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Role and Impact of International NGOs in Global Ocean Governance

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INTRODUCTION

For over two decades, the general public has become increasingly accustomed to the term “non-governmental organization,” and the acronym “NGO” has entered in the lexicon of laypersons all over the world. “NGO” is now widely used as a synonym for advocacy, voluntary or philanthropic organizations acting to protect various public interests in the fields of human rights, public health, global equity and solidarity, humanitarian affairs, environmental protection and conservation, fair trade, disarmament and arms control, etc. Among the wide array of spheres, issues and activities in which NGOs are involved, this article shows that the contribution of NGOs to ocean governance and ocean conservation has been and continues to be extremely important and wide-ranging. As Lucien Chabason, former Coordinator of UNEP’s Mediterranean Action Plan (MAP), and now Special Adviser to France’s International Institute on Sustainable Development on International Relations (IDDRI-Sciences Po) says, “Because of the governance gaps and overlaps, and the limited number of voters’ vested interests, the marine environment is for environmental NGOs’ their best niche.”¹

* The author wishes to thank Ilana Ventura who undertook research and organized interviews for this project during her post-graduate internship at The Varda Group in the summer of 2011, and to express his gratitude to Kristina Gjerde (IUCN) and Clifton Curtis (The Varda Group) for reading and commenting the first draft of this article. Thanks are also due to stakeholders who kindly responded to our questions when we were preparing this article, including Lucien Chabason (IDDRI-Sciences Po), Dr. Sidney Holt, Xavier Pastor (Oceana), Dr. David Santillo (Greenpeace Science Unit), Karen Sack (the Pew Environment Group), Leslie Busby, Kristina Gjerde (IUCN) and Clifton Curtis (The Varda Group).

1. Lucien Chabason, Special Adviser IDDRI-Sciences Po, pers. comm., June 2011.

RISE OF THE NGOS

For many years the term “non-governmental organization” had little or no resonance for the wider public. It was only a bureaucratic term used within the United Nations to distinguish NGOs from intergovernmental organizations (IGOs) and from governments and government agencies. The term NGO originated in the United Nations Charter of 1945. In Article 71, the United Nations’ founding fathers had already recognized that non-governmental organizations could and should have a supporting role.² Many NGOs were founded and active in the decades following the creation of the United Nations.³ Their collective strength, broadly stated, as key non-state actors capable of shaping policy, became more formally recognized in the 1990s, a decade that began with the United Nations Conference on Environment and Development (UNCED) of 1992, also remembered as the Rio Earth Summit and ended in 1999 with the Seattle Ministerial Conference of the World Trade Organization (WTO). In Rio 1992, NGOs were encouraged to help set the agenda; their role as partners was explicitly recognized in Section III of Agenda 21, the “blueprint” for sustainable development endorsed by Earth Summit participants.⁴ In Seattle 1999, grassroots civil society organizations (development and environmental organizations, trade union organizations, farmers federations, etc.) were largely credited with helping to create a mood that prevented the launch of a so-called Millennium Round of trade liberalization, triggering a wide array of commentaries and observations (positive and negative alike) on the implications for governance of the rise of NGOs as a new power capable of changing the course set by one of the Bretton-Woods institutions.

NGOs AT SEA

The nature of NGO contributions in marine governance, management, science and conservation is almost as diverse as the nature of NGOs themselves. Although they occasionally join forces, NGOs are not a monolithic block and their mandate, focus and approaches differ as a result of the characteristics of

2. Article 71 of the UN Charter envisaged that: “The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned.” United Nations Charter, Chapter 10: The Economic and Social Council, 1945, available online: <<http://www.un-documents.net/ch-10.htm>>.

3. The number of NGOs involved in international programs is estimated to be of the order of 40,000.

4. Agenda 21, Section III “Strengthening the Role of Major Groups,” Chapter 27 “Strengthening the Role of NGOs: Partners for Sustainable Development,” available online: <http://www.un.org/esa/dsd/agenda21/res_agenda21_27.shtml>.

their leadership, their membership, their history, including environmental threats and disasters that galvanized their foundation, and, on occasions, their sources of funding.

When the idea of a single, new United Nations Convention on the Law of the Sea (UNCLOS) was incubated, and later when it was negotiated, the International Ocean Institute (IOI) together with the International Council of Scientific Unions (ICSU) and the International Union for the Conservation of Nature's Commission on Environmental Law (IUCN CEL) showed what a group of motivated and competent independent stakeholders can achieve when they coalesce their skills and expertise in pursuit of a common cause. The expression "stakeholder dialogue" had not been coined at the time, but important parts of what was to become UNCLOS originated at meetings of experts organized by the IOI, including scholars and practitioners in the areas of science, law, economics, diplomacy and advocacy.⁵ The early *Pacem in Maribus* conferences organized under the leadership of Professor Elisabeth Mann Borgese from 1970 onward were a founding moment of the IOI, before its establishment in Malta. Dr. Sidney Holt describes the early days of the IOI as those of a pressure group (an advocacy NGO in contemporary language): "The IOI combined two functions: it was an advocacy group specifically for the idea of the deep seabed as a Common Heritage of Humankind, and it was also a forum to facilitate consultations among people of a variety of disciplines, free to speak outside the constraints of governmental positions; included both people on delegations and independent stakeholders."⁶

The founders of the IOI played an important role advocating for the adoption of UNCLOS Article 169 on "Consultation and Co-operation with International and Non-Governmental Organizations," whereby NGOs are given ample opportunities within UNCLOS.⁷

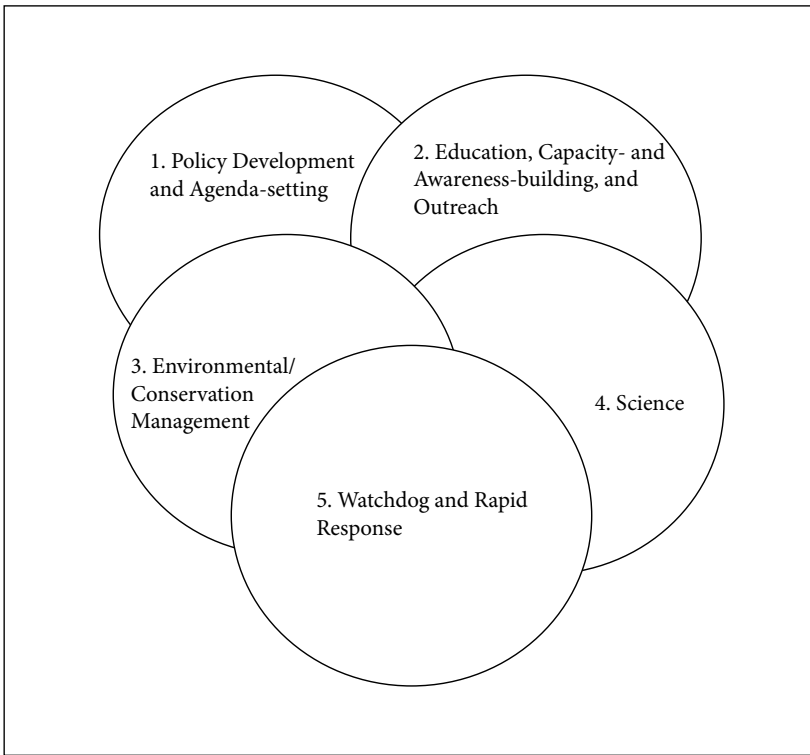
Five different clusters of NGO intervention relevant to the marine environment can be identified: 1) policy development and agenda-setting, 2) education, capacity and awareness-building, and outreach, 3) environmental/conservation management, 4) science, and 5) watch-dogging and rapid response. Some NGOs are involved only in one or a few of these clusters, while others are involved in all five. Even if an NGO tries to restrain its activities in one or two of these clusters, in most cases it is practically impossible for them to work in isolation from the other clusters or to ignore them; the reality given the increasingly global

5. Dr. Sidney Holt, Founding Director of IOI, pers. comm., June 2011.

6. *Id.*

7. UNCLOS Article 169: "(1) The Secretary-General shall, on matters within the competence of the Authority, make suitable arrangements, with the approval of the Council, for consultation and co-operation with international and non-governmental organizations recognized by the Economic and Social Council of the United Nations. [...] (3) "The Secretary-General may distribute to States Parties written reports submitted by the non-governmental organizations referred to in paragraph 1 on subjects in which they have special competence and which are related to the work of the Authority."

FIGURE 1.—Overlapping clusters.



reach of NGO actors and actions now results in significant instances of inevitable interrelated and overlapping linkages and interests, as shown in Figure 1. This can enhance the cooperation among different NGOs with different foci, and it can also facilitate the growth and diversification of existing NGOs.⁸

1. Policy Development and Agenda-Setting

Many developments in policy directly relevant to marine governance, including concrete and measurable progress in conservation, find their origin in individual

8. For example, Greenpeace started in the 1970s as an organization involved in Clusters 2 and 5, but it expanded its scope into Clusters 1 and 4 in the 1980s and beyond; WWF originally started in the 1960s as an organization involved in Clusters 2, 3 and 4, but is now directly involved in all the other clusters. In the late 1970s and early 1980s, their respective differences and the fact that their target audiences were different at the time encouraged the leadership of both organizations to develop synergies.

or collective NGO initiatives. Many NGOs actively contribute to the development and improvement of the policies of public administrations, with the aim of influencing legislation and regulation at local, national and international (both regional and global) levels to improve their performance and effectiveness. They center on this cluster of activities because those NGOs recognize the critical importance of working with the *rule of law* on their side in order to gain formal endorsement and legitimacy for their demands.

In order to influence public administrations, NGOs often organize their own events and processes in order to create opportunities for public administrations to interact with them, and they can also participate formally or informally in the processes established by public administrations. In most cases, a combination of both approaches is required for NGOs to be effective. For example, advocacy organizations like Greenpeace,⁹ WWF¹⁰ or Oceana¹¹ combine their outreach efforts to the wider public (at-sea expeditions, publications, internet communication and social networks mobilization, documentaries, etc.), with outreach strategies to public administrations as one of their target audiences. These initiatives provide the means to achieve and implement the management and conservation measures sought to resolve the issues of concern identified and addressed by NGOs.

When they share the same campaign objectives, NGOs involved in marine policy have a long tradition of working strategically in concert, taking account of their respective strengths and weaknesses, networks and spheres of influence. These alliances can give rise to the branding of specific and formal entities that can profile a specific issue with one voice, or they can remain more informal pools when it is deemed preferable. For example, when Greenpeace, WWF, Friends of the Earth and others addressed the challenges of Antarctic governance and conservation in the 1980s, including their opposition to the Wellington Protocol adopted by the Parties to the Antarctic Treaty in 1987 which these organizations feared would facilitate and accelerate minerals exploitation in Antarctica, they created a public umbrella organization, the Antarctic and Southern Ocean Coalition (ASOC),¹² which continues to exist. In contrast, when at the beginning of the 1980s, Greenpeace, WWF, the Humane Society of the United States and the Animal Welfare Institute joined forces to speed up the adoption by the International Whaling Commission (IWC) of a moratorium on commercial whaling (adopted in 1982 and entered into force in 1986 as a result of these NGOs' coordinated effort), the so-called joint "IWC project" of those NGOs was not given a public face.

Thirty years later, the approaches and policies of both organizations have more in common, but still address different audiences despite some degree of overlap.

9. See Greenpeace <<http://www.greenpeace.org>>.

10. See WWF <<http://www.wwf.org>>.

11. See Oceana <<http://www.oceana.org>>.

12. See Antarctic and Southern Ocean Coalition <<http://www.asoc.org>>.

In the past decade, NGOs involved in marine policy and conservation have increasingly opted for the development of their campaigns in coalitions and networks with others. For example, after addressing individually for several years the impacts of high seas bottom trawling which they identified as a largely uncontrolled, wasteful, non-selective and destructive fishing method causing irreversible damage to seamounts and vulnerable marine life such as slow-growth deep water fish and cold-water corals, sponge colonies and hydrothermal vents, in 2005 several NGOs set up the Deep Sea Conservation Coalition (DSCC)¹³ in an effort to promote a United Nations moratorium on high seas bottom trawling. The strength of the DSCC as a coalition of advocacy NGOs and scientific organizations has been largely credited for the fact that the UN is now actively addressing these NGOs' concerns within the framework of an Ad-Hoc Open-ended Informal Working Group to study issues related to the Conservation and Sustainable Use of Marine Biological Diversity beyond Areas of National Jurisdiction (BBNJ for short); empowered by a UN General Assembly resolution supported by the DSCC, several relevant regional fisheries management organizations (RFMOs) and individual governments have also begun to take action to prevent damage from bottom trawling on deep-sea ecosystems.

The formation in the second half of the past decade of another large coalition, the Shark Alliance,¹⁴ was also the force that triggered an increased awareness of another issue – the depletion of shark populations, including the need to prevent the wasteful and cruel practice known as “shark finning,” which consists of dumping the carcasses of agonizing sharks caught by fishing vessels after high market value shark fins have been removed to be dried and exported to Asia as an ingredient of China's shark fin soup culinary tradition. Several NGOs had raised the alarm individually for many years, but the Shark Alliance was able to increase the profile of the issue and to help develop a more comprehensive strategic approach, especially within the European Union. With its membership combining traditional environmental advocacy organizations, divers associations and shark scientists, the creation of the Shark Alliance signaled to politicians in the European Union and elsewhere that the shark finning issue was gaining visibility and attention in the public arena; politicians would get backing and praise if they acted resolutely for the conservation of sharks, and they risked being criticized if they came down on the wrong side, or even remained silent. Although the UN Food and Agriculture Organization (FAO) had raised the alarm over the decline of shark populations and called upon its members to adopt shark management plans, the European Union had been dragging its feet until they started to take steps to strengthen European legislation once the Shark Alliance's campaign was underway.

13. See Deep Sea Conservation Coalition <<http://www.savethehighseas.org>>.

14. See the Shark Alliance <<http://www.sharkalliance.org>>.

More than 130 different European environmental NGOs are now also working together under the umbrella of Ocean 2012,¹⁵ a coalition that seeks to strengthen the EU fisheries policy currently under review and scheduled to be reformed in 2012 with a view to reducing the considerable global environmental footprint of the European fishing fleet.

There are several factors behind the tendency of NGOs to work together in coalition: showing a united front translates into a strong critical mass that is harder for policy-makers to ignore; for organizations whose scope of activities is not limited to ocean issues and may sometimes have to struggle with the proliferation of environmental issues on their agenda, joining ad-hoc expert coalitions can be a handy way to enhance their expertise; as campaigns are often developed and prioritized in roster within individual organizations, maintaining functioning coalitions and alliances over long periods (sometimes decades, like in the case of ASOC) is a cost-effective way to secure that historic memory and know-how is not lost; and of course many grant-making philanthropic foundations are keen in supporting effective coalitions when they see that it is cost-effective.

Ongoing efforts of NGOs to strengthen high seas governance, through the DSCC and the High Seas Alliance¹⁶ (a new initiative to expand the contribution of NGOs, scientists and other experts in this area) and the *response-in-progress* from governments illustrate the *agenda-setting* function of NGOs. With “sustainable development in the oceans” (some refer to the Blue Economy) identified as one of the clusters where action is possible at the UN Conference on Sustainable Development of June 2012 in Rio de Janeiro (also known as “Rio+20”),¹⁷ NGOs are now set to call upon governments at Rio+20 to agree to convene an inter-governmental conference under the auspices of the United Nations on strengthening high seas governance. That proposed decision would provide a mandate for the conference to agree to governance reforms that can fulfill the legal obligation under UNCLOS to effectively conserve and protect the marine environment and biodiversity in areas beyond national jurisdiction.

NGOs are also calling upon the Rio+20 conference to fulfill a commitment made ten years ago at the World Summit on Sustainable Development (WSSD) in Johannesburg in 2002 to adopt a mechanism for the establishment and management of a comprehensive, effectively managed and globally representative network of high seas marine protected areas (MPAs), including no-take reserves.

Because they reach out to large segments of society and are not constrained by the same political boundaries and vested interests that often shadow the vision of governments and the business sector, NGOs can play an important service to society in promoting broad and lasting paradigm shifts. For example, when they

15. See Ocean 2012 <<http://www.ocean2012.eu>>.

16. See High Seas Alliance <<http://highseasalliance.org>>.

17. See UN Conference on Sustainable Development <<http://www.uncsd2012.org/rio20>>.

questioned in the 1970s and 1980s the legitimacy of the exploitation by a minority of countries of resources that the majority of countries and public opinion wanted to protect, such as whales and other cetaceans, NGOs raised the wider issue of the rights and duties of nation states in international waters thus supporting the spirit of UNCLOS. NGOs pursued the same logics in the 1990s when they supported the international effort that led to the adoption of the UN Fish Stocks Agreement of 1995, and continue now when they call for a new agreement under UNCLOS to strengthen high seas governance.

Another important paradigm shift triggered by an NGO campaign was Greenpeace's 15-year-long campaign to ban the dumping of radioactive and industrial wastes at sea, a campaign that started in the summer of 1978 when a Greenpeace ship first encountered and documented a vessel dumping barrels of radioactive wastes in the international waters of the Northeast Atlantic, and ended in 1993 when the Parties to the London Convention on dumping adopted an amendment banning the dumping at sea of all radioactive and industrial wastes. After years of the Greenpeace campaign, what was initially considered by all governments as part of the solution to face the increasing production of wastes (ocean dumping) became a part of the problem. The assumption that the ocean's assimilative capacity can sustain the dumping of ever-increasing amounts of wastes has vanished, and two decades after the practice of waste dumping at sea was banned a return to the old practice of routinely and deliberately mounting waste dumping operations from ships is simply inconceivable.¹⁸

The ocean dumping ban of 1993 was in and of itself an effective policy response to the precautionary principle whereby preventative action must be taken before significant environmental damage starts to take place. Because it affects so many areas, the precautionary principle and its incorporation in numerous international environmental instruments, including the Rio Earth Summit Declaration of 1992, was arguably the most visibly recognized paradigm shift promoted by environmental NGOs in the 1980s and 1990s. The most practical and effective solution to implement the precautionary principle came from international instruments that regulate the dumping of wastes at sea; after the Rio Earth Summit of 1992, the global London Convention on ocean dumping to which nearly 80 countries are party, the OSPAR Convention for the Protection of the Northeast Atlantic, and the Dumping Protocol to the Barcelona Convention for the Protection of the Mediterranean have all been amended to ban the dumping of *all* wastes. The architecture of the annexes to these conventions, which used to contain lists of wastes that *could not* be dumped was modified and contains only a short list of wastes that *may be* dumped. The burden of proof has shifted as a result. Environmentalists no longer have to convince regulators

18. R. Parmentier, "Greenpeace and the Dumping of Wastes at Sea: A Case of Non-State Actors' Intervention in International Affairs," *International Negotiation* 4, no. 3 (1999): 435–457.

that a given dumping operation would or was causing harm; it is the prospective dumpers who need to convince regulators that their practices are safe.

2. Education, Capacity and Awareness-Building and Outreach

The NGOs' high profile and recognition in large segments of society has grown in parallel with the expansion of their increasing role as disseminators of information and promoters of environmental values and behavior. Until the impact of environmental NGOs started to be felt in society in the early 1970s, government officials, members of the academia and the business sector tended to address their issues in closed loops with little or no regard for other stakeholders. Information that is now considered of public interest was not publicly available at the time. Data that are now in the public domain, e.g., the types and amounts of hazardous wastes discharged in the environment, the names of those carrying out and authorizing these discharges, and the criteria used, were kept private and confidential in many countries or severely restricted. In line with the adage *information is power*, there is a constant tension between those abusing the environment or covering up harmful practices by trying to keep data and information for themselves, on the one hand, and environmental NGOs, on the other, pressing for access to information in order to share it with relevant stakeholders and, in some instances, with the wider public.

Following the Rio Earth Summit, in the mid-1990s the UN Economic Commission for Europe (UNECE) member states initiated the development of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention).¹⁹ In addition to addressing core themes reflected in its title that are important for a wide range of environmental issues, including ocean management and conservation, it also contains several other important features. These include a rights-based approach that underlies the various procedural requirements in the Convention; adoption of minimum standards (a "floor"), while promoting the view that other legal instruments can go further (no "ceiling"); and prohibition of discrimination based on citizenship, nationality or domicile against persons seeking to exercise their rights. That Convention was signed by 39 UNECE member states and by the European Union in 1998 and entered into force in 2001.

NGO campaigns to raise awareness of environmental issues can take many different shapes. There is a severe competitiveness for attention in today's world where information travels faster than ever, and the public is solicited almost on a daily basis to join several different causes. The first international advocacy

19. Signed and adopted by 39 ECE member states and the European Union on 25 June 1998 in Aarhus, Denmark, and entered into force 30 October 2001.

campaign ever developed by the WWF was an awareness campaign called “The Sea must Live!” launched in 1977. It was a laudable, sophisticated effort for that time, but since then together with the rest of the world, advocacy has completely changed. The first Greenpeace campaign to protect whales and other marine wildlife also started around the same period, and although they had a lasting impact, similar campaigns nowadays – by Greenpeace or by others – require permanent innovation to get their points across. In the case of the largest NGOs involved in a wide array of sectoral and cross-sectoral issues, campaigners are not only competing with the rest of the daily newsfeed and with other advocacy NGOs and causes, but also with their own colleagues. With this background, the successful campaigners and campaigning organizations need to reinvent themselves periodically, identifying accurately the right target audience that can potentially make a crucial difference, adapting their messages and using the right channels of communication to reach the target audiences.

NGOs have also been increasingly involved in actions to influence the policies and practice of private corporations, and the patterns and behavior of consumers. On the one hand, consumer demands triggered by NGOs can influence the purchasing policies of large and small retailers and restaurants; on the other, NGOs can also add value as a trend-setter for the green purchasing policies of retailers and restaurants if properly implemented and communicated well to the clientele. For example, in response to the concerns aired by NGOs over the future of bluefin tuna stocks in the Atlantic and elsewhere, numerous retail chains, restaurants and chefs are advertising the fact that they have blacklisted this species from their stalls and menus.²⁰ The Seafood Choices Alliance,²¹ an international program developed to create opportunities for change across the seafood industry and for ocean conservation was founded in the United States in 2001 and helps the seafood industry (from fishermen and fish farmers to processors, distributors, retailers, restaurants and food service providers) to make the seafood marketplace environmentally, economically and socially sustainable. In order to build synergies and stimulate dialogue, they organize a Seafood Summit held each year in a different location identified strategically.²² In Europe, a group of concerned celebrity chefs have launched Fish Fight, an online petition calling for a European Union-wide ban on fish discards.²³

As NGO and other ocean conservation awareness programs reach out to increasing audiences, consumer demand is growing for seafood that is sustainable. NGOs and other institutions are doing their best to respond, for example,

20. WWF Mediterranean program press release “Join retailers’ Mediterranean Bluefin tuna boycott, urges WWF,” 28 January, 2008, available online: <<http://wwf.panda.org/index.cfm?uNewsID=123320>>.

21. See Seafood Choices Alliance <<http://www.seafoodchoices.com/home.php>>.

22. The 2012 Seafood Choice Summit will be held in Hong Kong. Information on past Seafood Summits is available online: <<http://www.seafoodchoices.com/seafoodsummit.php>>.

23. See Fish Fight <<http://www.fishfight.net>>.

through online information or small guides for shoppers and the clientele of restaurants. Charles Clover, a British journalist who produced in 2009 “The End of the Line,” a documentary on the impacts of overfishing worldwide that was first released at the Sundance Film Festival,²⁴ also runs Fish2Fork, an online “campaigning restaurant guide for people who want to eat fish sustainably,” which attempts to document and rank restaurants from the UK, Belgium, France, Spain and the USA.²⁵ The creation and adequate distribution of appropriate tools to inform and guide consumers can be a challenge, because the status of different populations of the same species of fish can differ from one region and sea to another, and be subject to debates even among NGOs and conservation specialists. The lack of traceability of seafood available in stalls and restaurants also creates difficulties. In an attempt to build from the experience of the Forest Stewardship Council (FSC), a certification scheme to boost sustainable forestry and fight illegal logging, the Marine Stewardship Council (MSC)²⁶ was set up as a fishery certification program and seafood ecolabel to recognize and reward sustainable fishing. The MSC works with fisheries, seafood companies, scientists and conservation groups to promote the best environmental choice in seafood, albeit so far with mixed results.

3. Environmental/Conservation Management

Even though public awareness of ocean governance and conservation issues is increasing, the capacity of governments and government agencies, and sometimes their political will to respond to the challenge, is often limited or even shrinking. Under these circumstances, and in the light of the substantial damage done to marine biodiversity and habitats, some NGOs have had to extend their mandates from promotion to management of conservation instruments such as marine protected areas, marine reserves, marine parks or no-take zones. The severity of environmental threats can justify the intervention of NGOs in this area, as long as attention is paid to the need to build the capacity of local stakeholders and to plan properly and in a timely fashion a hand-over of the conservation project to ensure that ownership and management can be reverted to local stakeholders, and to agree on systems that can guarantee the project’s permanence or legacy.

Many NGOs are involved in the identification and surveying of marine areas that deserve MPA or no-take zone status. For example, with the backing from the Spanish Environment Ministry’s Fundación Biodiversidad,²⁷ Oceana

24. See End of the Line <<http://endoftheline.com>>.

25. See Fish2Fork <<http://www.fish2fork.com>>.

26. See Marine Stewardship Council <<http://www.msc.org>>.

27. See Fundación Biodiversidad <<http://www.fundacion-biodiversidad.es>>.

routinely carries underwater surveys in the Mediterranean Sea and the Atlantic Ocean and promotes the creation of a network of MPAs. The Pew Environment Group's ambitious Global Ocean Legacy Program²⁸ has been set up to protect "large special places in the sea" that have remained relatively pristine and deserve to be managed and protected as no-take zones. The Sargasso Sea Alliance²⁹ is a recent initiative led by the Government of Bermuda and supported by several international NGOs and foundations to create a large high seas MPA in the Atlantic Ocean.

In their homepage, WWF describes its work related to MPAs as follows: "We help governments and local communities select which marine areas are the most important to protect and what kind of protection measures suit them best, and then help with MPA implementation. We also cooperate with researchers to advance the science of how to design networks of MPAs."³⁰ Another large international organization, Conservation International³¹ has developed in recent years its own "Seascapes" approach which it seeks to replicate in different regions of the world. The Seascapes approach aims to establish "good governance" and recovery of ocean health at a large scale through collaborative efforts among governments, stakeholder groups and partner organizations. Three "Seascapes" have been tested in the Eastern Tropical Pacific, in Indonesia, and in a maritime area shared by the Philippines, Indonesia and Malaysia.³²

Launched in 2002 pursuant to its announcement at the Johannesburg World Summit on Sustainable Development, the Marviva project,³³ a public-private partnership between the Governments of Ecuador, Colombia, Panama and Costa Rica, philanthropic personalities with business and social ties in those countries, and NGO activists increased the protection of a biological corridor in the Central-American Pacific comprising the Marine Protected Areas of the Galapagos Islands, Malpelo, Gorgona, Coiba and Coco. With a fleet of "non-governmental patrol boats" cruising across the corridor and alerting the coast-guard when they detect activities in violation of the protective measures for the large MPA, the Marviva project converted what was in many ways a series of national parks on paper into areas effectively protected. Marviva was thus able to help local authorities implement the law and related protection measures, secure a permanent presence of monitoring and control units in the protected

28. See Pew Environment Group <<http://www.pewenvironment.org/campaigns/global-ocean-legacy/id/8589941025>>.

29. See Sargasso Sea Alliance <<http://iwlearn.net/publications/gefpolicies/areas-beyond-national-jurisdiction/the-sargasso-sea-alliance>>.

30. See WWF <http://wwf.panda.org/what_we_do/how_we_work/conservation/marine/protected_areas/increasing_protection>.

31. See Conservation International <<http://www.conservation.org>>.

32. See Conservation International <<http://www.conservation.org/sites/marine/initiatives/seascapes/Pages/seascapes.aspx>>.

33. See Marviva <<http://www.marviva.net>>.

areas, promote and guarantee transparency, ethics and effectiveness, involve local communities in the management and protection of the coastal and marine environment, offer training to coastguard officers to increase their effectiveness and motivation, share and promote the environmental wealth of the biological corridor, and facilitate access to environmental scientists and support their work. After nearly a decade, Marviva continues to operate in Central America, with support from private donors, international foundations and organizations, international cooperation agencies and multilateral development banks.

In the Republic of Belize, another Central American country with a rich marine biodiversity valuable to the country's potential as a tourist destination, all MPAs are managed or co-managed by NGOs. Three NGOs, the Toledo Association for Sustainable Tourism and Empowerment (TASTE), the Toledo Institute for Development and Environment (TIDE) and Friends of Nature have signed agreements with the Government of Belize.

Robert Pomeroy and Tara Goetze of the Caribbean Conservation Society found in 2003 both positive and negative aspects of the co-management of an MPA by the NGO Friends of Nature.³⁴ The mitigation of certain severe threats to the integrity of the MPAs was found to be beyond the means of an NGO. Pomeroy and Goetze explained these aspects as follows:

Overall, the idea and implementation of the concept of co-management for MPAs in Belize appears to be fundamentally one of devolving government management responsibilities to local NGOs. In undertaking this devolution, it is felt that the NGOs will improve the management of coastal resources and that the government will reduce the burden on its already inadequate resources to effectively manage some of the country's most economically valuable natural resources by encouraging NGOs to seek donor funding for resource conservation and management. In general, the co-management of MPAs in Belize does not inherently involve broad based community participation. Co-management arrangements in Belize have not been designed primarily as community-based systems with the attendant participatory decision-making structures and processes. The dominant understanding of 'community participation' seems to involve appointing a representative from the community, regardless of whether that individual in fact represents the many interests of that community, or indeed, communicates the activities of the managing NGO to its members. As such, communities impacted by the MPA often have very little real determinative impact on the MPA management design and decisions that affect the local resources they depend upon for their personal and

34. R.S. Pomeroy and T. Goetze, *Belize Case Study: Marine Protected Areas Co-managed by Friends of Nature*. Caribbean Coastal Co-management Guidelines Project. (Barbados: Caribbean Conservation Association, 2003), 69 p. Available online: <<http://www.cavehill.uwi.edu/cermes/publications/BelizeMPAscasestudy.pdf>>.

economic survival. There is a pressing need to develop mechanisms to more directly and actively involve local communities in the management decision-making of local resources in cooperation with the NGOs that have been granted this responsibility by the government. There is a general sense among people in the communities that FON serves [and] works with that the Government of Belize doesn't really provide adequate services to its residents. NGOs [...] are often seen in the same way as government; that is, doing the work that the government cannot afford.³⁵

Central America does not have a monopoly on MPAs managed or co-managed by NGOs. In the U.S., for example, two large NGOs, The Nature Conservancy and WWF, and local NGOs based in the Gulf of Mexico and elsewhere, are involved in the management of MPAs, including designing and implementing capacity-building programs for MPA managers and key stakeholders.

In a recent technical report on MPA governance published by the United Nations Environment Programme (UNEP), Peter Jones et al. show that MPA management works better where there is a solid regulatory regime.³⁶ “Whilst there is currently much guidance available on how to manage MPAs, there is less guidance available that considers MPAs from a governance perspective. This perspective poses a key question – how do we combine top-down, bottom-up and market approaches for reaching and implementing decisions in order to achieve effective and equitable MPAs? It is widely accepted that all three approaches are important, but how might they be combined in different MPA contexts?”

The authors identified five different approaches of MPA management: 1) MPAs managed primarily by the government under a clear legal framework (government-led; e.g., the Great Barrier Reef Marine Park in Australia), 2) MPAs managed by the government with significant decentralization and/or influences from private organizations (decentralized governance; e.g., the Galapagos Marine Reserve in Ecuador), 3) MPAs managed primarily by local communities under collective management arrangements (community-led; e.g., Os Minarzos Marine Reserve of Fishing Interest in Galicia, Northwest Spain), 4) MPAs managed primarily by the private sector and/or NGOs granted with property/management rights (private-led; e.g., Great South Bay Marine Conservation Area in the U.S.), and 5) MPAs with no clearly recognizable effective governance framework in place (e.g., the Baleia Franca Environmental Protected Area in Brazil, led by NGOs).

The authors value the role of local, national and international NGOs for having “played important roles in governing MPAs, often providing funding,

35. *Id.*

36. P.J.S. Jones, W. Qiu, and E.M. De Santo, *Governing Marine Protected Areas - Getting the Balance Right*. Technical Report, United Nations Environment Programme, 2011. Available online: <<http://www.mpag.info>>.

knowledge, facilitation and guidance that are needed for MPA management. They work alongside state, private, academic or local community sectors, to support MPA governance frameworks in order to provide for the better achievement of MPA objectives. They are often responsible for galvanizing both public opinion and political will towards establishing MPAs, for example, with the continued push towards networks of MPAs, large no-take MPAs and international MPA targets. Several case studies indicate that NGOs can serve an important role in developing and implementing various incentives for the effective governance of MPAs, particularly in LEDCs lacking in state finance, governance capacity and/or political will to apply such capacity to MPA governance.”³⁷ Jones et al., however, emphasize that while “NGOs can serve an important role in developing and implementing various incentives for the effective governance of MPAs [...] they are not a substitute for the leadership role of the state, particularly with regards to the need for legal incentives to reinforce MPA governance frameworks.”

4. Science

The motivation and work of NGOs is intrinsically science-based, even if they are not all involved in scientific work per se. Some NGOs’ mandates are based on value judgements and ethical considerations that are fed by the scientific findings and analysis of scientists of various disciplines; for example, an NGO acting in the area of climate change may not have climate scientists on staff but the organization finds its motivations in the findings of the Intergovernmental Panel on Climate Change (IPCC). Other NGOs benefit from in-house scientific expertise or may even be led by scientists, such as the Union of Concerned Scientists,³⁸ based in the US; as a further example of NGO scientists linking up with governmental, international agency, private sector and academic scientists, leading members of certain NGOs are members of the IPCC and contribute to its findings as scientific experts in their own fields.

The nature of the scientific work undertaken by NGOs can be separated into two different clusters: the review of scientific knowledge and of assumptions arising from that knowledge (and from the knowledge gaps); and laboratory and on-site scientific research. Both clusters can give rise to the publication of reports in both peer-reviewed scientific journals and in the so-called grey literature.

The scientific work of environmental NGOs often evokes the mission, portfolio and reach of the International Union for Conservation of Nature (IUCN).³⁹ Even though it is not an NGO per se,⁴⁰ the IUCN is an important platform at

37. *Id.*

38. See Union of Concerned Scientists <<http://www.ucsusa.org>>.

39. See IUCN <<http://www.iucn.org>>.

40. With headquarters in Gland, Switzerland, the IUCN has a dual membership comprised of two colleges: one formed by governments and government agencies, and

the crossroads of science and policy, and scientists from both governmental institutions and NGOs are active participants and members. On an ongoing basis IUCN government and NGO members share their scientific findings and benefit from those of their colleagues. The work related to oceans is coordinated by the IUCN Marine and Polar Program and experts from around the world participate directly as members of one or more of its six Commissions.⁴¹ Every four years the IUCN convenes the World Conservation Congress, its general assembly preceded by a World Conservation Forum. Nearly 10,000 representatives from governments and NGOs interact and adopt decisions and recommendations. While not legally binding, they can be significant because they represent the common denominator of both the governmental and non-governmental communities worldwide.

The scientific capacity of some NGOs is more developed than others. For example, Greenpeace International has had for over 20 years a Science Unit based at the University of Exeter, UK, where a team of full-time scientists advise the organization's campaigners and undertake research that helps build the case for their campaigns.⁴² The Greenpeace Science Unit has acquired a particular expertise in sampling programs to detect the presence and concentrations of hazardous substances in the environment, food and commercial goods, including in the sea and living marine resources. Many scientists belong and work with or for WWF and other NGOs. In the case of smaller organizations with limited resources, it is normal that scientists donate their time and expertise, often as a counterweight to redress the lack of response to their expressions of concern in the government, or industry-controlled institutions to which they belong.

Several NGOs encourage science and scientific capacity through fellowship programs. WWF's Kathryn Fuller Science for Nature Fellowship, Russell E. Train Education for Nature Program and WWF Memorial Scholarships,⁴³ and the large Pew Fellowship for Marine Conservation⁴⁴ provide to scholars a necessary complement to support work that government support alone could not provide, especially in developing countries. The Pew Charitable Trusts also provide support for critical ocean conservation science through the Lenfest Ocean Program⁴⁵ and its support to the Fisheries Centre based at the University of

the other formed by NGOs. Decisions made at the IUCN Congress require a simple majority from both colleges.

41. See IUCN <<http://www.iucn.org/about/work/programmes/marine/>>.

42. Greenpeace Science Unit website, available online: <<http://www.greenpeace.to/greenpeace/>>.

43. See WWF <<http://www.worldwildlife.org/science/fellowships/item5466.html>>.

44. See Pew Environment Group <<http://www.pewenvironment.org/research-programs/marine-fellows/>>.

45. See Lenfest Ocean Program <<http://www.lenfestocean.org>>.

British Columbia, Canada,⁴⁶ which has become a world-class centre of excellence for fisheries conservation research and training.

Economic expertise has become as important for NGOs as expertise in other fields of science. Initiatives like the UK-based New Economics Foundation's (NEF)⁴⁷ analysis of the Europe Union's reliance on fish from distant waters, or Fishsubsidy.org,⁴⁸ an online database that tracks down the distribution and use of fisheries subsidies by the European Union, are important innovative tools to help policy-makers to put environmental economics into the balance.

5. Watch-Dogging and Rapid Response

The "watchdog" function assumed by many environmental NGOs, which consists of monitoring and reporting on how well governments and corporations perform to minimize their environmental footprint and whether they abide by relevant environmental laws and regulations, is one of the activities that gives the most visibility, credibility and popularity to NGOs. More flexible than public administrations and often less risk-averse than business corporations, NGOs also receive a lot of public support when they are seen to respond faster than public authorities when environmental disasters occur.

For example, in May 2011 Greenpeace sent a ship to the maritime area most affected by the Fukushima Daiichi nuclear disaster in Japan, enabling the NGO to be in a position to publish the results of a seafood sampling program showing significant concentrations of radioactive pollutants in seafood.⁴⁹ Greenpeace was also the first, on March 25, 2011, to equate the seriousness of the consequences of the Fukushima Daiichi accident with those of the Chernobyl catastrophic explosion that occurred in Ukraine in 1986.⁵⁰ Several weeks before the International Atomic Energy Agency (IAEA) reached the same conclusion publicly, Greenpeace classified the Fukushima disaster as the worst on the IAEA scale for nuclear accidents. When the IAEA finally reached the

46. See Fisheries Centre, UBC <<http://www.fisheries.ubc.ca>>.

47. See New Economics Foundation <<http://www.neweconomics.org/publications/fish-dependence>>.

48. See Fishsubsidy <<http://fishsubsidy.org>>.

49. "Greenpeace Fukushima radiation research reveals serious marine contamination," Greenpeace press release, 26 May, 2011. Available online: <<http://www.greenpeace.org/international/en/press/releases/Greenpeace-Fukushima-radiation-research-reveals-serious-marine-contamination>>.

50. "Greenpeace study ranks Fukushima as Chernobyl level 7 incident," Greenpeace press release, 25 March, 2011. Available online: <<http://www.greenpeace.org/canada/en/recent/Greenpeace-study-ranks-Fukushima-as-Chernobyl-Level-7-incident/>>.

same conclusion several weeks later, it gave the impression that it was lagging behind Greenpeace.⁵¹

Because of the governance and monitoring gaps by public administrations involving management of the marine environment, the sea offers innumerable opportunities for NGOs to test and demonstrate the effectiveness of their “watchdog” function. As the ocean unfortunately is also an area where a significant number of environmental disasters take place, this provides NGOs with relatively wide-open opportunities to deploy and demonstrate their rapid response capacity. In 2010, to cite another example, Oceana chartered its own vessel to document and report on the extent of the environment damage caused by the Deepwater Horizon platform accident in the Gulf of Mexico.⁵² In Europe, the Governments of France and Spain were destabilized when the *Erika* and *Prestige* oil tankers wrecked, respectively in 2000 and 2003. Both governments underestimated the capacity of civil society organizations to bear witness. In both cases, NGOs were seen to engage with local stakeholders faster and more responsibly and effectively than government ministers who, on both accounts, were criticized for visiting the coastlines devastated by the oil spills only several days or weeks after the NGOs had started to provide rapid response assistance to local populations.

The *Erika* and the *Prestige* supertankers both flew flags of convenience, from Malta and the Bahamas respectively. In 2002, between these two maritime disasters, the International Transport Workers’ Federation (ITF),⁵³ Greenpeace and WWF jointly wrote to UN Secretary-General Kofi Annan, urging him to call for a fundamental reform of the shipping industry, in line with UNCLOS Article 91 whereby there should be a “genuine link” between the ship and the state of the flag it flies. UNCLOS Article 94 sets out the flag states’ duties and requires that all flag states effectively exercise jurisdiction and control over the ships flying their flag. As UNCLOS reaches the 30th anniversary since its adoption in 1982, a global agreement to eliminate the flag of convenience system, as suggested by the three NGOs ten years ago, is long overdue. As more civil society voices, and even governments, are raising their voices to demand the elimination of fiscal paradises, why shouldn’t those sorts of floating (and occasionally sinking...) fiscal paradises that are tolerated through the flags of convenience system be the first domino?

Illegal, unregulated and unreported (IUU) fishing, documented and denounced by NGOs, is also often made possible because of the existence of the flag of convenience system that allows unscrupulous fishing companies and

51. “Fukushima nuclear accident update log,” IAEA. Available online: <<http://www.iaea.org/newscenter/news/2011/fukushimafull.html>>.

52. See, for example, Oceana’s “Gulf of Mexico Response Center,” available online: <<http://na.oceana.org/en/our-work/climate-energy/offshore-drilling/gulf-oil-spill-response-center/overview>>.

53. See International Transport Workers’ Federation <<http://www.itfglobal.org>>.

traders to evade regulations and controls. It is estimated that about one-fifth of all fish taken from the ocean have been caught illegally or with insufficient or no management oversight. Illegal fishing undermines efforts to conserve and restore marine biodiversity and undermines the livelihoods of coastal communities, especially from developing countries, as well as the rights of fish workers.

Because effective measures to ensure that flag states carry out their duties properly may convey technical and legal challenges as long as the status quo over the use of a flags of convenience system continues to exist, NGOs are supporting efforts for the establishment of port state measures as leverage to complement the flag states' responsibilities. According to the NGOs combating IUU fishing, the catches from fishing vessels flying flags of convenience are rarely or never discharged in ports belonging to the flag states, whereas port authorities and customs agencies all over the world should be given the authority and means to inspect and control flags of convenience fishing vessels, and to deny port entry to illegally operating vessels. For reasons such as those noted here, NGOs applauded when the United Nations FAO adopted its Agreement on Port State Measures to Prevent, Deter and Eliminate IUU Fishing,⁵⁴ and they are now seeking the agreement's expedited entry into force, as soon as it has been ratified by 25 signatory states.

IUU fishing takes place in a variety of ways, not only by vessels flying flags of convenience. Several NGOs have had to specialize in investigations and monitoring to fill the gaps caused by the lack of capacity or political will of states to enforce their own regulations. Created by environmental activists in 1984, the Environmental Investigation Agency (EIA)⁵⁵ has specialized in the investigation of environmental crimes. As part of its "Species in Peril" program, EIA documents and seeks to prevent massive kills of dolphins, porpoises and whales. In a similar vein, in 2006 and 2007 Oceana, an international NGO dedicated to ocean conservation, undertook a thorough investigation in Italy where it identified, documented and reported the vessels engaged in IUU fishing. That investigation focused on vessels operating out of ports from Sardinia, Campania, Calabria and Sicily, including 71 vessels using large driftnets, a destructive and wasteful fishing gear condemned by a UN resolution adopted in 1989 and banned by the European Union since 2002. Oceana's investigation also showed that 22 of these illegal vessels were supported by EU subsidies. Oceana also has a long track record of documenting the use of various illegal fishing gear in France, Morocco and other countries. As IUU fishing and the underworld are often associated, NGO activists involved in investigating and denouncing illegal fishing are often placed in situations that involve taking significant risks.

54. Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, UN FAO, Rome, 2009. Available online: <<http://www.fao.org/docrep/013/i1644t/i1644t00.pdf>>.

55. See Environmental Investigation Agency <<http://www.eia-international.org>>.

As a result of the work of WWF, Greenpeace and other NGOs to document the management and law enforcement gaps in bluefin tuna fishing and ranching operations in the Mediterranean Sea, the International Commission for the Conservation of Atlantic Tuna (ICCAT) was forced to strengthen its regulations. ICCAT now recognizes that until 2007 its control over tuna purse seiners and tuna ranchers had failed completely to meet its regulatory responsibilities. At its annual meeting in 2010, ICCAT adopted additional compliance measures, and they pledge that bluefin tuna catches in the Mediterranean are now documented and controlled in real-time via a reliable satellite communication system. While they recognize that progress has been made, environmental NGOs have pledged to pursue their efforts as they are seeking the protection of bluefin tuna in their spawning grounds.

CONCLUSION – BEYOND 2012

Thirty years after the adoption of UNCLOS in 1982, forty years after the first UN Conference on the Human Environment held in Stockholm in 1972, twenty years after the Rio Earth Summit, and ten years after the Johannesburg Summit on Sustainable Development, what lessons can we draw for global governance from the role of NGOs in devoting substantial efforts in the cause of ocean conservation? What is the leadership role assumed in numerous instances by NGOs telling us about the future of international governance?

Should the world celebrate the increased capacity, skills and creative vision shown by NGOs? Should we be relieved that – thank God (or thank Gaia, as some would say) – civil society is no longer waiting for governments to take action and tell them what to do? Or should we be concerned that NGOs have had to take the helm and occupy a niche left by the governments' short sightedness?

It is all at the same time encouraging and scary to imagine what the world would be like today, if environmental NGOs of all kinds did not exist and had not acted as a safety net to counteract the short-term vision and inadequate marine management by governments and the greed of corporations. How many more species, how many more natural habitats would have been lost if it was not for the motivation and mobilization of thousands of NGOs and concerned citizens? How many more environmental disasters and how many more human sufferings were spared because private citizens took action to prevent them? Should we be joyful because the future of the global environment is dependent upon the voluntary action of private citizens organizing themselves as NGOs? Or should we remind our governments that it is primarily their duty to guarantee our children and future generations a future?

In 2012, the United Nations Secretariat is asking the NGO community to help provide at the Rio+20 Conference a new pathway and vision for sustainable development in the next 20 years. Many NGOs are getting involved, and

everyone takes this for granted. This is good, but what would happen if instead the NGOs said, “why should we?”

It is not a realistic nor a desirable hypothesis of course, but let us imagine for a moment that all the environmental NGOs (or *just* the NGOs involved in ocean conservation) got together and announced before the Rio+20 Conference that they are all putting an end to their programs and to their existence. Imagine all the NGOs saying that they are disbanding because governments must stop evading their responsibilities and stop hiding behind the NGOs. What would happen? What would be the future in a world without environmental NGOs?