (iii) the regional approach often makes cooperation easier, targeted, relevant and effective than at global level, where more diverse stakeholders with potentially more diverging interests make negotiations more complex.
- Clearer definition of the actions at regional and national levels for the implementation of internationally agreed instruments and programmes.
- Clearly defined cooperative frameworks among the sectors and organisations involved in oceans, their resources and environment, so that collective and integrated decisions between and among these sectors can be made for the maximum benefit of human beings and sustainable management of oceans.

3.1.2 What would you want to change?

- Incorporating and strengthening of regional ocean governance as an integrated part of an effective international ocean governance framework; and enhanced effectiveness of governance of regional oceans for more sustainable and informed decisions. Aimed at bringing together countries bordering a given ecosystem in concerted actions to protect the marine and coastal environment, the Regional Seas programmes are well established vehicles in the oceans governance landscape.
- Further developing structural linkages among the global, regional and national governance frameworks in order to promote synergies and comparative advantages with the ultimate objectives of the implementation international agreements and application of international rules and regulations.

3.1.3 Which areas or issues of international ocean governance are inadequately covered and could benefit the most from filling gaps in the current framework or from more efficient organisation of the international ocean governance framework?

- Enhancing the effectiveness of the existing global, regional and national frameworks
- Development of effective cooperation frameworks among the sector-based organisations and mechanisms at the national, regional and global levels. Good examples of this include the development of an integrated ocean policy at a national level, new and innovative national institutional initiatives, such as operation Pakhisa¹⁰, and collective arrangements between OSPAR Commission and the Northeast Atlantic Fisheries Commission (NEAFC)).
- Regional oceans mechanisms are not often multi- sectoral by construction, which is clearly the case for RFBs, but also for Regional Seas programmes which, however multi-sectoral in principle, are not competent over key economic sectors such as fisheries, mining and maritime transport. The need to coordinate with other competent international organisations such as FAO and RFBs, ISA and IMO and develop the necessary synergies to complement each other's comparative advantages as institutions is key .
- Cooperation and coordination between the Regional Seas programmes and the RFBs “reflects the growing nexus between fisheries and environmental management (...). Underpinning this relation are the concepts and obligations of (...) international instruments which apply to both” (UNEP 2001).

3.1.4. How would they benefit?

- Setting up a cooperative framework between the sector-based organisations and mechanisms will promote the adoption of sustainable, informed and participatory decision-making, additionally contributing to sectoral sustainable development over a longer timeframe.

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