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Ocean Governance and the Millennium Development Goals (MDGs): The Missing Links to Sustainable Development Goals (SDGs)

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ABSTRACT

The oceans and seas are the source of life on earth and are therefore a crucial factor in determining global climate change, global economy and hence international relations. For these reasons, ocean governance must necessarily become part and parcel of the strategies for achieving the objectives sought in the Millennium Declaration of September 2000 and the new sustainable development project. This paper highlights the essence of the Law of the Sea and hence ocean governance and the role it could have played in achieving the objectives sought in Millennium Development Goals (MDGS) in Nigeria as well as the prospects for transiting to the current Sustainable Development Agenda (SDA). The paper thus equates ocean governance by means of the evolution of the law of the sea, which has progressively developed from two major principles to attend a climax with the 1982 Convention on the Law of the Sea otherwise known as UNCLOS III. The main thrust of the paper is that the opportunities provided by the law of the sea and hence ocean governance have provided impetus that can serve Nigeria as some of the most effective strategies for achieving SDGs having missed maximization in respect to the MDGs.

Keywords: *Ocean Governance, Millennium Development Goals (MDGs), Missing Links, Sustainable Development Goals (SDGs), UNCLOS III*

INTRODUCTION

The evolution and development of the law of the sea reflect the constant struggles by coastal and landlocked states in their bids to gain special rights and access to the vast areas of sea and other states particularly traditional

maritime powers which insist on having unlimited access to navigate and fish in all ocean areas. These struggles created exceptions to the traditional freedom of the seas (*mere labarum* -- close sea) and gradually gave way to new principles of the expanded enclosure of ocean space (*mere clausum* -- open sea). This was achieved through a proliferation of conferences from the early 19th century up to 1982. For example, between 1884 and 1983 over 162 multilateral conventions, together with the all-encompassing UNCLOS III were adopted. UNCLOS III thus forms the bulk of the law of the sea whose implementation constitutes modern ocean governance.

The MDGs are developmental goals which the United Nations tasked the international community to achieve for all mankind in the first quarter of the new millennium. The Law of the Sea and consequently ocean governance promised advantages ranging from increasing the resource base of all nations of the world, economic development, marine environment protection and preservation to sustainable development. The implementation of the Law of the Sea, together with UNCED's Agenda 21 which emphasizes sustainable development of the seas can therefore be closely connected to the strategies for achieving the MDGs. Yet, much was not achieved with that. Against this background; this paper examines ocean governance as guided by the Law of the Sea as one of the most effective strategies for achieving the MDGs and established what went wrong in fully utilizing that.

The paper is divided into five parts. In addition to this introduction, the paper first highlights the historical background of the law of the sea which laid the foundation of ocean governance. This is followed by the highlight of the MDGs in their intrinsic values and the major building blocks of UNCLOS III which prescribe the direction of modern ocean governance. The forth part analyses ocean governance as a strategy for achieving the MDGs. The fifth part discussed the relationship between ocean governance and the MDGs and what went wrong and o the missing links The last part is conclusion and recommendations.

BACKGROUND TO THE LAW OF THE SEA

Modern law of the sea, as mentioned earlier, evolved and progressively developed into two broad principles, the traditional open sea system (*mere labarum*) and the new principles of expanded enclosure of ocean space (*mere clausum*). These broad principles are consolidated in a most comprehensive single document (UNCLOS III) which was necessitated by the erosion of the then existing law of the Sea under the traditional open sea system.

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Two factors generated this erosion. The first was the intensive and expansion of new actors in the international system following the collapse of imperial empires. The second was the impact of new technologies that transform the traditional uses of the sea (fishing and shipping) and introduced diversified multiple uses such as seabed mining, energy generation, construction of artificial islands, etc. With the intensification of such diversified uses, the traditional governing order of the oceans which insisted or consisted of narrow territorial seas and freedom of the high seas become obsolete. The high point of this obsolescence was the Truman Proclamation on the continental shelf of the United States of 1945, which provided exclusive fishing zone and sovereign rights over the continental shelf of the United States. This generated chaotic expansion of national claims of parts of the sea (from 50-200 nautical miles) from Latin America and Africa states, thus threatening the freedom of navigation of the military and commercial fleets of the big maritime powers.

There was also the concern over depleting stocks of fish due to over fishing and use of distant commercial fishing fleets. In addition, there were problems associated with marine pollution through atmospheric sources, dumping from ships, accidental discharge, and offshore oil platforms, etc, to coastal waters and the enclosed or semi-enclosed seas, which endangered the health of living resources and coastal communities.

The conventions adopted in Geneva 1958 were somewhat sectoral, limited and vague in many respects. They could not address a number of unresolved issues fundamental to ocean governance, such as the breadth of territorial sea and the controversy surrounding the definition of continental shelf. Moreover, the 1958 conventions adopted in UNCLOS I were only negotiated and ratified by a small number of states without the inclusion of most developing states. UNCLOS II which was convened in 1960 to resolve the issue of the breadth of territorial sea again ended without success. All these factors led to further erosion of the traditional open sea principles creating room for unilateral claims of various parts of the sea. It was amidst these unilateral claims that when the 25th session of the United Nation General Assembly was convened in 1967, the Permanent Representative of Malta made his famous speech calling for a declaration and treaty on the peaceful uses, in the interest of mankind, of the seabed resources beyond national jurisdiction. At that time, it was evident that undersea technology had reached the point of making deep seabed mineral resources accessible. Wang (1992, 27) summed up the situation as follows:

To the vast majority of the developing Third World nations, the seabed was the last frontier for mankind to tap the resources found there. But they also

were keenly aware that without the technology, or the sharing of advanced undersea technology for the seabed exploration and exploitation, they would be deprived of the economic benefits. The concern of the developing world about the usage and ownership of the sea was basically motivated by the acceptance of the view that technology was a 'panacea for their economic ills'. Thus, the debate over the seabed at the United Nations in the late 1960s emerged for the developing nations as a top priority on the agenda at any multilateral diplomatic conference regarding the oceans.

It was against this background that amidst the seabed debate on the Committee on peaceful uses of the seabed, the United Nations General Assembly adopted a resolution on 17th December 1970 convening the Third United Nations Conference on the Law of the Sea (UNCLOS III) in 1973. The conference took nine years and a total of 11 official sessions to complete the assignment. Thus, on 10th December, 1982 the draft Convention was opened for signature and was adopted and signed by 119 nations (Zuleta, 1983). The Convention received the 60th ratification and entered into force on 16th November, 1994. The Convention is supplemented by two implementation agreements dealing with seabed mining provisions, revising Part XI and Straddling and Highly Migratory Fish Stocks which must be read as part of the Convention. This Convention which is described as "a constitution for the ocean" contains provisions that serve as distinct building blocks, some of which updated and codified existing law in a progressive form (Parts I-X), while others are constitutive (Parts XI-XV) (Borgese 1996). The constitutive parts embody new concepts, new laws and establish new institutions for oceans governance of the 21st century.

All these were intended to open up as well as regulate the exploration, exploitation and uses of the sea for the benefit of mankind and provide an impetus for the development of nations. Perhaps, what constitutes a challenge to the above is that the freedom to use the sea is dependent on the capacity of nations to effectively it. While some developed countries of the world had uninhibited capacity to and hence advocated for unregulated uses of the sea, the technologically poor nations of the world had a lot of inhibitions to effectively explore and maximize the uses of the sea. This made the advantages of ocean governance very relevant to the efforts achieving the MDGs. Ocean governance, which evolved out of the need to use the ocean space for the development of the undeveloped parts of the world, ought to naturally provided a platform for re-assigning and re-applying the sea towards achieving the Millennium Agenda for Development (MAD) and transit to SDAs, hence the need for this discourse.

THE MILLENNIUM DEVELOPMENT GOALS (MDGs) AND UNCLOS III

As the World marched into the 21st century, the United Nations General Assembly adopted the legendary Millennium Declaration in September 2000, asserting that the members of the organization ...will spare no effort to free... fellow men, women and children from abject and dehumanizing conditions of extreme poverty, to which more than a billion are currently subjected to (Annan, 2000).

Consequently, the millennium development goals were set up to be achieved within a hypothetical period of fifteen years. These goals including:

1. The eradication poverty and hunger;
2. The achievement of universal primary education;
3. Promotion of general equality and empowering of woman;
4. Reduction of child mortality ;
5. Improvement of maternal health ;
6. Combing HIV/AIDS, malaria other disease;
7. Ensuring environmental sustainability; and
8. Developing a global partnership for development (see UN MDGs website, retrieved 16 June 2009).

In the words of Amakom (2012), “unlike other seemingly bold pledges that became broken promises over the fifty years period before 2000, the MDGs were different in four significant ways”. First, this was the first time rich countries accepted, in principle, their share of responsibility to support the efforts of poor countries, through more and better aid, debt cancellation and fairer trade. Similarly, developing countries, just like the developed counterparts, accepted, at least in principle, to ‘reciprocate’ through improved governance and better use of resources. Secondly, the goals were people-centred, time-bound and measurable – there were clear, measurable indicators, focused on basic human needs. There were also clear benchmarks of progress or lack of it – both globally and on a country-by-country basis. Third, the MDGs had unprecedented political support since the eight goals were drawn from the Millennium Declaration, which was endorsed by all member states of the United Nations. Never before this have such concrete goals been formally endorsed by rich and poor countries alike. Fourth, the MDGs were achievable. Although the challenges were obvious, the goals were technically feasible where conscientious efforts were made as some them could achieved from the perspectives of ocean governance.

As noted earlier, UNCLOS III does not only provide building blocks which update and codify existing law, it creates new concepts, new law and established new institutions for oceans governance in the 21st century.

What are these building blocks, laws, concepts and institutions, and what they portend for the Millennium Declaration and the MDGs? The existing literature on the law of the sea often refers to these building blocks, concepts, laws and institutions as the major innovative components of UNCLOS III. Some of these include:

1. The exclusive economic zone (EEZ) and changes in the concept of sovereignty
2. Archipelagic state and the concept of archipelagic waters
3. The common heritage of mankind (CHM)
4. International Seabed authority (ISA)
5. A global international environment law
6. A new regime of marine scientific research
7. A framework for technological cooperation and development
8. A comprehensive and binding system of pacific settlement of disputes
9. Reservation of the sea for peaceful progress.

These changes were said to have marked a breakthrough in the annals of history of international relations and law especially in the treaty making process. The breakthrough started a process of transformation over the past two decades which was continued and developed into linkages between UNCLOS and the United Nations Conference on Environment and Development (UNCED) (Tagowa, 2006). The following section highlights what this transformation process portends for the MDGs as well as the missing links to SDGs.

OCEAN GOVERNANCE AND THE MILLENNIUM DEVELOPMENT GOALS (MDGS)

At the Third Global Conference on Oceans and Coastal Management, the Panel on “African Perspectives” in 2010, tasked African delegates to address two key issues, viz:

1. Identify options and models for further development of the EEZ management in Sub-Saharan Africa through ecosystem based management approaches aimed at poverty reduction and enhance social development, and
2. Identify how synergy among LME projects, Regional Seas Programmes and the activities of national and multinational NGOs can be achieved to reduce poverty, achieve environmental targets in Sub-Saharan Africa.

It was therefore established that the capacity for coastal and ocean management and synergy among existing regional and national efforts in this area have implication for achieving the MDGs. Indeed, the international

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community agrees on the fact that environmental problems of the seas cannot be solved without taking into consideration proper management of the coastal and land areas. The implementation of integrated coastal zone management would therefore allow a more sustainable management with the participation of all agencies and lead to reduction of conflicts of interest. Global governance of the oceans would be efficient if it is organized at the level of Large Marine Ecosystems that cover coasts, adjacent seas, estuaries, and fresh water without following national borders. Similarly, it is believed that the regulation of the high seas.

...will be essential to prevent irremediable degradation of their resources only to fit the benefits of few countries that can afford to exploit them.... the Millennium Development Goals (MDGs) called for improve cooperation and coordination at all levels to address oceans and seas issues and promoted integrated management and sustainable development of the oceans and seas (WON, 2013).

The first Millennium Development (MD) goal has to do eradication of poverty and hunger and the strategy to achieve it is the promotion of opportunities for the poor people. This involves the provision of jobs, credit facilities, and provision of infrastructures like roads and electricity, accessibility to markets for their produce, schools, waters, sanitation and healthy services, and skills for work. The second strategy which is related to the first one is that of empowerment. The facilitation of empowerment has to do with the selection of public actions that are responsive to the needs of the poor in the respect to political, social and other institutional restructuring. This requires integration of efforts and collaboration among people themselves, the government and other groups in the society. The third strategy has to do with enhancement of security, such as the reduction of risks and vulnerability to economic shocks, natural disasters, ill-health disability and personal violence.

There is no hierarchy in these strategies as they complement each other and so the approach had to be integrative. States, especially developing countries needed to have discerned their mix of policies to reflect national and local priorities. This requires a closely-interwoven institutional restructuring and actions at the national, regional and global levels: and generally speaking, that is what the law of the sea and ocean governance is all about.

Let us take some of the innovative components of UNCLOS III and elaborate on how ocean governance could have been used as strategies for realization of the MDGs. The provision of the regime of EEZ as a Third World concept has significantly increased the resource base of coastal states

especially for small island states that lack land resources. This has the possibility of providing economic opportunities for the poor communities of coastal states. Indeed the development of technological capability by advanced countries has provided them the opportunities to gain access to the major fishery resources of the world up to the coast of less technologically developed states. This access was made possible by the freedom of navigation and fishing which was maintained since the 17th century.

Up to that time the traditional distant fishing fleets from Japan, South Korea and Russia were found in the North Atlantic up to the coast of Africa with fishing processing equipment, freezer trawlers and factory ships. The EEZ thus enclosed more than 40 percent of the world's ocean area which contained more than 90 percent of the world's living resources giving coastal states the right of control and management of such resources.

The EEZ also provides a framework for management of the ocean space in large square nautical miles with the largest known concentration of hydrocarbon reserves. In this way the provision of EEZ in the law of the sea has the capacity to help in the redistribution of World resources. This has provided a multipurpose management zone covering all uses of the ocean space in an integrative and interdependent way. It provided an opportunity for the notion of integrated coastal zone management and Joint Management Zones (JMZs) which relates to action plans for attaining the MDGs (Vacuna, 1994). This type of opportunity does exist between Nigeria and Equatorial Guinea but was not put into effect with other neighboring states, leading to a huge loss of such opportunity under MDG 8.

The principle of common heritage of mankind is a novel innovation that is capable of addressing the target goals of MDGs in very serious terms. By regarding the 'Area' as common heritage of mankind which is a non property that cannot be appropriated, mankind has therefore assumed a gargantuan position in international law. More so, this 'Area' is to be managed under three fundamental principles including benefit sharing with particular consideration of the needs of the poor, reservation for exclusively peaceful purposes, and must be protected and conserved for future generations. The ISA is the institutional embodiment of ocean governance and custodian of the common heritage of mankind. By its constitution under UNCLOS III, it is capable of generating international taxation in the exploitation of seabed resources in the international area and the areas under national jurisdictions noted above. This offers a framework for global private/public sector cooperation and internationalization of high technology in the marine sector (Tagowa, 2010).

The concept of common heritage of mankind under UNCLOS III is theoretical and its actualization could have been transformed to link up with the strategies for achieving the MDGs. Theoretically, it is not a physical property that can be appropriated by any state, legal or physical person. It is therefore not a property for owners to use and misuse. It is something that must be managed in a special kind of management for the benefit of mankind as a whole. It can therefore be argued that ever since the UN tasked the economically advanced nations to assist the poor nations, nowhere was there a legal imposition of assistance to the poor like this 'benefit sharing with particular reference to the poor' nations. This has an MDG connotation. Thus, the three principles of common heritage of mankind sum up the political economy of common heritage of mankind itself. They envelope three problems of mankind's development: poverty reduction, disarmament (peaceful use of the 'Area') and environment protection and preservation. These are central themes in the MDGs and provides for the notion of comprehensive security and sustainable development.

In addition, the common heritage of mankind principles has development, environment and disarmament dimensions designed to be integrated to provide the basis for comprehensive security. In this connection, it must be emphasized that the administration of common heritage of mankind in itself can pave the way not only for poverty reduction but also ensure environmental sustainability and security which are some of the MDGs.

Indeed, the Principle of common heritage of mankind prefers institution building that accords with certain guidelines laid down in *Our Common Future* and *Agenda 21* which provided that institutions must be comprehensive, consistent, trans-sectoral or multidisciplinary, and participational (sic) (Borgese, 1998). Participational guideline is important because it emphasized "bottom-up" rather than "top-down." This approach to ocean governance, especially in the area of coastal and ocean management has created a new concept of governance known as "co-management." Co-management emerged in several parts of the world as a response to the failures of national governments and crisis of fisheries involving social and cultural disintegration of local communities. According Borgese (1998:135), co-management is a "consequence of the 'transparency of boundaries' between levels of governance – local-provincial-national. It is an example of the new relations between governmental and non-governmental sectors. Where it blends with notion of 'community-based management' it also reflects the 'transparency of the boundaries' between disciplines and departments. Thus, whenever local communities are involved in the management of their resources themselves, their level of poverty will consequently be reduced. Presently there a number of co-management communities in South Africa,

Belize, India, Canada, etc. and the programmes have contributed immensely in poverty reduction in the affected communities. In Nigeria, efforts were not made to advance the exploration of these resources, let alone developing them. The tapping from it using the co-management principles could have been tried. Indeed, it was not tried, but that could have contributed to achievement of the cardinal goals of MDGs in the area of poverty reduction.

Again, Part XII of UNCLOS III contains special provisions for building enforceable global, comprehensive environmental law. Its specific interlink with Chapter 17 of Agenda 21 and hence the UNCED process speaks more of the interconnectivity between economic development and environment and establishes a basis for sustainable development. In line with this, the International Ocean Institute (IOI) has been undertaking a number of human resource development activities in all its operational centres in its own contribution to ocean governance. These activities are in the areas of poverty eradication, generation of self-reliant development among local communities, resource co-management with focus on integrated coastal area management, mitigation and adaptation to hazards and the empowerment of developing country communities to manage the coastal and EEZ resources. The IOI has also established women empowerment activities in its women and the sea programme in various regions of the world. Common as they appear, Nigeria state could not explore its benefits in developing the capacity to meet the MDGs goals.

Finally, the thrust of ocean governance is to promote partnership cooperation at the national, regional and global levels. This explains the insistence for the establishment of institutional arrangements for ocean management in various parts of the world. In any case, international cooperation at bilateral, regional and global levels is mandatory as states have to cooperate to promote marine scientific research and transfer of marine technology under Part IV. It can therefore be concluded that ocean governance has gone ahead to specify strategies for developing global partnership for development as stipulated in the 8th MDG. Unfortunately, its limitless potentials were not utilized. These surely have implications in the failure to achieve the set goals of MDGs. That leaves the country with the choice of exploring these opportunities for the new Sustainable Development programme.

The notion of sustainable development again has to do with the integration of environment and development whose institutional embodiment, the Commission for Sustainable Development (CSD) hatched the MDGs. Part XII of UNCLOS III contains binding, enforceable and comprehensive environmental law that covers all sources of pollution of the marine

environment. This part established a process which links the UNCLOS with UNCED, especially since the publication of the Report, *Our Common Future* (1972), through Chapter 12 of Agenda 21, the Rio Declaration 1992, CSD and the plan of the World Summit on Sustainable Development (WSD) in Johannesburg, South Africa (2002), and Berlin, Germany (2012), and subsequent years.

The WSD Plan of Implementation reaffirms the international community's commitment to the Rio principles and further implementation of Agenda 21 which is a link-pin between the UNCLOS and UNCED processes. It also indicates the concrete steps and actions to be taken to achieve the MDGs. The steps and actions centre on the integration of economic development, social development and environmental protection 'as essential element of sustainable development' (CSD, 2002). Since economic development, environmental protection and disarmament are central in the UNCLOS process, ocean governance is therefore an essential strategy missed for achieving the MDGs, but which is still achievable under the sustainable development goals project. This is because the grand provision of the common heritage of mankind principle and the inter-link between the UNCLOS and UNCED processes has revolutionized ocean governance to a significant degree. Thus, good stewardship of the oceans and coastal areas can establish a more effective multilateral governance in the economic, environmental and security realms (CFR, 2013).

This made Elisabeth Mann Borgese to assert that "*UNCLOS + UNCED = UNCLOSED*", and that if '*UNCLOSED*' means 'open', the interaction between UNCLOS and UNCED has brought about a fundamental process of development that would continue to affect the World community (Borgese, 2000). This has thus established a harmonious relationship and impact between the MDGs and new SDGs. This effect must be felt from the local communities to national governments, to the regional and global levels. The principal implication is that the boundaries between sectors of government or governance are very porous due to the interlocking interdisciplinary character of the World System. Secondly, that the boundaries between 'public' and 'private' actors in the international system are also porous and this transcends to the relations between business and government. And thirdly, that "national boundaries have become so porous that distinctions between local, national, and international issues have become blurred" (Keckes, 1994:151). Therefore, following the preamble of UNCLOS III which states that the "problems of ocean space are closely interrelated and need to be considered as a whole," one must hasten to add that the problems of mankind are closely interrelated and therefore need to be considered as a whole, which is the philosophy behind MDGs and the new SDA.

CONCLUSION AND RECOMMENDATIONS

Against the foregoing analysis, this paper hastens to conclude that the development, promotion and implementation of ocean governance as guided by UNCLOS III must continue to be among the core objectives of the international community, and should be central to state policies, especially in Africa as an effective strategy for achieving the MDGs, the missing links in maximization notwithstanding. These objectives must be pursued through participation in various ocean governance events such as Global Forum on Oceans (GFO), United Nations Open-Ended Informal Consultative Process on Ocean and the Law of the Sea (UNIPOLOS), Sea and Human Security Forum (SHSF), Regional Intergovernmental Ocean Governance Forum (RIOGF), etc. It is equally important for Nigeria to intensify local and international training and academic conferences, seminars, research and publications in ocean governance for enhanced capacity building. The International Ocean Institute (IOI) undertakes training and capacity building education in its entire operational centre and its Virtual University (IOIVU) programmes. It also collaborates with states, NGOs and international organizations in training and education on ocean governance in various institutions all over the globe. Nigeria can take advantage of these training programmes to achieve SDGs so as not to degrade the little achievement in relation to the MDGs.

In the context of Millennium Millage Programme (MVP) under the Millennium Project (MP), Nigeria should intensify the establishment of coastal eco-village programmes in collaboration with International Ocean Institute (IOI) operational centres. The MVP seeks to end poverty by working in the poorest of the poor, village by village, in partnership with government and other stakeholders to provide affordable science based solutions to help people uplift themselves from extreme poverty. Like the millennium village concept, the coastal eco-village concept also centre on capacity building through training of coastal village communities in new skills, development issues, vocations, ecology, biological biodiversity, herbal plants and other issues related to poverty alleviation. There is also Women, Youth and the Sea Programme (WPSPP) of the International Ocean Institute (IOI) which also aims at uplifting the standards of living of women and youths in coastal communities and empowers and promotes equitable distribution of wealth and opportunities in such communities (Oyewo, 2010). Such programmes should be strengthened and supported by local and national governments as well as NGOs in Africa as part of the strategies to achieve the SDGs which were not considered under MDGs.

To achieve environmental sustainability in the seas, scientist, managers and policy makers must work together to ensure that the coasts and the seas

are protected and developed (GESEMP 70). In this way they can achieve the objective of ensuring that decisions affecting the environment are not only justified by social and economic factors but also influenced politically. This is because political decisions informed by social and economic reasons but driven by short-term financial considerations and not necessarily informed by science. The oceans and their resources can only be managed wisely only when such management system relies on interdisciplinary scientific research and observation that can make positive impact on environmental change that is valuable in economic terms. Only scientific method is capable of estimating gaps and uncertainty in knowledge that can work out the possibilities of risks involved in different decisions about policies and managements (GESEMP 70). In this directive nations and the international community should rely more on precautionary approach to avoid unwanted results or limit the likelihood of unwanted results occurring. The approach calls for pre-emptive action by authorities whenever they believe the risks would cause severe and irreversible damage to human welfare, resources or environment, even if the effects or causes may be uncertain. Should there be risks about the risks, there should also be errors on the safety side of the divide in so far as the economic and social considerations are concerned. This is because the central objective of policy and management “should be to achieve the greatest long-term benefit to the society by making wise and consistent choice in the trade-off between economic development and environmental protection” (GESEMP 70: 29).

Finally, there is need to enhance integrated approach to coastal and ocean management to achieve environmental sustainability under the SDGs as it could not be under the MDGs as we transit to the SDGs. This is because the problems of the oceans and coasts are intricately interwoven that they cannot be addressed in isolation. The land and sea are interdependent and linked by a complex atmosphere: geological, physical, chemical and biological and depends on economic and social factors.

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