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THE IMPLICATIONS OF THE NEW TREATY FOR MARINE BIODIVERSITY FOR THE ASIA PACIFIC REGION

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1

Overview

- Introduction to the BBNJ process and package
- Existing interests and cooperation in the Asia-Pacific
- Potential implications of new treaty

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2

BBNJ at a glance (+ a guide to alphabet soup)

- UN GA Resolution 72/249 authorised the negotiations for a new international legally binding instrument (**ILBI**) for the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction (**BBNJ**). Four sessions agreed.
- 'Negotiations shall address the topics identified in the package agreed in 2011'
 - Marine genetic resources (**MGRs**)
 - Area-based management tools (**ABMTs**) including marine protected areas (**MPAs**)
 - Environmental Impact Assessments (**EIAs**)
 - Capacity building and the transfer of marine technology (**CBTMT**)
- '... this process and its result should **not undermine** existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies.'

BBNJ at a glance

- Third Intergovernmental Conference (IGC) held in August 2019. First discussion of a draft text.
- Fourth meeting postponed from March 2020, possibly to August 2021. Will discuss second draft text.



Marine genetic resources

- Question about the legal framework for MGRs in ABNJ
- Common heritage of mankind?
- General acceptance of need for regime
- Significant disagreements remain:
 - Definition of MGR
 - Access provisions – freedom or permit?
 - How benefit sharing might occur
 - Inclusion of common heritage of mankind

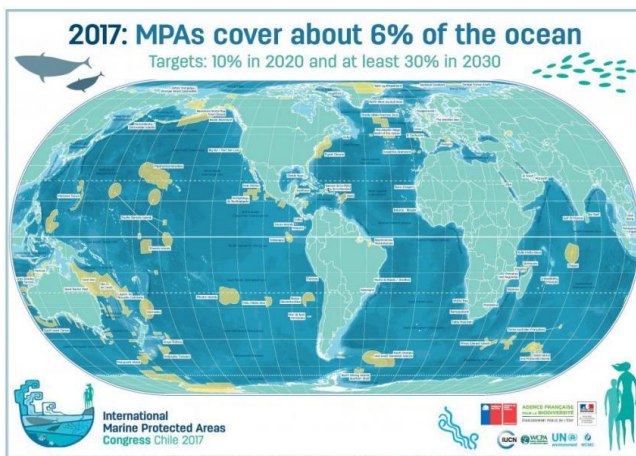


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Area-based management tools including marine protected areas



- Agreement that a process is needed for identification of suitable areas
- Problem is the institutional overlap – what role for ILBI v Global, Regional and Sectoral bodies

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‘Not Undermine’

- Key question: how will the Treaty interact with global, regional and sectoral bodies? What decision making power will the COP have?

If a GRSB exists,
COP cannot take
decisions on its
subject matter



COP can take decisions
'complementary' to
GRSB mandate.

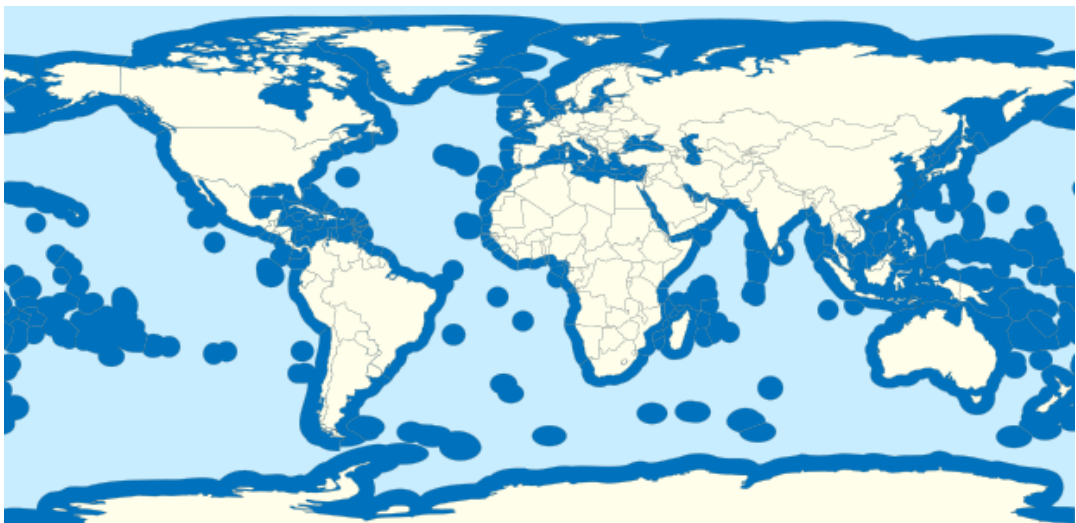
“...it is perhaps more useful to think in terms of complementarity and compatibility, rather than trying to delineate geographically and materially the individual and overlapping mandates.” (De Lucia, 2019)

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A diverse region

Industrialised countries

- E.g. Japan, China, South Korea
- Often distant water fishing nations

Middle income countries, less capacity

- E.g. Indonesia, New Zealand, Philippines

Small island states, low capacity

- E.g. Solomon Islands, Fiji, Kiribati
- Usually large EEZs, but good cooperation

External to the region

- Distant water fishing nations
- Flag states

A diverse region

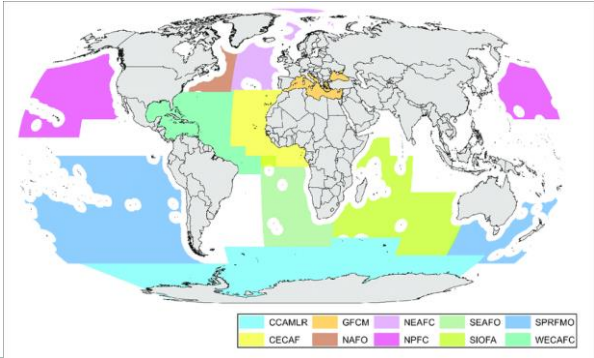
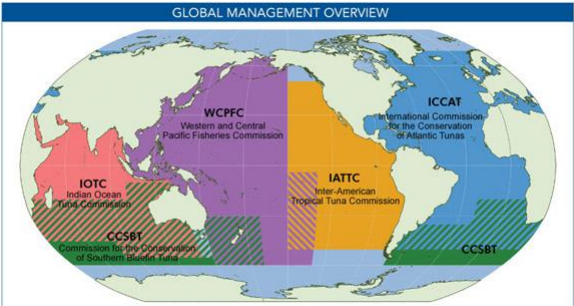
Asia region

- Ongoing tensions over disputed territories and maritime claims
- Fewer regional cooperative bodies regulating use of human activity with impacts on marine biodiversity

Pacific Region

- Reasonably coordinated approach by countries in the region
- High seas pockets an issue
- Fairly effective regional bodies regulating uses (esp. fishing)

Regional fisheries bodies



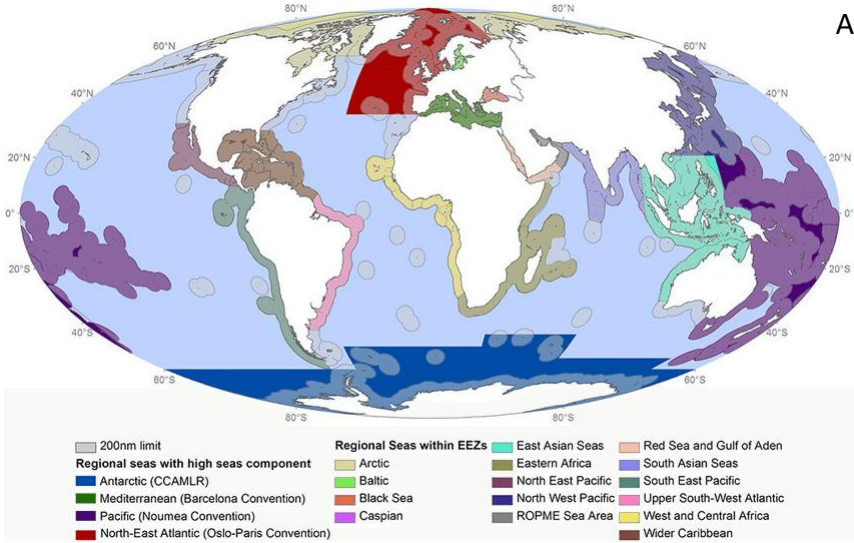
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Regional Seas Agreements



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Positions of states in the BBNJ negotiations

Larger states in region

- While accepting the need for the ILBI, keen to limit its scope, esp concerned about application to fisheries.
- Often seeking consensus decision making in bodies established under the ILBI.
- Some ambiguity on position of Common Heritage of Mankind (CHM) for MGRs

Smaller states in region

- More likely to favour a broad scope and global or hybrid institutional approach.
- See a strong institutional framework as useful to support smaller state capacity

Article 6 International cooperation

1. States Parties shall cooperate under this Agreement for the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, including through strengthening and enhancing cooperation with and among relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies and members thereof in the achievement of the objective of this Agreement.

2. States Parties shall promote international cooperation in marine scientific research and in the development and transfer of marine technology consistent with the Convention in support of the objective of this Agreement.

[3. States Parties shall cooperate to establish new global, regional and sectoral bodies, where necessary.]

Area-based management tools

- Still bracketed text (art 15) asks states to establish ABMTs and MPAs:
 - Through relevant instruments, frameworks and bodies
 - Adopting measures under the ILBI to complement measures in other instruments, frameworks and bodies
 - Establishing ABMTs “where there is no relevant” instrument, framework or bodies
- OR
- Where there is not relevant legal instrument etc to establish ABMTs, “States Parties shall cooperate” to establish one, and participate in its work.

Implications for Asia

Challenges

- Unresolved disputes about sovereignty over features and maritime zones.
- Lack of regional institutional architecture regulating human activities esp fisheries.

Opportunities

- Potential to provide a basis for cooperation?
- MGRs and capacity building provisions could be beneficial for small states.

Implications for the Pacific

Challenges

- Attempts to claim more control over high seas pockets have not been successful.
- Potential benefit from MGRs, capacity building, could be limited by the negotiating positions of some larger states.
- Question about the relationship between the regional architecture and ILBI.

Opportunities

- Increased focus on biodiversity conservation and sustainable use may help SIDS to raise these issues on the agenda of e.g. RFMOs.
- Potential for coordination across instruments and bodies
- Recognition of importance of traditional knowledge as well as science.

Conclusions

- The draft text still reflects significant disagreement.
- Likely to have different implications for Asia v the Pacific due to the different nature of regional ocean governance architecture. But should provide a catalyst for renewed cooperation.
- Smaller states may benefit from MGR and capacity building provisions.