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RIO+20
United Nations
Conference on
Sustainable
Development

POLICY BRIEF

N°05/11 NOVEMBER 2011 | BIODIVERSITY

Advancing the Oceans agenda at Rio+20: where we must go

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This article was submitted on November 1, 2011 by IDDRI to the United Nations Conference on Sustainable Development Bureau in responding to the invitation from Second Preparatory Committee "to provide inputs and contributions for inclusion in a compilation document to serve as basis for the preparation of zero draft of the outcome document".

1. INTRODUCTION: A CONTRIBUTION TO THE CONFERENCE OBJECTIVES, BUT A CHALLENGE TO ITS THEMATIC FOCUS

The 1992 Earth Summit in Rio de Janeiro gave birth most noticeably to the three "Rio Conventions" (on desertification, climate change and biodiversity), Agenda 21 as well as the Rio Declaration. Twenty years later, the "Rio+20" conference has much lower ambitions: in a best-case scenario, it will end up with a strong political declaration, visionary enough to blow a new wind of change and specific enough to open concrete avenues for progress. Officially[1], "the objective of the Conference is to secure renewed political commitment for sustainable development, assess the progress to date and the remaining gaps in the implementation of the outcomes of the major summits on sustainable development, and address new and emerging challenges. The Conference will focus on two themes: (a) a green economy in the context of sustainable development and poverty eradication; and (b) the institutional framework for sustainable development".

This paper aims at contributing to three of these four objectives with regard to oceans by (i) demanding renewed political commitment for sustainable ocean management; (ii) proposing options to fill the remaining gaps in ocean governance; and (iii) addressing some new and emerging challenges. We do not elaborate on the assessment of progress to date, which is clear e.g. from UNEP's Global Biodiversity Outlook[2]: in a nutshell, the state of the oceans has continuously and seriously worsened since 1992, despite some local or sectoral successes which remain very scattered. Degradation trends are even often still accelerating.

The choice here is therefore to try and contribute directly to the conference objectives, without however developing our views in the

1. http://www.uncsd2012.org/rio20/index.php?menu=61
2. Secretariat of the Convention on Biological Diversity, (2010), *Global Biodiversity Outlook 3*. Montréal, 94 p.

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framework of the two separate conference themes. The reason is two-fold.

First, oceans have had their share of empty concepts, buzzwords and so-called tools that are actually "Lichtenberg knives[3]". We strongly oppose the supposed need to reframe the problem under a new umbrella, like the "blue-green economy". The ocean community is now strong enough, its science robust enough, its concepts and principles established enough, not to let new fashions impose more chewing-gum concepts which bring neither tools, communication, political momentum nor helpful reframing.

Second, the institutional framework is of course important, but we do not believe much progress can be made in Rio as far as ocean governance is concerned. Oceans are currently dealt with in various international fora (including the ones provided by the Law of the Sea Convention (UNCLOS), the Convention on Biological Diversity or the Convention on Climate Change, etc.) and institutions (UNEP, FAO, IMO, UN Economic and Social Council, UN Commission on Sustainable Development…). Their governance is grounded in dozens of partial, sectoral or regional international agreements, the rationalization of which is bound to remain a vain wish[4]. The ocean governance system is, and will remain, essentially multi-layer, heterogeneous, contradictory and seemingly irrational. It was never conceived as a "system", but it has a logic if not an overall rationality. Each of its bits and pieces has a history, matches the specific concern of a specific constituency, and is used by some stakeholders to apply *ad hoc* recipes to contrasted objects and situations. Therefore, the complexity of the system is the context in which we shall work and achieve progress, not a temporary dysfunctioning which should be remediated. It is right and legitimate to demand consistent and coordinated policies, but room for maneuver is to be found only marginally in reforms of the institutional framework – we give a few minor examples in various parts of the following sections. The United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea (UNICPOLOS) may or may not be given a second chance, the UN oceans and coastal areas network (UN OCEANS) may or may not be reformed: this shall not bring significant changes in the way the system works and delivers change. Room for progress is largely elsewhere, and we intend to contribute mapping where.

On the whole, we argue that significant progress has been made on science – not a limiting factor at this stage anymore, on the diagnosis of threats and governance gaps, and on legal and policy proposals. It is time to be specific, and the Rio+20 outcome, although a mere political declaration, can help a lot provided it addresses at least five key issues which can perfectly be dealt with outside the green economy "conceptual" framework. Without any pretention to be exhaustive, we call for progress on (1) setting the stage for the establishment and management of MPAs in Areas Beyond National Jurisdiction; (2) paving the way for an international regulation of offshore oil exploitation; (3) giving the regional approach a new lease on life; (4) giving a new impetus to a drastic reduction of land-based pollution; and (5) strengthening the tools to fight Illegal, Unreported and Unregulated fishing.

2. SETTING THE STAGE FOR THE ESTABLISHMENT AND MANAGEMENT OF MPAS IN ABNJ

Areas beyond national jurisdiction (ABNJ)[5] cover around half of the planet's surface and 64% of the surface of oceans and seas. They are also the least known and least protected areas on Earth. In recent years, the exponential use of ABNJ and their resources and a growing human pressure have subjected them to a multiplicity of threats: overexploitation of fish stocks, alteration of deep water habitats due to destructive fishing practices, oil pollution, introduction of alien invasive species, acidification of the oceans as well as emerging threats linked to bio-prospecting and deep-sea mining, etc.

In this context, marine protected areas (MPAs) are seen as an efficient tool to protect this fragile biodiversity, but a certain number of legal issues are raised when it comes to the question of their establishment and management in ABNJ[6].

The United Nations Convention on the Law of the Sea (UNCLOS) is the overarching framework for the governance of the oceans. Its Part VII deals with the legal regime of the high seas and defines

3. Or "knives without a blade which have no handle"…
4. Billé R., Rochette J., (2011), « De la difficulté de rationnaliser la gouvernance internationale de l'environnement ». *Slate.fr*, 7 April. http://www.slate.fr/story/36555/gouvernance-internationale-environnement-illusoire-rationalisation
5. The wording "ABNJ" encompasses the high seas (the water column of the oceans) and the deep seabed which are located outside the jurisdiction of any State. Two different regimes are applied to them. For the high seas, it is a regime of freedom (freedom of access, freedom of exploitation). In UNCLOS, the deep-seabed outside national jurisdiction (named, in this case, the Area), has been declared "Common heritage of mankind" and is managed by the International Seabed Authority.
6. Druel E., (2011), "Marine protected areas in areas beyond national jurisdiction: the state of play", IDDRI, Working Paper n° 07/11.

its freedoms (freedom of navigation, fishing, marine scientific research, etc.) but seems rather incomplete on the protection of marine biodiversity in this zone. In particular, nothing is said about the establishment of MPAs.

For that reason, regional seas conventions have recently taken the lead on this issue, and created the first MPAs in high seas[7]. But this regional approach has intrinsic limits. First, MPAs designated by a regional sea convention only bind contracting parties to that convention, and not third States, which can nevertheless be active in the region. Moreover, regional seas conventions do not have the mandate to regulate some activities which occur in the ABNJ, such as fishing, deep-sea mining or navigation. Other organisations are competent for these issues, and there is therefore a need of cooperation and collaboration between all these authorities which yields high transaction costs. Last, most parts of the high seas are actually not regulated by a regional convention.

At the same time, the Convention on Biological Diversity (CBD) has adopted scientific criteria for identifying ecologically or biologically significant marine areas in need of protection in open ocean waters and deep-sea habitats (EBSAs). The identification of EBSAs is ongoing, and will probably serve as a scientific basis for the designation of MPAs, should the legal framework permit. In 2010, contracting parties to the CBD also agreed in Nagoya to establish a network of MPAs covering 10% of the oceans, including ABNJ, by 2020.

These three spheres of action (regional, UNCLOS and CBD) are interrelated and need to be strengthened in order to establish an efficient governance system for MPAs in ABNJ. At the regional level, agreements involving *inter alia* regional seas conventions and regional fisheries management organisations need to be concluded, and complementary models must also be established for parts of the world where no such agreements may exist. Given the growing importance of the CBD due to its prominent position in the identification of EBSAs, its role must also be enhanced. Additional protection could be granted to EBSAs through, for example, a resolution of the United Nations General Assembly (UNGA).

However, there is growing evidence and consensus that all these efforts will fall short of delivering adequate protection if a global legal framework does not provide for the establishment and management of MPAs in ABNJ. A clear political mandate must therefore be given at Rio+20 to the UNGA to open the negotiations on an implementing agreement to UNCLOS on the conservation of marine biodiversity in ABNJ, including through the creation of MPAs. This needs to include other issues such as the status of marine genetic resources in ABNJ or the need of environmental impact assessments, as a package deal.

3. PAVING THE WAY FOR AN INTERNATIONAL REGULATION OF OFFSHORE OIL EXPLOITATION

A recent series of accidents on offshore oil platforms (Montara platform, August 2009; Deepwater Horizon, April 2010; Penglai 19-3 platform, June 2011, etc.) have raised public awareness on the extent to which offshore oil exploitation is moving into ever deeper waters. Whereas just after the Second World War industries were only drilling in around 10 m of water, it is now increasingly common for rigs to drill at a depth of over 2 km. Almost a third of the oil consumed in the world now comes from underwater areas. However, human domination of the world's oceans does not look set to abate. The sea has so far revealed only a tiny fraction of its energy potential and new ultra-deepwater drilling technologies are currently being developed. Consequently, it becomes clear that despite its environmental, economic and social impact, the rush towards offshore drilling is unlikely to be halted by these recent accidents, especially given that the technical cost of deepwater oil drilling has been significantly reduced in recent years and that offshore oil fields are continually discovered. Several official declarations advocate for the adoption of a moratorium on deepwater drilling. However, because of the economic weight of this sector and its vital role in the equilibrium of the oil market, nobody is seriously considering halting its development.

What does this mean in practice? Such strong standpoints against deepwater drilling remain useful and should still be supported and strengthened globally. However, it should be done in parallel with attempts to rethink the regulation of the activity itself. Because of the multiplication of accidents, their dramatic consequences both for marine environment and coastal populations and the "four Ds, which, from now on, are destined to characterize the offshore oil industry in its search for black gold: Deep, Distant, Dangerous and Difficult[8]", it is no more possible to plead for a legal

7. In 2009, adoption of the first MPA in high seas by the parties to the Convention for the Conservation of Antarctic Marine Living Resources; in 2010, adoption of the first network of MPAs in high seas by the parties to the OSPAR Convention for the Protection of the Marine Environment of the North East Atlantic.

8. Mr. Efthimios E. Mitropoulos, Secretary-General of the International Maritime Organization, 15 November 2010

status quo. Agenda 21 argued in 1992 that "the nature and extent of environmental impacts from offshore oil exploration and production activities generally account[ed] for a very small proportion of marine pollution[9]". The Rio+20 process must invite the international community to question the suitability of the current framework for the regulation of offshore oil drilling.

Indeed, although UNCLOS imposes a general obligation to protect the marine environment, no international convention specifically sets international standards determining the conditions under which States should issue drilling permits. Moreover, in terms of liability and compensation, oil platforms, floating or using different types of fixed structures, are not covered by international agreements such as the Convention on civil liability for oil pollution damage (1992) or the Convention on the establishment of an international fund for compensation for oil pollution damage (1992). Last, the current governance of offshore oil drilling is in fact largely characterised by self-regulation by operators. It is therefore clear that there are two main gaps in global international law: the first is located upstream – the absence of an international framework on the conditions under which oil exploration/exploitation is authorised and monitored – while the second is downstream – the absence of a global instrument relating to responsibilities and the distribution of damage liability.

At the regional level, there is only one real legal instrument aimed at specifically monitoring offshore drilling: the Madrid Protocol for the protection of the Mediterranean sea against pollution resulting from exploration and exploitation of the continental shelf and the seabed and its subsoil, adopted in 1994 within the framework of the Mediterranean Action Plan and entered into force in March 2011. In the North-East Atlantic, the OSPAR Commission has adopted a number of regulations on the matter, but in a more fragmented manner. While hoping that these regulations will be applied by all States and that a common regime will be implemented in these two regions where offshore drilling is rapidly developing, international regulation should not be developed only at the regional level. Indeed, in many regions impacted by the oil industry, such as West Africa, there are major governance problems which impede States to ensure an effective control on offshore platforms and to deal with pollution accidents.

Such circumstances can only plead for a comprehensive approach that aims to (i) establish a common set of obligations for States (and operators) to cover the entire process of approval, monitoring, intervention, sanctions and liability regime; (ii) and counterbalance the power of oil companies and their professional organizations with an international legal framework that creates obligations, including reporting, and allows the creation of an international convention secretariat[10]. The current initiatives led by Russia within the G20 framework and Indonesia at IMO push in the right direction. Nevertheless, the Rio+20 process constitutes the opportunity to address this issue in a global and non-fragmented framework: the whole international community must now recognize that Agenda 21 is outdated on this particular topic and therefore pave the way for an international regulation of off shore oil exploitation.

4. GIVING THE REGIONAL APPROACH A NEW LEASE ON LIFE

The 1972 United Nations Conference on the Human Environment led to the creation of the United Nations Environment Programme (UNEP) "to serve as a focal point for environmental action and coordination within the United Nations system[11]". In its first session, UNEP made the oceans a priority action area[12] and the UNEP Regional Seas Programme was then initiated in 1974[13] "as an action-oriented programme having concern not only for the consequences but also for the causes of environmental degradation and encompassing a comprehensive approach to combating environmental problems through the management of marine and coastal areas[14]". Since it was launched, the Regional Seas Programme has proven attractive, as evidenced by the more than 140 States participating in regional seas framework. Because "not every international environmental problem needs to be dealt with on a global level[15]", such regional arrangements have often given States the opportunity to go

9. Agenda 21, Chapter 17, §17.20.

10. Chabason L., (2011), "Offshore oil exploitation: a new frontier for international environmental law", IDDRI, Working Paper n°11/11.

11. United Nations General Assembly, Resolution 2997 (XXVII) of 15 December 1972.

12. UNEP, Report of the governing council on the work on its first session, 12-22 June 1973, United Nations, New York, 1973.

13. UNEP, Report of the governing council on the work on its second session, 11-22 March 1974, United Nations, New York, Decision 8(II).

14. UNEP, (1982), Achievements and planned development of UNEP's Regional Seas Programme and comparable programmes sponsored by other bodies, Nairobi, UNEP Regional Seas Reports and Studies N°1.

15. Alhéritière, D, (1982), "Marine pollution regulation. Regional approaches", *Marine Policy*, July, pp. 162-174.

"closer, further and faster[16]" than at the global level. However, regional frameworks must now overcome some challenges to retain their value and gain effectiveness within the international oceans governance architecture.

First, new frontiers must be conquered. For a long time indeed, regional seas frameworks have remained within the confines of territorial waters and exclusive economic zones. Recently, regional cooperation has extended to the high seas (Mediterranean Sea, North East Atlantic) and coastal zones (Mediterranean Sea, Western Indian Ocean), in a still limited way however. Under the impetus of UNEP Regional Seas Programme, regional seas frameworks must therefore study the political and legal feasibility as well as the scientific and geographic relevance of such extension of the regional cooperation. Indeed, the regional approach can compensate some of the current shortcomings of the global level with regard to conservation of biodiversity in ABNJ. It can also help homogenizing – to a high common denominator – the way coastal areas are managed at the national level.

Besides, since Rio, many initiatives have been conducted within regional frameworks to update and develop legal instruments of cooperation. Nevertheless, one cannot deny that too many conventions and protocols have been and remain dormant or weakly implemented. It is therefore time to reactivate these instruments, by providing regional frameworks the means of their ambition. More efforts, in terms of funding in particular, must therefore be dedicated to strengthening regional systems, so that they be able to keep the cooperation alive and provide States with technical assistance and support for the implementation of the regional instruments. In this regard, the creation of Regional Activity Centres, such as the ones existing in the Mediterranean and Caribbean Seas, must be promoted. It should be underlined that financial constraints to do so may actually often be more easily removed than usually assumed[17]. For instance, GEF-supported Large Marine Ecosystems projects could often be better mainstreamed in regional seas agendas and programmes of work. Besides, reallocating into trust funds even a small proportion of development cooperation funding that is today dedicated to marine biodiversity conservation through projects, would basically allow to sustain at least one RAC in each regional sea.

Special attention should also be given to the cooperation between the regional seas conventions and other sectoral organisations interested in marine conservation. The North-East Atlantic looks like the most advanced region in this respect. Indeed, the OSPAR commission is currently working on a draft collective arrangement between competent authorities on the management of the six MPAs in ABNJ established in 2010. This process, also referred to as the "Madeira process", aims to coordinate the adoption of sectoral management measures and to strengthen cooperation on this issue with organisations such as the North East Atlantic Fisheries Commission, the IMO, the International Seabed Authority (ISA) or the International Commission for the Conservation of Atlantic Tunas (ICCAT). Such cooperation between regional and international organisations is also crucial in parts of the world where no regional sea convention and/or no RFMO (regional fisheries management organisation) exist. In the Sargasso Sea for instance, there is no regional sea convention and the only RFMO, ICCAT, is solely competent for tuna. Regional cooperation can nevertheless be enhanced by a combination of protective measures adopted by sectoral organisations, such as the designation of a particularly sensitive sea area by IMO, of fisheries closures by ICCAT, of areas closed to seabed mining by ISA. In the future, an agreed management plan could be signed by these organisations, and could also enlist the support of coastal States to this initiative. The Sargasso Sea Alliance is currently promoting this approach. These two models show the need of a better cooperation at the regional level but also highlight that there are already instruments existing for this cooperation to be enhanced. At the regional level, States have the power to act without necessarily going through an important institutional reform.

Rio+20 is therefore the appropriate moment, not only to recall the strategic importance of the regional approach in addressing marine issues, but to help regional organisations enter the 21st century: the Rio+20 outcomes must urge the international community, including donors and NGOs, to strengthen the regional frameworks so that they be able to make a real difference in tackling marine challenges. As far as high seas conservation is concerned, a mandate given to the UNGA to start a negotiation process towards an UNCLOS implementing agreement should necessarily assert the importance of the regional level, and encourage negotiating parties

16. Rochette J., Chabason L., (2011), "A regional approach to marine environment: the regional seas experiences", in Jacquet P., Pachauri R., Tubiana L., *A Planet for life 2011, Oceans: the new frontier*, pp.111-121.

17. Rochette J., Billé R., (2011), Strengthening the Western Indian Ocean regional framework: An analytical review of potential modalities. Indian Ocean Commission, 32 p. + annexes.

to strengthen the coordination and cooperation between regional organisations.

5. GIVING A NEW IMPETUS TO A DRASTIC REDUCTION OF LAND-BASED POLLUTION

Land-based activities have been recognised as a major source of marine environmental pollution for decades. During the 1992 Earth Summit, States considered that these activities contributed to "70 per cent of marine pollution[18]". Even if the Johannesburg Plan of implementation called States to "make every effort to achieve substantial progress (…) to protect the marine environment from land-based activities[19]", the situation has further deteriorated. It is now estimated that up to 80 per cent of marine pollution comes from land-based sources[20], which also poses huge threats to human health[21]. Despite the various legal instruments and policies adopted at global, regional and national levels, the situation is therefore getting worse as illustrated by the two following related "emerging issues" identified by the 2011 Report of the UN Secretary-General on oceans and law of the sea.

The first issue relates to the discovery of high levels of accumulation of plastics and other marine debris in seas convergence zones, known as "gyres". In the North Pacific for example, studies show a "literal blanket of trash[22]", while recent expeditions highlighted the presence of 250 billion particles of micro-plastic in the Mediterranean. The ocean is therefore sick from land-based activities. This is also illustrated by the second issue identified by the UN Secretary General's report, namely nutrient over-enrichment of marine waters, which causes oxygen depletion, eutrophication and leads to the development of "dead zones". In this regard, dead zones in coastal areas have doubled in extent every decade since the 1960's[23]. A recent study conducted by UNEP has identified 415 eutrophic and hypoxic coastal systems, including 169 identified hypoxic areas, 233 areas of concern and 13 systems in recovery[24]. These two phenomena can obviously be seen as "emerging issues" but they are, above all, the symptoms of a continuously deteriorating situation.

However, policy and legal responses to address land-based pollutions have been widely adopted in recent years, through the elaboration of the Global Programme of Action for the Protection of the Marine Environment from Land-based Activities, the adoption of the European Union Water Framework Directive the EU Marine Strategy Framework Directive, specific protocols within regional seas frameworks, as well as the related development of national policies and laws. But one cannot fail to notice that these political and legal instruments have not curbed the general tend.

Rio+20 process and outcomes must therefore not miss this issue but recall the extent of the problem. In particular, considerable progress could be made in the future on at least three dimensions. First, there is unquestionably a need to ensure the effective implementation of legal instruments, especially at the regional level, which presupposes strengthening the regional systems themselves (see section 4). Second, investments should be reinforced to develop sewage treatment plants, which are dramatically lacking in many coastal zones, and the associated water management systems; donors should thus reinforce this area of action. Last, economic instruments should be used to promote environmentally friendly behaviours and activities: taxes, non-compliance fees and, more than anything and following the Nagoya Strategic Plan, elimination of harmful subsidies which are supporting models of agriculture, industry, mining or tourism that have been polluting our oceans for too many decades.

No major step forward can be expected from Rio+20 in that regard. However simply placing the fight against land-based pollution back among the highest priorities for action and funding would be useful for future reference.

6. STRENGTHENING THE TOOLS TO FIGHT ILLEGAL, UNREPORTED AND UNREGULATED (IUU) FISHING

Chapter 17 of Agenda 21 promoted the sustainable use and conservation of marine living resources and described a wide range of tools available to States in order to achieve this aim. In 2002, at the WSSD, States agreed to *"maintain or restore stocks to levels that can produce the maximum sustainable yield with the aim of achieving these goals for depleted stocks on an urgent basis and where possible*

18. Agenda 21, Chapter 17, §17-18.
19. §33d.
20. United Nations General Assembly, Oceans and the law of the sea, Report of the Secretary-General, 11 April 2011, §154.
21. Global Programme of Action for the Protection of the Marine Environment from Land-Based Activities, 3 November 1995, §1.
22. NOAA, 2010, National Oceanic and Atmospheric Administration (NOAA) (2010) Demystifying the Great Pacific Garbage Patch. NOAA National Ocean Service Marine Debris Programme. Washington, DC: US Department of Commerce.
23. UNEP Year Book, New science and developments in our changing environment, UNEP, Nairobi, 66p
24. Global Partnership on Nutrient Management, Building the foundations for sustainable nutrient management, UNEP, 2010, 28p.

not later than 2015". Today, in 2011, it seems clear that these objectives, formulated with wisdom in very vague terms (*"and where possible not later than 2015")*, will not be met – whatever this should mean. The 2010 report of the FAO on the state of the world's fisheries and aquaculture indeed estimates that about 32 percent of world fish stocks are overexploited, depleted or recovering and that 53 percent of the remaining stocks are fully exploited. The report moreover states that *"the increasing trend in the percentage of overexploited, depleted and recovering stocks and the decreasing trend in underexploited and moderately exploited stocks give cause for concern"*. At the same time, market demand for fish has never been so high and is not likely to decrease in the upcoming years.

Illegal, Unreported and Unregulated (IUU) fishing is a widespread phenomenon which largely contributes to the depletion of fish stocks. A report to be adopted soon by the European Parliament estimates that its share is equivalent to at least 15 percent of worldwide catches, between 11 and 26 million tonnes a year[25]. In 2001, the international community decided to tackle the issue with the adoption of an International Plan of Action to prevent, deter and eliminate IUU fishing (the FAO IPOA IUU), an instrument which provides States with a range of tools and principles which could help to fight IUU fishing. The following year, the Johannesburg Plan of Implementation (JPOI) called upon States to *"urgently develop and implement national and where appropriate, regional plans of action to put into effect […] the International Plan of Action to prevent, deter and eliminate illegal, unreported and unregulated fishing by 2004"*. But, since then, only very little progress has been made[26]. The biggest flaw of the FAO IPOA IUU is that it is a voluntary instrument and to date only a small number of States have adopted their own national plan of action. This proves that it might not be the appropriate tool.

On the whole, efforts are far from sufficient and, as of today, it is clear that the fight against IUU fishing is a triple failure:

- It is the failure of international organisations (RFMOs but also the UN, with UNCLOS and the other agreements linked to it as well as the FAO) to impose an effective control over States on this matter. RFMOs have established IUU lists of fishing vessels, which are all out of date, empty or never contain the names of vessels flagged in one of their Contracting Parties. A reform of RFMOs is urgently needed in order to strengthen their capacity to ensure compliance with the measures they are adopting and to impose sanctions on States which are not respecting them.
- It is the failure of States to exercise an effective control over their own vessels and/or nationals because of a lack of means, but also and primarily because of a lack of political will. The lack of political will is here not only a vague reluctance but in some cases a clear and active political choice, with the existence of "States of non-compliance". The international community should adopt means such as a flag State compliance instrument with stringent sanctions associated in case of non-respect to make sure that these States can no longer escape their international obligations. In addition, and according to the requirements of the JPOI and Nagoya plan of action, States should also eliminate subsidies which contribute to IUU fishing.
- It is the failure of markets to regulate fish exchanges so as not to accept in the production chain products stemming from illegal catches. IUU fishing is a very profitable business and it is relatively easy for operators to take advantage of the system. Market-related measures have been advocated for a long time, and the EU is pushing for the introduction of a global catch certification scheme. In order to be efficient and to avoid fraud, this scheme should not be paper based, but fully electronic, based for example on the TRACES system used by the EU for health and sanitary certification requirements[27].

More broadly, a particular emphasis must be put on the fight against flags of convenience and in particular against countries which are granting their flags and international fishing licenses (the owner of the vessel is not allowed to fish in the EEZ of the flag State but only in the high seas) to beneficial owners who are hiding their identity under the status of an International Business Company or Corporation[28]. Parallel registration of fishing vessels should also be carefully monitored. To this end, the establishment of a mandatory record of fishing

25. See : http://www.europarl.europa.eu/en/pressroom/content/20111010IPR28784/html/Fisheries-Committee-calls-for-international-action-to-fight-illegal-fishing

26. The only important progress has been in 2009 the adoption of the FAO Agreement on Port State measures to Prevent, Deter and Eliminate IUU fishing, an interesting instrument that States need to ratify as soon as possible so that it can enter into force.

27. TRACES, which stands for TRAde Control and Expert System is an internet-based network between EU veterinary authorities and economic operators. Entirely electronic, this system ensures *inter alia* the delivery of health and sanitary certificates for products entering the EU market and the traceability of these products for sanitary purposes.

28. For dismaying examples, see e.g. http://www.flagsofconvenience.com/index.php

vessels under the auspices of the FAO would be an efficient instrument. Additional efforts have also to be put on the definition of the link between a flag State and its vessels. Article 92 of UNCLOS simply states that *"there must exist a genuine link between the State and the ship"*. An agreed international definition of this link must be adopted, which should underline the necessity of States to effectively exercise their jurisdiction on their vessels.

Rio+20 should be the occasion for States to renew their commitment to fight IUU fishing but also to take into account the shortcomings of this fight in the last 20 years. A call is needed for the adoption of stringent international instruments (a global record of fishing vessels, a flag state compliance instrument) and for the ratification of the FAO Port State Agreement. Discussions must be launched on the review of the RFMOs and on the adoption of an international, electronic-based, catch certification scheme.

7. CONCLUSION: SMALL PROGRESS ON OLD ISSUES NEEDS BUREAUCRATIC SUCCESS

We reviewed five key areas where we think steps forward could and should be taken at Rio+20. Readers may be stricken by two observations:

- These all sound like old stories: none of these issues – except to a certain extent offshore energy – is new, and most of the policy responses are well-known.
- The range of progress that may be achieved in Rio in June 2012 seems ridiculously bureaucratic: launching processes, reasserting the importance of …, etc.

We believe both are realistic and legitimate concerns.

First (1), most issues have indeed been around for at least 20 years, often many more, and the international community – or part of it – has been trying to take action for almost as long. Rio+20 is also Stockholm+40, and a lot was already going on long before 1972, both in terms of problems and action. Pretending things have been moving in the right direction, although too slowly, would not only be misleading: it would be a strategic dead-end. The only way forward is to recognize the overall failure with regard to ocean governance, to study the few successes at hand, and to develop strategies that seriously take both into account. This means also acknowledging the conflicting dimension of ocean governance and the widespread reluctance – if not active resistance – to make it more sustainable as soon as it comes at a cost. The green economy concept, however blue we may manage to make it, does not contain any silver-bullet to overcome such oppositions. We are left with good old advocacy, communication, education, demonstration, to hopefully build the necessary constituency – hence the political will – that will reverse the balance of powers.

Besides intensification of well-known threats, what may be considered new – in the sense that we are only starting to understand it – is the additional pressure climate change and ocean acidification place on marine ecosystems. Impact science is in its infancy, and effects of e.g. acidification are difficult to isolate from that of other stressors. There are however three points we can make:

- Climate change and ocean acidification may well turn out to be the greatest threats to marine ecosystems along the 21st century, but this will largely depend on the way we manage other stressors.
- As global issues (i.e. issues which need to be addressed globally), they will however impact marine ecosystems and dependent societies very unevenly and at different time scales. This will challenge the willingness to and attempts at addressing these threats globally.
- Most importantly, oceans are faced for the first time with global threats rising *after* most levers and policy options to tackle them have already been identified and tested: reducing CO_2 emissions, building ecosystem resilience through networks of MPAs, reducing land-based pollutions or the pressure from fishing, etc. Although some minor progress has been made along these lines, efforts have remained vastly insufficient and unsuccessful.

This means that there is not much choice but to eventually succeed where we failed to a large extent so far. Hence the old stories and familiar policy responses reviewed in this paper.

Second (2), having too high expectations about Rio+20 would not help. The above indeed shows the nature of what may be achieved there: at best the international community may decide to renew and strengthen the political momentum inherited from Rio 1992, and to launch new processes which in turn may lead to important decisions. But crucial decisions – in the sense of decisions directly driving changes in pressures on oceans – will not be taken in Rio. It is all the more important to demand that Rio+20 be a political and bureaucratic success. This will condition to a significant extent the next decade of the international sustainable development agenda.