

Bridging the gap: regulating climate change and its impacts on ocean life

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Scientific evidence demonstrates that the effects of climate change upon the oceans will lead to biological, chemical and physical changes with dire environmental and geopolitical repercussions. The impacts of climate change upon the oceans, namely their warming, sea level rise, ocean acidification and resultant marine biodiversity loss have been consistently highlighted in various scientific reports. Experts, scholars and academic networks from various disciplines have raised awareness on the multifaceted and complex relationship between oceans, marine living resources and climate change¹. In political fora, climate change is often referred to as a threat multiplier. Earth scientists describe how the climate and oceans relationship accentuates the complexities of the natural world providing a classic example of how planetary boundaries², such as global warming, ocean acidification and marine biodiversity loss, interact to exacerbate the negative impacts caused by human behaviour. Outcomes from conferences and even applicable treaties acknowledge that a cross sectoral and an integrated, ecosystem approach is key to achieve sound governance of these natural resources.

Despite widespread awareness for a holistic approach, the current international political and norm-creating pathways remain too fragmented to deal effectively with the interface between marine biodiversity, oceans and climate change. Negotiators are bound, legally and politically, to stick to their mandate. Technocrats taking part in negotiations are usually very specialised and answer to different ministries that may have conflicting agendas and priorities, disregarding the wider context. They deliberately refrain from delving into issues, which fall within the remit of other international institutional bodies and treaties, however interrelated they may be. Sticking to the mandate is a methodology founded upon a centuries old legal practice based on delineated roles, which cannot interfere with the *‘reserved domain’* of

¹ Apart from the IPCC regular reports other reports from Stern, the World Bank and Moody’s, have accentuated the need for an integrated approach.

² Through the progression of Earth systems science, humans have been able to identify a number of environmental thresholds, namely the ‘Nine Planetary Boundaries’. These non-linear boundaries interact to serve as a guide for humans, determining the level which certain planetary systems must not cross to remain ‘non-hazardous’. Rockström says that, “the planet is a complex, self-regulating system” (TEDGlobal, 2010, 9:51)

other subjects of international law and with the specific mandate of international fora entrusted with international negotiations that are more often than not sectoral in their approach. From a legal perspective, it secures equality of states acting both individually and as members of international organisations.

Science, however is showing us that despite all the pain-staking efforts to reach ambitious substantive obligations spelt out in the Paris Agreement and various conservation treaties, results will not be as effective if this '*silo*' methodology persists. Working arrangements must be adapted to integrate the interface between the planetary boundaries to generate adequate legally-binding norms that are mutually supportive. Whilst summits and inter ministerial meetings help to foster a wider perspective in dealing with ocean and climate governance, attempts to harmonise international regulation relating thereto cannot remain sporadic and just dependant upon political goodwill. It is crucial for international law-making to have the requisite structure that facilitates an integrated approach to circumvent fragmentation. Given the imminent risks posed by climate change upon ocean life, the relationship between climate action and ocean governance should serve as a prototype to change the way how things are currently done. If the Paris Agreement is to transform the planet into a carbon neutral and climate resilient economy it will also need to be supplemented by substantive legally binding norms that address effectively environmental and socio-economic risks that aim for good governance of ocean life.

The way forward in securing a holistic approach between climate and ocean governance is a journey through unchartered waters in the history of international law. This paper proposes three steps as a possible methodology to achieve it:

- (i) The establishment of a permanent multilateral body that would have a cross sectoral mandate to undertake a stock-taking exercise and assess whether applicable norms could be better implemented or need to be supplemented by more robust and specialised legal norms;
- (ii) The same mulilateral body would have a scientific panel to institutionalise and render legally binding the working relationship between law makers and scientists. It would be the scientific reports that would assess the suitability of existing applicable norms as well as any legal gaps that need to be addressed via new legal instruments to prevent or limit harm to ocean life as a result of climate change;
- (iii) The threat of climate change has lead to various innovative developments under international law, one of the most remarkable outcomes is doubtlessly the involvement of non-state actors in the negotiation and implementation process. The non-state actors involved include NGOs as well as multinationals, macro and micro businesses, mayors, financial institutions, chambers of commerce and civilians. The involvement

of non-state actors not only maintains the required momentum to ensure climate action that sustains ocean life but also circumvents bouts of political inertia and disinterest, alleviates governments from shouldering financial burdens to ensure preparedness and promotes equitable effort sharing among all sectors.