

A CANADIAN OPEN-ENDED INFORMAL CONSULTATIVE PROCESS ON OCEAN AFFAIRS

Integrating National and International Dimensions

IOI Leadership Seminar, Ottawa, June...,2000

Purpose

- To contribute to the framing of an integrated oceans policy within the framework of the Oceans Act
- to contribute to strengthening the role of Canada in international fora dealing with the oceans
- to contribute to integrate international and national aspects of ocean policy.

Background

1. The contribution of the resources and uses of the sea to the world economy is enormous. One recent study has estimated the value of all goods and services related to the oceans (including living and nonliving resources, services like shipping tourism, submarine cables, etc., as \$8 trillion a year. Beyond that, the "ecological goods and services" of the ocean as a life support system have been estimated as \$21 trillion, as compared with \$12 trillion for those related to the land. The numbers may be debatable but they undoubtedly underscore the importance of the oceans to the health and wealth of nations.
2. The importance of the oceans and seas to mankind and the interrelatedness of all aspects of oceans and seas have led to significant cooperative and coordinated endeavours on the part of the international community. A comprehensive "constitution for the oceans" dealing with all aspects of man's interaction with the oceans and seas is in place - the United Nations Convention on the Law of the Sea (UNCLOS) sets out the legal framework within which all activities in the oceans and seas must be carried out, and with which these activities should be consistent Canada has yet to ratify this Convention.
3. Important developments have occurred since the adoption (1982) and entry into force (1994) of

the Law of the Sea Convention. The Brundtland Report (1987), The Earth Summit (1992), and the subsequent events triggered by it ("the UNCED Process") generated Agenda 21, whose Chapter 17 remains the fundamental Programme of action for achieving sustainable development in respect to oceans and seas, as well as a whole slew of Conventions, Agreements and Programmes, each including an important marine sector, but each having its own Secretariat and its own sectoral mandate. Thus the Law of the Sea has diversified and broadened into "Ocean affairs," as reflected in the annual Reports of the Secretary General to the General Assembly of the United Nations, which are becoming ever more comprehensive and complex.

4. At the level of the United Nations it is now universally recognized that it is only the General Assembly, with its universal membership and broad mandate that is capable of considering the problems of ocean space as a whole. This now involves not only the United Nations Convention on the Law of the Sea, subsuming a host of global and regional conventions as "existing international law," but the whole series of Conventions, Agreements and Programmes emanating from the UNCED process

5. In his Report on Oceans and the Law of the Sea, to the Fifty-third session of the General Assembly (A/53/456, 5 October 1998), the Secretary-General of the United Nations stressed the unique role the General Assembly had assumed in regularly overseeing, on an annual basis, what was happening in the steadily diversifying and intensifying uses of ocean space and resources and in the multiple developments relating to the law of the sea. UNCLOS, he said, provides the framework to deal with these issues. Its moral authority, based on its wide acceptance throughout the community of nations, is exactly what is required at this time in history. *The General Assembly will be called upon to take a more active part in anticipating areas of concern and devising strategies to address them effectively.* (Paragraph 8; emphasis added).

6. It has become equally clear, however, that the General Assembly, with its already overburdened agenda, simply does not have the time to do justice to this immensely complex task. The Secretary-General's Report now fills a whole book and raises too many issues to be considered in the one day a year the General Assembly could spare for it.

7. In consideration of this situation, the International Ocean Institute put forward a proposal that the General Assembly should establish a Committee of the Whole open to the participation of all Delegations which was to meet to examine in depth the Secretary-General's Report. Ample time was to be set apart for hearings where NGOs, the private sector and independent scientists could present

their view and have them discussed. It was envisioned that only through such a mechanism could the General Assembly fulfil its task successfully and in a spirit of innovation

8. This proposal was included in the Report to the Club of Rome, *The Oceanic Circle*, (United Nations University Press, 1998). It was endorsed by Pacem in Maribus XXVI in Halifax, (December 1998). In the General Assembly it was introduced during the General Debate by the Representative of Malta, the Hon. Deputy Prime Minister and Minister of Foreign Affairs, Mr. Guido de Marco, who said on September 29, 1998:

Malta suggests positive consideration of the suggestion that this Assembly institute a biennial Committee of the Whole to review ocean-related questions in an integrated manner.

9. During the London Workshop, in preparation of the 7th session of the Commission on Sustainable Development (CSD), the Chairman of the CSD, the Hon. Simon Upton, Minister for the Environment, New Zealand, also recommended that a body should be established to follow developments relating to ocean affairs and the law of the sea; to foster a coherent approach to the implementation of the global ocean regime established by UNCLOS, to encourage its ratification and effective implementation; to identify emerging issues and persistent problems which require international action that would be built upon the basis provided by the Convention, in its interaction with the other ocean-related Conventions, Agreements, and Programmes; and to take a more active part in anticipating areas of concern and devising strategies to address them effectively.

10. The Seventh Session of the Commission on Sustainable Development included the concept in its recommendations. On this basis, the General Assembly, in November 1999, decided (Resolution A/CONF 62/122)

consistent with the legal framework provided by the United Nations Convention on the Law of the Sea and the goals of chapter 17 of Agenda 21, to establish an open-ended informal consultative process in order to facilitate the annual review by the General Assembly, in an effective and constructive manner, of developments in ocean affairs by considering the Secretary-General's report on oceans and the law of the sea and by suggesting particular issues to be considered by it, with an emphasis on identifying areas where coordination and cooperation at the intergovernmental and inter-agency levels should be enhanced..

11. The General Assembly also decided that this "process" should be open to all States Members of the United Nations, States members of the specialized agencies, all parties to the Convention, entities that have received a standing invitation to participate as observers in the work of the General Assembly, and intergovernmental organizations with competence in ocean affairs. Meetings are to take place for one week each year, starting in May 30, 2000.

12. The establishment of this "process" marks a major break-through in the evolution of a global system of ocean governance. In its composition and mandate it fully responds to the intentions of the proposal for a "Committee of the Whole." Its emphasis on integration and coordination will guide and facilitate the work of the Subcommittee on Oceans and Coastal Management of the Administrative Committee on Coordination (ACC) of the United Nations, and encourage constructive solutions to the problems of overlap between the different instruments of the UNCLOS/UNCED process. At the same time it constitutes a challenge to States which now must also develop "processes" to generate an integrated policy if they are to participate meaningfully in UNICPO and if UNICPO is to develop its full potential.

The Canadian Challenge

13. Thus Canada will have to create an internal *institutional* "process" ("CAICPO") both for the effective implementation of the Oceans Act and to prepare for a meaningful participation in UNICPO

14. A beginning has already been made. On April 3 the Hon. Herb Dhaliwal, Minister for Fisheries and Oceans, organized an "Ocean dinner," to assist him to design a "strategy" for the implementation of the Oceans Act. He invited a cross section of "stake holders" -- academia, private sector, indigenous people, NGOs, constituting the "ocean constituency," together with some of the officials of his Department. The Minister opened the meeting with an excellent statement on the need for such a strategy based on a "vision" of the whole. A consultation and discussion with all the participants of this "constituency" resulted in consensus on the desirability of establishing some sort of "Informal Advisory Committee" to assist the Minister in an informal way in the designing and implementing of the "strategy."

15. With this Leadership Seminar, the International Ocean Institute Canada which was represented at the Ocean Dinner, now proposes to build on this promising beginning by *expanding it from the Department of Fisheries and Oceans to all the Departments involved in one way or another in*

ocean affairs (Foreign Affairs & International Trade; Mines and Resources; Environment). What he IOI wants to submit for discussion at this seminar is that the informal advisory committee should advise not only the DFO but the other Departments as well, and perhaps regular meetings or hearings could be organized, perhaps twice or three times a year.

16. The need to integrate internal and international policies and strategies is self-evident in the case of fisheries (straddling stock!) And environment (pollution does not recognize political boundaries).

17. In the case of sea-bed mining this need has been sorely neglected. Canadian participation in the International Sea-bed Authority has been less than adequate. A deeper understanding of the issues associated with the Sea-bed, however, would reveal that Canada has an enormous stake in the effective management of this area. Large sub-sectors of Canada's ocean constituency have much to gain from initiatives Canada could take within this body to address sea-bed issues affecting communications, oil and gas, fisheries, genetic resources, medical and pharmaceutical research, as well as mining, and general marine environmental health and biodiversity. The ISA is already beginning to look at these broader issues. In June this year it is organizing a seminar on genetic resources and hydrates. Canada should not be absent, or only passively present, in these deliberations. Canada has a great deal to contribute, and much to gain, from active and high-level participation. The participation of Foreign Affairs and Energy and Resources in the proposed Canadian Process would enhance this participation.

18. Perhaps a special seminar on sea-bed resources and services and the future of the International Sea-bed Authority could be organized later this year.

19. Other Departments could be included in a second phase. It might be extremely useful, e.g., to include Navy and Coastguard to deal with the issues of monitoring, surveillance, enforcement, peace-keeping and peaceful (humanitarian) uses of the Navy, as well as the suppression of crimes on the high seas and in coastal waters. All of this should be considered as an essential part of an integrated oceans policy. Some of it will be covered by the following paragraph.

20. In 2001, IOI Canada's contribution to the "Process" would consist in the organization of a major Ocean Conference in Ottawa. This would be co-sponsored by IOI Canada and the Canadian Council on International Law. The intention would be *a broadening of the ocean constituency*, in this case, particularly by strengthening awareness of the importance of the oceans in the legal and international law

community .and by elaborating some proposals for the “Process” on the subjects mentioned in para. 19

21. In 2001, a similar effort will also be made with regard to *the Media in North America*. IOI Canada will organize a leadership seminar on ocean affairs for journalists, publishers and representatives of the media, printed, visual, and electronic, to enhance their awareness of the importance of this subject.

The Plan of Work

22. This plan presents a logical sequence of events in IOI Canada’s efforts to assist the Government in the successful implementation of the Oceans Act. It builds on the Oceans Act and Minister Dhalival’s initiative to create a consultative process including Canada’s ocean constituency. His initial effort, however, was limited to domestic policy and his own Department, which, in any case, should remain the lead agency in the process.

23. Consideration of the IOI proposal would expand the process to include other Departments involved in ocean affairs (“horizontal integration”) and contribute to a “vision” integrating domestic and foreign policy in ocean affairs. A Canadian Open-ended Informal Consultative Process would, at the same time, strengthen the linkages between the Government and the ocean constituency, including coastal communities, the private sector, academia, and NGOs (Co-management; “vertical integration”). Subsequent activities would be aimed at expanding the ocean constituency through consciousness raising and policy research.

24. That such an effort would be extremely timely and necessary is indicated also by initiatives in other countries. An example is the initiative taken by the US Congress with the establishment of the House Oceans Caucus whose Mission/Vision statement is annexed.

**Selected Issues for Consideration of the
First Session of the OICP
May 30 - June 2, 2000**

1. *Integrated Ocean and Coastal Management*
Integrated management is being pursued, more or less effectively, at the local and national level, especially through the introduction of co-management systems. At the regional and global level it is still sorely lacking. At the regional level it can now be enhanced through the institutional framework created by UNEP in the context of the regional implementation of the Global Programme of Action for the Protection of the Marine Environment from Land-Based Activities and the revitalization of the Regional Seas Programme. The GPA can be considered as the catalyst for the revitalization of the Regional Seas Programme. A revitalized Regional Seas Programme can be considered as a catalyst for development of a system of integrated ocean and coastal management at the regional level. At the global level it can only be developed through the U.N. General Assembly, based on the work of the "Open-ended Consultative Process." The OICP might therefore consider a recommendation to UNEP *to broaden the mandate of the regional institutional framework foreseen by the GPA to deal with the implementation of all eight instruments rather than restricting itself to the implementation of the GPA only.*

2. *Monitoring, surveillance, enforcement and control*
All eight instruments call for monitoring, surveillance, enforcement and control of implementation of their provisions. Evidently it would be immensely wasteful to institute eight different systems of monitoring, surveillance, enforcement and control of the implementation of provisions which are so closely interrelated. At the regional level, one multi-functional system could do the job much more cost-effectively. At the national level, the cost-effectiveness of multi-functional systems was already demonstrated in a seminal study on the Solomon Islands for the Commonwealth Fund for Technical Cooperation (Shepard, Ranken and Clarks, 1979). *Such a system could be adapted to the regional level and make an essential contribution to a solution of the problems, not only of the implementation of fisheries and environmental regulations, but also of the maritime crimes enumerated in the Secretary-General's Report (Piracy, drug smuggling, smuggling of illegal immigrants, violation of human rights of stow-aways on the high seas) and the integration of sustainable development and regional security.*

It would eventually also include consideration of the problem of *the protection of the marine environment in times of armed conflict*.

3. *Technology development and transfer*

The same argument applies to the overlapping provisions on technology cooperation and transfer and to the development of human resources and capacity building. The same kind of provisions are made in eight separate, sectoral programmes or convention regimes. Globally, one might assume that the Global Environment Facility (GEF), as the main funder of programmes to implement the various conventions and agreements, could exercise a coordinating and integrating function. Until now, however, this is hardly the case, due to the sectoral organization within the GEF itself. At the more limited regional level the multiplication of efforts in establishing eight separate systems of technology transfer is obviously ineffective. To this should be added that the regional level probably is the optimal level for technology development and transfer, as, on the one hand, it provides economies of scale, especially for regional seas bordered prevalently by developing countries which, individually, could not develop or acquire the needed technologies; on the other hand the regional sea generates a commonality of interests and needs which facilitates agreement on making choices and setting priorities. At the same time, an institutional framework already exists in the regional *seas* programmes, in the regional commissions for sustainable development where such a Commission exists (Mediterranean) or could perhaps be created, or in the structures established for the implementation of the GPA. ***Within these existing frameworks, the OICP might consider a recommendation for the establishment of systems of joint ventures for Research and Development, creating synergisms between private and public funding at the regional level, and serving the technology needs of all eight Conventions and Programmes, as the technologies involved are the same.*** As UNEP's recent publication. GEO 2000 sums it up, "to respond effectively to global environmental problems and, in turn, meet human needs more effectively, global environmental issues must be addressed in a holistic, integrated manner, ***building on the same technologies and policy instruments*** that are currently used to contend with these issues in a sectoral manner."

4. *Development of Human Resources*

Technology development and transfer, in the present phase of the industrial revolution, is based on the development of human resources, on education and training, above all. While specialization necessarily remains an essential part of higher education, training

and education must contain a component that is interdisciplinary and trans-sectoral. Interdisciplinary training and education are the response to the twofold challenge of *complexity* -- and hardly anything could be more complex than the integrated management of ocean and coastal systems -- and *rapid, often unpredictable change*. The International Ocean Institute is developing a number of innovative proposals to link systems of interdisciplinary training and education to those for research & development proposed in this study. These systems of training and education as well should *serve the needs and enhance the implementation of all eight conventions and programmes in their interactions. It would be extremely useful if this session of the OICP could devote some time to the question of interdisciplinary, trans-sectoral training serving the needs of the system as a whole.*

5. *Identifying new and additional as well as predictable financial means and innovative methods to mobilize them*

It has become glaringly evident that contributions by States were inadequate for the effective implementation of the conventions and programmes adopted by the Earth Summit and its aftermaths and that "innovative" methods to generate new, additional and predictable funding would have to be found. The methods suggested in the documents before us, are not very "innovative." The most detailed projection of the needs is to be found in Agenda 21. The most detailed list of possible sources of supply is in the Global Programme of Action. But the list is far from "innovative." UNEP's GEO 2000 reminds us (p 366) "*that a start has been made — studies conducted within the framework of the Commission on Sustainable Development have led to several new proposals, including Tobin-type taxes...which would raise money for the environment through an international tax on financial transactions.*" Canada took this idea a step further when its House of Commons voted, in March 1999, to authorize the federal government to promote the Tobin tax internationally. In addition, many banks and lending organizations, including the World Bank, have incorporated environmental considerations into their operations" International taxation may indeed be an idea whose time has come. This is simply due to the fact that States are no longer the only actors on the scene of international law and organization. "Civil society," economic and social actors, municipalities, nongovernmental organizations ("major groups") are playing an increasingly important, recognized and structured role in international negotiations. And with this new right, obviously should also come the duty of making a financial contribution. A Tobin tax today would be even more efficient than it would have been two decades ago, when it was first proposed, because the amounts transferred have

grown by several orders of magnitude, and so have the technologies (fibre optic cables) through which they are effected and can be controlled. In the introduction to the proceedings of a leadership seminar organized by the International Ocean Institute in Malta in August 1999, I proposed a 0.001 percent tax on business — including e-commerce — transacted through fibre optic cables traversing the international sea-bed Area which is the Common Heritage of Mankind. This tax would be so small that it most certainly would not hurt anybody, but considering that the transactions involved are already now about 1 trillion dollars per year, the revenues generated would be sufficient to change the entire global sustainable development picture. One should also consider the fact that the International Sea-bed Authority is the only existing international institution which already has, under international law, the authority to collect taxes from sea-bed miners both in the international area and in areas under national jurisdiction (on the continental shelf, beyond 200 miles measured from the base lines).

Another pilot experiment could be made by introducing, at the regional level, a very small tax on tourists. Some States, including SIDS, are already doing, or considering this, but part of this revenue should go to the regional trust funds to enable UNEP to implement its programmes and fulfil its obligations at the regional level. Considering the staggering size of this industry — the biggest in history, comprising 635 million international tourists in 1998, spending almost half a trillion dollars, while the World Tourism Organisation predicts that by 2020, 1.5 billion international tourists will be spending \$2 trillion, Even one dollar per tourist per vacation— which certainly would not be a burden on the industry — would go a long way. *Consideration of innovative methods to generate new and additional as well as predictable funding for the implementation of the UNCLOS/UNCED process through the international funding of sustainable development projects should be on the agenda of the OICP.*

6. *The protection of biodiversity in international waters, including the international sea-bed area*

The overlaps between Part XI of the Law of the Sea Convention and the Biodiversity Convention require consideration of *the protection of biodiversity in international waters, including the international sea-bed area*. This, presently, constitutes a legal vacuum and this might well be taken up by the OICP. A Protocol may be needed to establish a cooperative regime between the International Sea-Bed Authority and the Biodiversity Convention, for the protection and management of these resources, the equitable sharing of benefits, and the regulation of bio-prospecting in the Area and its

coordination and harmonization with other uses of the Area.

7. *Climate Change and the Ocean Floor*

The overlap between the Law of the Sea Convention and the Framework Convention on Climate Change (the Climate Convention) requires *consideration of the very recently discovered methane hydrates and their potential as a major energy resource for the next century and as a most powerful greenhouse gas and sea-bed destabilizing agent* and may require rules and regulations for a cooperative regime between the International Sea-bed Authority and the Framework Convention on Climate Change, for international cooperation on hydrate research and capacity building in developing countries to enable them to participate in this research. Also this is an issue that might be considered by the OICP which might make an appropriate recommendation to the two regimes involved..

8. *Conclusion*

To put the eight documents side by side is a rewarding experience. What is in fact emerging is a quite coherent and comprehensive system reflecting a new environmental consciousness, i.e., a new (at least in the western world) relationship between humans and nature; it envisages an holistic approach and fosters awareness of the interconnectedness of all the issues involved. It reveals a new social consciousness demanding intranational as well as international social justice, the eradication of poverty, the improvement of public health and public education. That innumerable problems remain, goes without saying. Our lack of understanding of the interaction between natural and anthropogenic change may distort our view. Rarely do we recall how brief human presence has been on this Planet Ocean, which existed eons before we came on the scene, weathered by natural climate changes and the rise and fall of sea-levels, the extinction of innumerable species and the evolution of new ones. It may continue to exist and to change for millions of years, long after we are gone. Poisoning the air we breathe, the water we drink, the food we eat, altering our immediate environment, we may accelerate the extinction of the fragile human race long before making a serious dent in the eternity of the might world ocean. Recent studies by the WHO, evaluating the impact of ocean pollution on human health may contribute to reorient our thinking in this direction. Perhaps our attitude is at the same time too anthropocentric, in that we may overestimate the importance of the human species, and too little concerned with the well-being of this self-important species.

Perhaps the greatest weakness of the system emerging from the eight documents is a

disturbing conflict between the theory of integration and the practice of establishing eight separate institutional regimes which make this integration very difficult. The establishment of a "process" or "forum" capable of considering the problems in their interaction, avoiding duplications, integrating activities, giving directions to the various agencies, programmes and institutions so that the eight institutional regimes reinforce rather than duplicate one another is essential, both at the regional and at the global level. Such fora could now be developed through the process initiated for the implementation of the GPA at the regional level, and through the process initiated with the establishment of the OICP at the global level.