



ORGANISATION OF EASTERN CARIBBEAN STATES

Morne Fortuné, P.O. Box 179, Castries, St. Lucia

Telephone: (758) 455- 6327 Fax: (758) 453-1628 E-mail: oesec@oeecs.org

25<sup>th</sup> February 2008.

Mr. Nicholas Michel  
Under Secretary-General for Legal Affairs  
United Nations Headquarters  
1 United Nations Plaza  
New York, NY 10017  
U.S.A.

Dear Mr. Michel

Reference is made to your letter of 17<sup>th</sup> January requesting additional information regarding available assistance to and measures that may be taken by developing States - including Small Island Developing States - to realise the benefits of sustainable and effective development of marine resources and uses of the oceans within the limits of national jurisdiction.

In response to your request, please find attached, a document prepared by our Secretariat which addresses the questions raised in Resolution 61/222.

Please do not hesitate to contact our office should you require any further assistance.

Yours sincerely

Len ISHMAEL  
Director General

## **Sustainable Oceans Governance (SOG) at the OECS Secretariat – A Programme Update**

### **Background**

Concern about the economic challenges of OECS Member States, particularly with regard to the integration of marine space in national development strategies, from as far back as 1981, prompted consideration of the extent and nature of the contribution that the rational utilisation of marine space can make in accelerating their growth and development. In light of this, a study had been undertaken by the Dalhousie Ocean Studies Programme (DOSP) on behalf of the Foundation Reshaping the International Order (RIO) and funded by the Special Programs Division of CIDA. The study recommended, among other things, that the States cooperate in establishing a Exclusive Economic Zone commission under the auspices of the OECS Secretariat, with responsibility for (i) negotiating a common EEZ and (ii) management of this EEZ.

Based on the resulting discussions, the OECS Authority decided to establish a Fisheries Unit in St. Vincent and the Grenadines. It was also decided that there should be a commencement, “under the umbrella of the OECS, of negotiations with a view to settling any existing or potential maritime delimitation issues which OECS Member States may have with other CARICOM Member States”. Heads also decided at this time that “except where arrangements (were) already advanced for negotiations between OECS Member States and non-CARICOM States ... no negotiations should commence with States in this category until (those) above (are) settled” and also that “OECS Member States as a whole would initiate negotiations with Venezuela with a view to settling boundary claims between that State and all OECS Member States”. This was the genesis of a maritime boundary delimitation (MBD) process within the OECS.

Among the outputs of this MBD process were MBD briefs for Member States possible negotiations with third states, as well as proposed baselines for the extension of maritime boundaries. In the years between 1981 and the present a number of other decisions have been made on issues related to Maritime Boundary Delimitation in particular, and maritime governance in general.

Recent discussions on issues related to Maritime Boundary Delimitation have made it even clearer that the sustainable development of ocean resources represents a key aspect of the economic development of the OECS region. It has been reiterated that this needs to be carried out in accordance with best international practices and the 1982 United Nations Convention on the Law of the Sea (UNCLOS) and other instruments. Article 123 of UNCLOS obliges States bordering enclosed or semi-

enclosed seas, such as the Caribbean Sea, to cooperate in the exercise of their rights and the performance of their duties under the Convention. The obligations of Member States to protect and preserve the marine space is articulated in Articles 56, 192 and 193 of the Convention, which require that States have a legal duty to protect the marine environment when exploiting marine space falling under their jurisdiction. The requirement that States are to cooperate (Article 199) through a harmonized approach (Article 197) speaks to the establishment of a regional mechanism that will facilitate the development of common positions, policies and laws for the coordination of management initiatives in waters subject to the jurisdiction of the States Parties.

It is in light of this renewed clarity of vision, that the OECS Secretariat has instituted a Sustainable Oceans Governance (SOG) programme with the overall objective of promoting regional economic development through the sustainable management of the use of ocean resources and the protection of the marine environment. This programme is geared, *inter alia*, towards (i) enabling the OECS Secretariat to create an institutional framework for regional cooperation in trans-boundary oceans management; (ii) strengthening national and regional capacities for the development and implementation of ocean law and policy within the framework sub-regional cooperation; and (iii) facilitating the provision of technical services in the area of sustainable ocean resource and marine environmental management.

### **Incubating the SOG Programme**

The incubation phase of the OECS SOG programme aims to build capacity at the level of the Secretariat and Member States for coordinating and facilitating a SOG programme for the OECS region by providing the relevant training and establishing the institutional framework for operationalising the OECS thrust. The following activities cover the core of this incubation period:

1. The development of an institutional structure and terms of reference for an Oceans Management Unit
2. An audit of existing ocean resource regimes, which has recently been completed and reveals the need for:
  - Development of a clear overarching national policy on ocean governance and strengthening of the legal and administrative frameworks in support of such policy;
  - Establishment of a national coordinating mechanism for ocean governance responsibilities;
  - Placement of the national coordinating mechanism within the appropriate ministry;
  - The provision of increased financial, human and material resources; and,

- An expanded role of the OECS Secretariat with the appropriate staffing resources
- 3. A review of key provisions of UNCLOS and other marine resources management-related agreements together with the collation and review of relevant maritime policies, legislation, international jurisprudence and writings has been initiated.
- 4. A desk study looking at new and emerging arrangements impacting on SOG suggests that in developing the broader SOG Programme, States should consider incorporating into the national programme the following areas outlined by the UN Secretary General in his report(s) on Oceans and the law of the sea
- 5. Briefing OECS Foreign Ministers and exposing them to MBD issues has begun
- 6. Initiation of MBD Negotiations with Third (non-OECS) States

The above and other issues related to sustainable oceans governance are high on the agenda of the OECS Heads of Government (the Authority). To this end they will convene a special meeting in early February 2008 to discuss proposals to further advance the development of the Programme.

### **Specific interventions**

Based on the aforementioned, OECS States are giving consideration to a number of issues.

➤ *UNCLOS Bodies*

A number of issues related to existing UNCLOS bodies are worthy of consideration in this regard.

➤ *International Seabed Authority*

OECS States will consider the rules and procedures for the application of the Endowment Fund for Marine Scientific Research in the Area, with a view to ensuring that their long-term interests are in no way prejudiced by their application.

➤ *International Tribunal for the Law of the Sea*

OECS States will ensure that their legal officer and potential agents become versed in the Guide to Proceedings before the International Tribunal for the Law of the Sea published by the Tribunal, particularly if these States are considering maritime boundary delimitation negotiations that may have occasion be brought to the Tribunal at some future time.

➤ International Shipping Activities

States are mindful of the extent to which safely constructed and regularly surveyed ships; well trained crew with labour conditions that meet global standards; properly stowed cargo; safe, secure and crime-free routes for navigation; and effective implementation of international rules and standards affect their ability to carry out their responsibilities as flag States. In this regard States are giving consideration to participating in the Voluntary IMO Member State Audit Scheme, which enables flag States to assess how effectively they implement and enforce relevant IMO convention standards (United Nations, 2007).

OECS States, as part of the Caribbean Community, continue to express serious concerns with regard to shipments of high level radioactive wastes through the Caribbean (CARICOM, 2006a,b). Other issues such as the revised performance standards for Electronic Chart Display and Information Systems (ECDIS) adopted by IMO and the IMO approved additional guidance on chart datums and the accuracy of positions on paper charts, where there is no determined datum or the datum is imprecise, will be given some attention by maritime authorities/administrations.

OECS States will apprise themselves of the content of the draft convention on the removal of wrecks, which once adopted will provide the legal basis for States to remove, or have removed, from their EEZs, wrecks that may pose hazards to navigation or, because of the nature of their cargo, to the marine environment or both (United Nations, 2007), and develop a unified position.

Maritime Safety

OECS States are mindful of the call by the United Nations Secretary General (United Nations, 2007) for the body of law related to the safety of life of people at sea to receive widespread acceptance by States and to be implemented effectively. The OECS Secretariat as previously reported on interventions in this regard in its advance contribution to the UN Secretary General's chapter on maritime security and safety.

Law and Policy

The enforcement of international maritime environmental law is said (Nelson, 2006) to present a unique set of challenges for all States. In this regard OECS States will be seeking to place greater emphasis on making use of the United Nations Consultative Process on the Law of the Sea to help identify weaknesses and to build consensus on the need for change (Leary and Chakraborty, 2005).

### Maritime Security

OECS States recognise that security issues have come to dominate the policy agenda globally and this trend is just as evident in the oceans (Leary and Chakraborty, 2005). The OECS Secretariat as previously reported on interventions in this regard in its advance contribution to the UN Secretary General's chapter on maritime security and safety.

### Marine Science and Technology

OECS States are in general agreement with the view of the United Nations Secretary General (United Nations, 2007) that acquiring widespread and increased knowledge and data about oceans and sea that may assist in understanding oceanic and climatic processes and in predicting and mitigating natural disasters is of benefit to their people. In addition, OECS States note and support the ongoing efforts (*ibid.*) to develop a legal framework for the collection of oceanographic data within the context of UNCLOS.

### Fisheries Conservation and Management

The OECS Fisheries Management and Development Strategy (OECS, 1999) provides a framework for the further development and diversification of the regional fisheries sector, reflecting stakeholders participation and fishers safety with increased investment in sustainable production and marketing, resulting in social and economic well being of fishers and the wider community. As a consequence of the diversity of issues impacting on the sustainable development of the fisheries sector, OECS States are currently given consideration to a number of issues including, but not limited to:

- Formulation by eastern Caribbean States of a fisheries management arrangement specifically for migratory pelagic fish species in region, and strengthen existing regional organisations and arrangements. In addition, there is need to consider the terms and conditions pertaining to cooperation with or membership in ICCAT, as well as the legal options available to members for strengthening sub-regional and regional cooperation in enforcement, pursuant to the UN Fish Stocks Agreement, the FAO Compliance Agreement, and the Code of Conduct for Responsible Fisheries.
- Further exploration of options for coordinated management of the coastal large pelagic species, which fall within their jurisdiction, at the sub-regional or regional levels.
- Development of their fisheries based on an understanding of the fragile nature of their tropical fishery ecosystems; existing fishing sector and the social structure of the coastal communities that depend on fishing; natural capital that fisheries represent, and the long term

potential to be realised from sustainable fisheries resource exploitation

- Increasing the benefit flows from fishery resource exploitation in developing local employment creating and value-added processing, both to meet national and regional demands, as well as to generate foreign exchange earnings on international markets
- Determining the suitability of vessels currently in use, given that consideration may have to be given to changing both the physical nature of these vessels and the way in which they are being utilised at present, as well as retooling and/or retrofitting of existing fishing platforms or plants.
- Seeking FAO advice on the potential negative consequences of both distant water fleet access and international fish trade for food security.
- Promulgating the suite of fisheries management (related) legislation developed as part of the OECS Secretariat's assistance programme; and reviewing and improving the prosecution of fisheries cases within the court system.
- Putting in place policies and development programmes which seek to use fisheries resources in a sustainable manner and which can respond effectively to changing conditions such as climate change.

➤ Marine Genetic Resources

OECS States will seek to develop clearly stated harmonised policies regarding:

- Scientific investigation of the oceans
- Bioprospecting
- Exploitation of non-fisheries resources
- Services provided by marine genetic resources, including
  - Supporting and regulating services
  - Provisioning services, such as
  
- Scientific knowledge
- Biotechnology
- Health care
- Nutrition
- Aquaculture, and
- Bioremediation

Such policies should give separate consideration to positions regarding

- Utilisation and conservation of marine genetic resources
  - Within national jurisdiction
  - Beyond national jurisdiction

- Marine scientific research (MSR), paying attention to
  - General principles for the conduct of MSR
  - MSR under national jurisdiction
  - MSR beyond national jurisdiction
- Other aspects such as
  - Assertion of intellectual property rights and
  - Protection and preservation of the marine environment

### Marine Biological Diversity

The United Nations (2007) has clearly enunciated the view that “priority needs to be given to the management of human activities that adversely impact marine ecosystems in order to ensure conservation, sustainable use and development of ocean resources in the interests of current and future generations”. In this regard, OECS States will give consideration to policies related to (a) diversity of marine ecosystems and (b) diversity between and among marine species.

### Protection of the Marine Environment

It has previously been pointed out (United Nations, 2007) out that healthy coastal and marine environments are essential to human well-being and sustainable development. In this regard OECS States acknowledge four priority issues, namely: marine litter, nutrient over-enrichment, sewage and management of municipal wastewater and physical alteration of habitats; and six emerging challenges (United Nations, 2007). The latter include coastal dead zones, depleted freshwater flows, downstream and near-coast freshwater wetlands, and the effects of sea level rise. Within this context, eastern Caribbean States will consider enunciating clear, harmonised or common policies that relate to:

- Protection of the marine environment from land-based activities
- Pollution from ships
- Control of harmful organisms and pathogens in ballast water
- Ocean noise
- Waste management
- Ship breaking/dismantling/recycling/scraping
- Regional cooperation, and
- Marine Protected Areas

### Climate Change

The importance of the climate change to OECS States cannot be over-emphasised; in this regard, States recognise the need to institute a fully integrated approach to vulnerability assessment in the context of all the possible impacts of climate change.

- Leary, D. and A. Chakraborty, 2005. New Horizons in the Law of the Sea. Victoria University at Wellington Law Review 36: 675 – 681.
- Nelson, P., 2006. Enforcement perspectives on maritime and environmental law and policy. pp 257-259 in Smith, G.R. and C. Boese (Eds.), 2006. Proceedings, *Pacem in Maribus XXXI* Conference, Townsville, Australia, 31 October – 3 November, 2006. International Ocean Institute Regional Operational Centre for Australia and the Western Pacific.
- Organisation of Eastern Caribbean States (OECS), 1999. OECS Fisheries Management and Development Strategy and Implementation Plan. OECS Natural Resources Management Unit, Castries, St. Lucia. 47p.
- United Nations, 2007. Oceans and the law of the sea: Report of the Secretary General. Advance and unedited text. United Nations General Assembly, Sixty-second session, Agenda item 79(a) of the provisional agenda. 91p.

\*\*\*\*\*