

IOSF 2008
Focus Groups 2+5

(2) Legislation of Maritime Space and (5) The United Nations Convention on the Law of the Sea (UNCLOS)

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KEY QUESTIONS - Focus Group 2:

- 1 What impact has the dynamic between developed and developing states on successful implementation of international legal instruments relating to the oceans?
- 2 How can the encouragement to industry to invest in developing the resources of the oceans be safely balanced with ensuring adequate protection of the marine ecosystem?
- 3 What are the most significant lacunae in current maritime legislation and what could be on the radar in the next 5-15 years?
- 4 Is the development of legislation appropriately supported by technical (and other) expert advice, and if not what are the best ways of ensuring this shortfall is addressed?
- 5 How can an integrated marine policy be developed on a national basis to tackle the issues of ocean governance – by a national consortium, think-tank, commissioned bodies?
- 6 How will the Marine Bill, European Blue Book affect the current practices of marine legislation – and how will they not?
- 7 How does the legislation of maritime space interact with other emerging issues (such as the other FG topics of this meeting)?
- 8 What are the major gaps in scientific knowledge for the adequate management of the open ocean?
- 9 How can joint international multi-national and multi-disciplinary scientific studies be created and funded to address key ocean management needs?
- 10 What scale of impact is needed in order to require Environmental Impact Assessments?
- 11 How can enhanced capacity building in developing nations relating to open ocean resources and the international legislation for their management be achieved?
- 12 What are the key issues appearing on the horizon which we might consider for such a meeting in a year's time?

KEY QUESTIONS - Focus Group 5:

- 1 How out of date is current legislation such as UNCLOS with regard to new resources – and how can improvements to it be best achieved?
- 2 How does the legislation of maritime space interact with other emerging issues (such as the other FG topics of this meeting)?
- 3 What are the major gaps in scientific knowledge for the adequate management of the open ocean?
- 4 How can joint international multi-national and multi-disciplinary scientific studies be created and funded to address key ocean management needs?
- 5 What regulations are necessary in UNCLOS to provide adequate anti-monopoly provisions?
- 6 Should the 'High Seas' and 'The Area' have a common management system?
- 7 What should 'effective control' by a sponsoring state for work in 'The Area' include?
- 8 Understanding, clarity and the “case by case” basis – difficulties arising from different interpretation of UNCLOS Article 76 and CLCS/11.
- 9 Article 82 – caring and sharing, or an impractical and impossible dream?
- 10 What are the key issues appearing on the horizon which we might consider for such a meeting in a year's time?

REPORT

One of the largest of the focus groups, and with a good balance of academia, the legal profession and industry. Using the broad set of questions circulated before the session (see pages.....), the following areas were examined and debated.

General comments regarding current process of the Marine Bill, noting:

- Multiple references to other bills
 - Planning Bill (DCLG) – encourages an MMO type of organisation
 - Regulating international and sanctions reform (DBERR)
 - Energy Bill (DBERR)
 - Climate Change Bill
- Reflects multiple strands of incoming legislation – There is a need a far more holistic approach?
- Sectional vs strategy, but different timescales and have liaised

What are the lacunae in the UNCLOS framework? Some form of enforcement mechanism to ensure duties, concerns and obligations can be met ; regulatory oversight of living resources beyond national jurisdiction; marine genetic resources/bioharvesting; marine scientific research vs. operational research definitions. When we identify gaps in UNCLOS – How do we deal with these?

- Convention amendment (major and potentially damaging to the Convention single package mode)
- Implementing agreement (current fatigue)
- More detailed guidelines (Such as have been produced for Art 76, do we need them for Article 82)
- Create a new framework outside Convention – UNESCO? (but not good precedent)

How well do developing states know their rights under Part XIII, Art 82? Consideration of the responsibility on developed nations to push the rights of developing countries, to ensure (say) small island and developing states, SIDS, are well informed with the process and the ways to achieve juste retour from key sections of UNCLSO (such as Part XIII and XIV) Do we need to re-visit the Marine Scientific Research guidance (there is a DOALOS book, but quite old and under much needed review. Coastal states need to understand their rights to receive data, how to request permissions, participate in data analysis, processing and joint publication with requesting states, etc. There is a real need for this info to be more widely available?

Article 82 – Revenue sharing and the role of the International Seabed Authority – How practical are the provisions? Seemingly a set of parameters and criteria with much difficulty in enforcement/implementation. Is there a need to develop guidelines?

In terms of balancing the need for protection of the marine environment with the commercial requirements of industry, the Mining Industry recognises the need to protect

marine environment, but considers some of the regimes quite stringent and discouraging to investors.

Outside of the Convention, are there other instruments of international law which provide models for non-UNCLOS solutions? – Some laws exist but provide little in the way of enforcement mechanisms

Review period for UNCLOS has always been available (after 10 years), but the fear that any attempt to overhaul a part of the Convention could de-stabilise the Convention as a whole – and risk losing the ‘one package’ structure that now exists. Far better that we consider the opportunities for implementation agreement – but is there a general ‘fatigue’ in States Parties for these?

UK’s Natural Environment Research Council (NERC) has a pivotal role in knowledge exchange, and thus act as guidance provider for government, industry and other organisations who are stakeholders in ocean use or governance – NERC also contributes at international level

- capacity building/ DFID
- legal responsibilities to help scientists from developing countries

And a collection of issues touched on and comments which needed further thought....

Should MMO keep an eye on what is happening internationally in terms of oversight? The Marine Bill – there is no requirement to lodge data of MSR programmes for common good – this seems to be an opportunity missed? It seems we have various initiatives, but no real oversight on marine governance - we need to develop a holistic UK approach on marine management and link with or provide a component to international bodies. The Marine Bill sets out a marine policy statement and objectives – overall it represents an improvement but not complete integration – such concern is felt over a structure mirrored in the EU Blue Book.