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CHAPTER IX

The Human Sea: Whole-of-Government Responses to Illicit Activities

Brian WILSON
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Résumé : *Les nations à travers le monde ont mis l'accent sur la formalisation de la coordination, en particulier dans le contexte de la sécurité. Le chef de la fonction publique de Singapour, Peter Ong, a fait remarquer, « que les défis auxquels nous sommes confrontés deviennent plus complexes, les solutions d'agence simples deviendront moins adéquate ... [et] nous avons besoin d'une réelle collaboration. » L'ancien président de la Joint Chiefs of Staff, le général Dempsey, a fait remarquer, « Le développement du «whole-of-government», gouvernement pangouvernementale, est non seulement souhaitable, il est effectivement impératif. » Les défis maritimes comprennent la répression des trafiquants de drogue et des trafiquants d'êtres humains, la réponse à la piraterie et aux vols à main armée en mer ; il faut empêcher le braconnage du pétrole et la pêche illégale, assurer la sécurité des ports, mener des missions de recherche et de sauvetage, assurer la protection de l'environnement marin. Ces événements se déroulent dans des environnements complexes, opérationnels et sensibles au facteur temporel, là où leur portée et leur gravité ne sont pas toujours apparentes. Un processus de collaboration, inclusif et transparent correspond aux meilleures positions d'un gouvernement, en vue du*

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partage rapide des informations, de la détection des anomalies, et de l'organisation des réponses.

Le plan Opérationnel Maritime Threat Response (MOTR) constitue la réponse des USA au whole-of-government. Le plan a été élaboré pour coordonner les multiples décisions au niveau national après le sauvetage de l'équipage à bord du Magellan Star en 2010. Sur une période de plusieurs jours, des téléconférences vidéo sécurisées, reliées aux centres de commandement, ont réunies les agences et experts sur trois continents, ce qui a permis la discussion et la résolution de nombreuses questions difficiles et sensibles. Parmi les participants figuraient des représentants des Département d'État, de la Justice, de la Défense (qui comprenait le Bureau du Secrétaire de la Défense, l'Etat-major interarmées, et les divers commandements), du Transport et de la Sécurité Intérieure, ainsi que la communauté du renseignement et d'autres organismes gouvernementaux. La sensibilisation diplomatique, les questions des enquêtes et de l'orientation des affaires publiques ont été abordés. Après l'achèvement de l'enquête et de l'examen par le ministère de la Justice, et un vaste engagement diplomatique du Département d'État, un État de la région a accepté de poursuivre les neuf pirates.

En 2009, le processus MOTR a facilité les discussions, les décisions et les actions suivants l'attaque sur le M/V Maersk Alabama, un cargo un programme alimentaire des Nations Unies vers la Somalie. Les intervenants d'un efficace processus de whole-government comprennent: l'autorité centrale de l'État ; la flexibilité ; la diffusion opportune, exacte et utile des informations ; des décisions documentées et réparties ; le soutien des divers départements et la confiance dans le processus ; une utilisation fréquente et une formation fréquente ; enfin la publication des procédures standard d'intervention. L'institutionnalisation de la collaboration est plus qu'un défi maritime : il existe un problème de gouvernance. La leçon durable est que la confiance, le leadership et l'existence de processus documentés sont les facilitateurs critiques d'une coopération nationale efficace, mais aussi bi-nationale et multi-nationale.

Abstract: *Nations across the globe have focused on formalizing coordination, particularly in the context of security. The head of Singapore's civil service, Peter Ong, remarked, «as the challenges we face become more complex, single agency solutions will become less adequate...[and to] function as one, we need to truly collaborate.» Former U.S. Chairman of the Joint Chiefs of Staff, General DEMPSEY, remarked, «The phrase whole-of-government is not just desirable—it's actually imperative.»*

Maritime challenges include interdicting drug traffickers and human smugglers, responding to piracy and armed robbery at sea, preventing oil poaching and fishing incursions, ensuring port security, conducting search and rescue missions, and safeguarding the environment. These events unfold in complex, operational, and time-sensitive environments, where their scope and gravity is not always apparent. A collaborative, inclusive, and transparent process best positions a government to

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expeditiously share information, detect anomalies, and align responses.

Enablers of effective whole-government processes include: Head of State direction; flexibility; timely, accurate, and useful information dissemination; documented and distributed decisions; departments support and trust the process; frequent use and frequent training; and the promulgation of standard operating procedures. Institutionalizing collaboration is more than just a maritime challenge: It is a governance challenge. An enduring lesson is that trust, leadership, and the existence of documented processes are critical enablers to effective national-level, bi-national, and multi-national cooperation.



I. Introduction

The Human Sea Project¹ ambitiously seeks to holistically examine the maritime space—*e.g.*, seafarer protection, responses to illicit activity, offshore activities, and legal authorities—to distill trends, identify gaps, and develop recommendations. Five separate, though intersecting «Workpackages» (WP) provide the structure for this innovative five-year project led by Patrick Chaumette, director of the Maritime and Oceanic Law Centre (France), University of Nantes. This chapter discusses the coordinated response to «illicit activities at sea» (WP2).

Responding to maritime threats, safety, and environmental events, such as piracy, illegal fishing, drug traffickers, and pollution, among others, typically involves multiple agencies within a government. Following the naval rescue of a hijacked vessel, for example, investigators could be asked to develop a case package, which would be forwarded to a prosecutor, potentially unfolding alongside diplomatic engagements with partner nations. A coordination challenge exists when alignment is sought among agencies that operate under different chains of command, possess different authorities, acquire different information, or provide different capabilities. To formally ensure alignment, at least twelve countries in the past decade have established whole-of-government frameworks to bring agencies together to collectively respond to maritime threats. The emergence of collaborative processes is predicated on both a more complex operating environment and an expanded response spectrum.

Nations across the globe have focused on formalizing coordination, particularly in the context of security. The head of Singapore's civil service, Peter Ong, remarked, «as the challenges we face become more complex, single agency solutions will become less adequate...[and to] function as one, we need to truly collaborate.»² Former U.S. Chairman of the Joint Chiefs of Staff, General Dempsey, remarked, «The phrase whole-of-government is not just desirable—it's actually imperative.»³

1) ERC-2013-AdG-340770, available at:

http://www.humansea.univ-nantes.fr/18266531/1/fiche___pagelibre/&RH=1396618354200

2) Winnie Agbonlahor, Singapore's Peter Ong calls on future leaders to foster collaboration, Global Government Forum, November 5, 2015, available at:

<http://www.globalgovernmentforum.com/singapores-peter-ong-calls-on-future-leaders-to-foster-collaboration/>.

3) Dempsey touts whole-of-government cooperation, September 24, 2015, Simons Center, quoting U.S. Army General Martin E. Dempsey. Available at:

http://thesimonscenter.org/dempsey-touts-cooperation/?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+ADSCPublications+%28Col.+Arthur+D.+Simons+Center+%C2%BB+Updates%29
«During the interview, Dempsey noted that people are beginning to understand the importance of the whole-of-government approach, saying that there is a greater understanding that conflicts have underlying issues that the military alone cannot address....Dempsey has repeatedly pushed for solutions integrating economic, diplomatic, law enforcement, energy, and military instruments of power during his tenure as chairman.»

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And a United Kingdom strategy document (2014) noted, «maritime security is a whole-of-government activity [in which] the governance structure...brings together 16 parties within the Government to maximize the coherence and efficiency of our approach.»⁴

Recognition of the value of collaboration extends beyond the maritime environment, including health, education, commerce, and economic and development issues, among others. The World Health Organization's implementation package regarding the European policy for health and well-being identified the importance of «implementing whole-of-government and whole-of-society approaches.»⁵ Even efforts regarding digital, electronic, or connected government, also known as «e-government» have focused on whole-of-government. Though substantively different than the maritime environment, a United Nations Survey from 2012 is instructive: «The [whole-of-government] movement from isolated silos in public administration to formal and informal networks is a global trend drive by various societal forces such as the growing complexity of problems that call for collaborative responses...»⁶

A Chatham House report noted, «Robust but adaptable structures for coordinated decision-making are crucial because when stakeholders make different judgments about risk during a crisis public confidence can be rapidly eroded. Sharing best practices and where relevant, capacity, especially across sectors, and red-teaming scenarios with key decision-makers – focusing in particular on critical sectors such as transport and communications will be essential to enhance preparedness in coping with the unexpected.»⁷

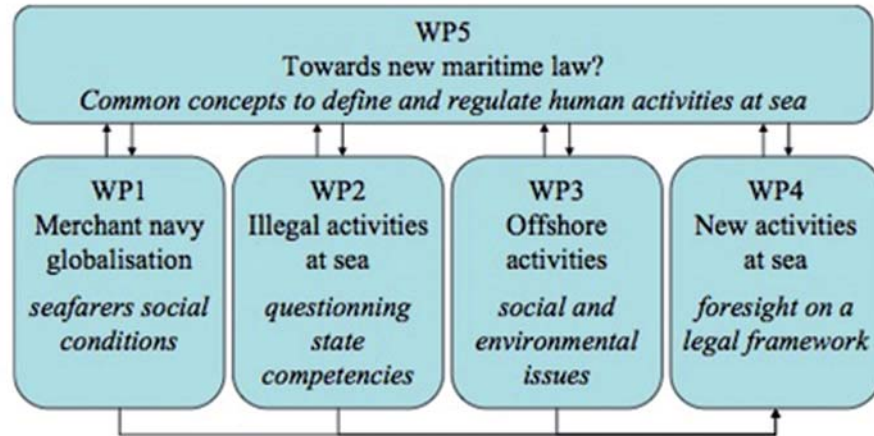
The probative issue is no longer whether cooperation exists among government agencies, but rather, whether there exists a documented whole-of-government process, and if so, what are its key elements. This inquiry supports Human Sea Project objectives to identify common concepts and develop recommendation to support improved governance. The below chart outlines the Human Sea Project's WPs:

4) The UK National Strategy for Maritime Security, May 2014, Presented to Parliament by the Secretary of State for Defence by Command of Her Majesty, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/310323/National_Strategy_for_Maritime_Security_2014.pdf.

5) Available at: <http://www.euro.who.int/en/health-topics/health-policy/health-2020-the-european-policy-for-health-and-well-being/implementation-package/3.-implementing-whole-of-government-and-whole-of-society-approaches>.

6) United Nations E-Government Survey 2012, available at: <http://unpan3.un.org/egovkb/Portals/egovkb/Documents/un/2012-Survey/Chapter-3-Taking-a-whole-of-government-approach.pdf>.

7) Bernice Lee and Felix Preston, with Gemma Green, Preparing for High-Impact, Low-Probability Events, Lessons from Eyjafjallajökull, A Chatham House Report, January 2012.



II. Discussion

Maritime challenges include interdicting drug traffickers and human smugglers, responding to piracy and armed robbery at sea, preventing oil poaching and fishing incursions, ensuring port security, conducting search and rescue missions, and safeguarding the environment. These events unfold in complex, operational, and time-sensitive environments, where their scope and gravity is not always apparent. A collaborative, inclusive, and transparent process best positions a government to expeditiously share information, detect anomalies, and align responses.

While several whole-of-government frameworks now exist, there is not one single, universally recognized model. Even defining whole-of-government presents challenges. A Center for Security Studies study remarked, «There is of yet no internationally agreed standard model for WGAs (whole-of-government approaches).»⁸ Moreover, «One would search in vain for a uniform definition of such integrated approaches. In principle, WGAs aim to improve coordination within a given government. In addition, however, states sometimes also aspire to coordinate their activities with those of other state or non-state actors, as a coherent overall strategy at the governmental level is often seen as being necessary, but not sufficient. This is generally referred to as a ‘whole of system’ approach.»⁹

8) Andrea Baumann, Whole of Government: Integration and Demarcation, No. 129, March 2013, available at: http://www.css.ethz.ch/publications/DetailansichtPubDB_EN?rec_id=2441.

9) *Id.*

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Regional differences in terminology, fortunately, have had little impact on the development of national-level coordination frameworks. More than just a bureaucratic mechanism, a brief summary of one response under a whole-of-government process highlights its key elements, governance value, and connective thread. A piracy attack, «was imminent when the crew of the MV Magellan Star retreated to a secure room, or citadel, on board their ship and sent distress messages. Within 24 hours, U.S. Marines boarded and regained control of the Antigua-Barbuda-flagged container ship without a shot being fired. That U.S. operation in 2010 was remarkably successful: The Magellan Star crew of 11 was safe, and the Somalis who attacked the vessel were detained. With nine pirates on board the USS Princeton (CG-59), several U.S. government agencies needed to immediately and collaboratively address the investigative, logistic, and disposition challenges associated with the crime. Issues to be resolved included which agency would lead the investigation, who would prosecute, what regional states should be approached for support, and where the detainees would be held pending those decisions. Timely resolution would require briefings, senior-level discussions, and agreement among several U.S. government agencies.»¹⁰

The Maritime Operational Threat Response (MOTR) plan directed the U.S. whole-of-government response. «The plan was used to coordinate multiple national-level decisions following the rescue of the crew on board the Magellan Star. Over a period of several days, secure video teleconferences connected agency command-watch centers and subject-matter experts on three continents, allowing numerous difficult and sensitive issues to be discussed and resolved. Participants included representatives from the Departments of State, Justice, Defense (which included the Office of the Secretary of Defense, the Joint Staff, and combatant commands), Transportation, and Homeland Security, as well as the intelligence community and other government agencies. Diplomatic outreach, investigative issues, and public-affairs guidance and posture were addressed. After completion of an investigation and review by the Department of Justice, and following extensive diplomatic engagement by the Department of State, a regional state accepted the nine pirates for prosecution.»¹¹

Several national-level coordination processes were developed after a specific event. The U.S. process can trace its origins to a bungled asylum request in 1970, when an interagency process for responding to such incidents did not exist. On November 23, 1970, a Lithuanian sailor desperate to defect to the United States leapt spectacularly from the deck of a Soviet ship onto a U.S. Coast Guard cutter.¹² After

10) Brian Wilson, *Making Stovepipes Work*, Proceedings, October 2011.

11) *Id.*

12) Committee on Foreign Affairs. Hearings before the Subcommittee on State Department Organization and Foreign Operations of the Committee on Foreign Affairs, House of Representatives; Attempted

discussions among numerous U.S. Government departments failed to produce a coordinated response, a Coast Guard commander gave the 40-year old seaman back to the Soviets.

Bad decisions certainly led to the outcome, but equally ineffective coordination among federal departments contributed, as well. Kudirka's botched asylum request importantly served as a catalyst to address the issue of aligning federal agency action. In 1970, cell phones, instant messaging, e-mails and Blackberries were still years away. There existed few 24-hour national-level federal agency command/operations centers and certainly no clear guidance regarding when departments should consult with one another.

Despite speaking four languages and training as a radio technician, Kudirka's job on the ship was to clean heads and move garbage.¹³ At one point in the day, Kudirka threw a crumpled note, hidden in a pack of cigarettes, onto the U.S. Coast Guard Cutter VIGILANT manifesting his intent to defect to the United States. The VIGILANT'S executive officer sought higher-level guidance to the response if Kudirka attempted to defect by jumping into the water and swimming towards VIGILANT: Should the Americans try to beat the Soviets to the rescue; would Kudirka be treated as a deserter or asylum-seeker; do other U.S. agencies/departments need to be notified?

Identifying the appropriate State Department point of contact consumed several hours. After finally reaching him, the State official refused to provide definitive policy or guidance to the Coast Guard, characterizing the situation as a «sticky question.»¹⁴

Then Kudirka did the unexpected: Rather than jumping in the water, he leapt from the deck of the Soviet vessel onto the VIGILANT. Kudirka's jump occurred at approximately the close of the business day. A senior Coast Guard officer in the cutter's immediate chain of command, based on both the time of day and the responses from earlier, believed it would not be productive to again seek guidance from Washington, DC. He then provided decisive, but inaccurate direction saying that Kudirka is a deserter who must be returned if the Soviets make a request.¹⁵ Because the VIGILANT's secure communications systems were inoperable, the ship used unclassified transmissions, easily accessed by the Soviets. Within minutes of

Defection by Lithuanian Seaman Simas Kudirka. 91st Congress, Second Session, December 3, 7, 8, 9, 14, 17, 18 and 29, 1970. *See also*, Secretary of Transportation John A. Volpe, Memorandum for the President, Subject: Attempted Defection by a Crew Member of the Sovetskaya Litva, December 2, 1970.

13) Algis Ruksenas, *Day of Shame*, 1973, David McKay Company, Inc, pages 54 and 247-248. Kudirka's Baltic heritage and previous refusal to testify against a relative contributed to his job assignment.

14) *Id.*, at pages 86 and 108-111.

15) *Id.*, page 338.

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the cutter's radio transmissions, the Soviet's requested Kudirka's return.

The VIGILANT's captain reluctantly told the Soviets, «He's all yours,»¹⁶ Kudirka sought to evade capture, but was apprehended by Soviets on board VIGILANT, who took turns hitting and kicking Kudirka, at times, in front of the cutter's officers and enlisted crew.¹⁷

Kudirka was subsequently subdued. After returning to the Soviet vessel, Kudirka was transported to the Soviet Union and subsequently convicted by a court for his actions. Four years later, U.S. President Gerald Ford shocked his staff, including Henry Kissinger,¹⁸ by disregarding their advice and requesting that Kudirka be released in his first meeting with the Soviets.¹⁹ The Soviets unexpectedly complied with President Ford's request.²⁰

Similar to other whole-of-government processes, the MOTR Plan brings together multiple departments for discussions and decisions through integrated national level command/operations centers. MOTR coordination activities occur through e-mail, phone calls or via secure video teleconferences. The rank, grade, position of agency



16) Simas Kudirka and Larry Eichel, *For those Still at Sea; The Defection of a Lithuanian Sailor; Simas Kudirka's Own Story of His Four-Year Journey to Freedom*; The Dial Press, 1978, page 41.

17) *Id.*, at pages 43-47.

18) At President Gerald Ford's eulogy, Henry Kissinger stated that Ford, «stumped me in his fifth day in office when he used the first call made by the Soviet ambassador to intervene on behalf of a Lithuanian seaman who four years earlier had in a horrible bungle been turned over to Soviet authorities after seeking asylum in America. Against all diplomatic precedent and, I must say, against the advice of all experts, Gerald Ford requested that the seaman, a Soviet citizen in a Soviet jail, not only be released but be turned over to American custody.» *New York Times*, Transcript, Henry A. Kissinger's Eulogy for President Ford, January 2, 2007. Available at <http://www.nytimes.com/2007/01/02/washington/02cnd-ford-kissinger.html>.

19) Barry Werth, *31 Days: Gerald Ford, the Nixon Pardon, and a Government in Crisis*, Anchor, 2007, page 68. «Now in the Oval Office, [Soviet Ambassador to the United States Anatoly] Dobrynin delivered Brezhnev's personal regards as Ford and he took matching yellow armchairs....After the media left, Ford got down to business. 'I told him,' Ford wrote, 'that I would consider it a personal favor if his government would agree to release Simas Kudirka ...Dobrynin said he would see what he could do.»


20) A White House Memorandum of Conversation regarding a September 5, 1974, meeting in the Oval Office, the White House, with President Ford, Dr. Henry Kissinger, Lt. General Scowcroft and Jerrold Schecter (from *Time* magazine; present for part of the meeting), documented the following: «President: I notice the Soviets are making efforts to let some specific cases go....Kissinger: Yes, and releasing Kudirka is a special favor for you.» Later in the meeting, President Ford, «explains to Schecter that Brezhnev had sent a note disclosing that Simas Kudirka, the Lithuanian defector, was being allowed to emigrate to the U.S. as a favor to Ford.» That note was summarized by Kissinger, quoting from Ambassador Dobrynin: «...Because of the interest of the President, Kudirka was given pardon and he is now at his home in the Lithuanian Republic. [When Kudirka applies to immigrate, he and] those members of his family who so desire will be able to leave the Soviet Union and go if they like to the United States.» Available at: <http://geraldrfdoundation.org/documents/memcons/1552773.pdf>.




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representatives is within the prerogative of the agency, but generally includes Commanders and Captains (and their civilian equivalents, General Service [GS] 14/15s), with Lieutenants and Lieutenant Commanders as well as Senior Executive Service, Admirals, Generals, Departmental Deputy Assistants and Ambassadors, at times, participating. Coordination activities can have included as few as four representatives to more than fifty.

In 2009, the MOTR process facilitated discussions, decisions and action following the attack on M/V MAERSK ALABAMA, a cargo ship transporting food aid to Somalia. Three pirates departed the ship with MAERSK ALABAMA's master, Captain Richard Phillips. Within hours of the hijacking, MOTR coordination activities were occurring. Representatives from the Departments of State, Justice, Defense (which included the Office of the Secretary of Defense, the Joint Staff and Combatant Commands), Transportation and Homeland Security, as well as the intelligence community and other government agencies participated. Secure video teleconferences (SVTC) were held twice daily over six days to connect senior U.S. Government officials on three continents. The MOTR process facilitated expeditious and transparent information dissemination, interagency concurrence on desired national outcomes and alignment of courses of action. Following the rescue of Captain Phillips by U.S. Special Forces, collaboration was again necessary to bring the surviving pirate to the United States for trial.



Whole-of-government maritime response processes also exist in Australia, Cameroon, Canada, Cape Verde, India, Japan, New Zealand, Philippines, Singapore, Sweden, and the United Kingdom, among others. Moreover, arrangements to facilitate information sharing between whole-of-government processes, such as between Canada and the United States also exist. Distilling common concepts, considerations, and effective elements from these varied frameworks is instructive for developing Human Sea Project recommendations.



Enablers of effective whole-government processes include: Head of State direction; flexibility; timely, accurate, and useful information dissemination; documented and distributed decisions; departments support and trust the process; frequent use and frequent training; and the promulgation of standard operating procedures.

Considerations in a whole-of-government process include: how the process is formally documented, whether funding is required, and if so, what agency is responsible; whether the process replaces or supplants another process or organization; whether agencies retain their authorities and responsibilities under this process; whether there is an office responsible for facilitating (or leading) coordination activities, and if so, to whom are they accountable; what decisions (or actions) can this process/center take; is the process «unity of effort» or «command and control»; are safety agencies included; are Ministry of Justice and Ministry of Foreign Affairs included; are public affairs an element of discussions/decisions; is there a process to resolve disagreements; and how is technical connectivity with participants ensured?

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III. Conclusion

Collaboration frameworks best position a government to share information, reduce uncertainty, enhance communication, and align efforts. Over the past decade, the emergence of whole-of-government frameworks represents a pioneering and strategically invaluable capability. These processes harness the collective strength of multiple agencies, and potentially, nations.

Over the past 50 years, national-level discussions have moved from ad hoc and informal to structured whole-of-government coordination that formally aligns civil and military agencies. In any documented process, a key inquiry is whether the framework supports cooperation, trust, and timely decision making.

A new phase is beginning to surface: Arrangements to support cooperation and information sharing between whole-of-government processes/frameworks. Though robust collaboration presently exists between some countries in diplomatic, investigative, and military venues, there is not widespread use of frameworks to share information between whole-of-government processes. In part, this new capability recognizes that the benefits of unity of effort constructs are no longer solely within a nation's borders. In 2015, at the United Nations General Assembly, U.S. President Obama «urged a whole-government approach to international dilemmas.»²¹ This emergent area warrants further attention, focus, and development to support timely information sharing and response decisions. Yet another phase of collaboration, not yet fully developed, also warrants focus and attention going forward: Inclusion of the private sector in whole-of-government processes as well as frameworks that address the entirety of maritime challenges: safety events as well as security threats. Further, as whole-of-government maritime response frameworks continue to develop, addressing requirements, measures of effectiveness, and a common lexicon and data sharing standards will become prominent focus areas.

Institutionalizing collaboration is more than just a maritime challenge: It is a governance challenge. An enduring lesson is that trust, leadership, and the existence of documented processes are critical enablers to effective national-level, bi-national, and multi-national cooperation.

21) President urges whole-of-government approach to U.N., September 29, 2015, Simons Center, available at:
http://thesimonscenter.org/whole-of-gov-approach-to-un/?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+ADSCPublications+%28Col.+Arthur+D.+Simons+Center+%C2%BB+Updates%29.