

**2016 ICPC Plenary Meeting
Hamburg, Germany
13 April 2016**

**Potential Impact of BBNJ
Negotiations on Cable Industry**

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Organization of Presentation

- 1. UN Negotiations on BBNJ -Biological Diversity Beyond National Jurisdiction**
- 2. BBNJ and Cables – Gaps in Current Legal Regime**
- 3. Conclusions and Recommendation**

Part 1

UN Negotiations on BBNJ - Biological Diversity Beyond National Jurisdiction

Action by UN General Assembly

- Have been discussions on BBNJ at the United Nations for several years
- On 19 June 2015, the UNGA decided to develop an international legally-binding instrument under UNCLOS to deal with the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction

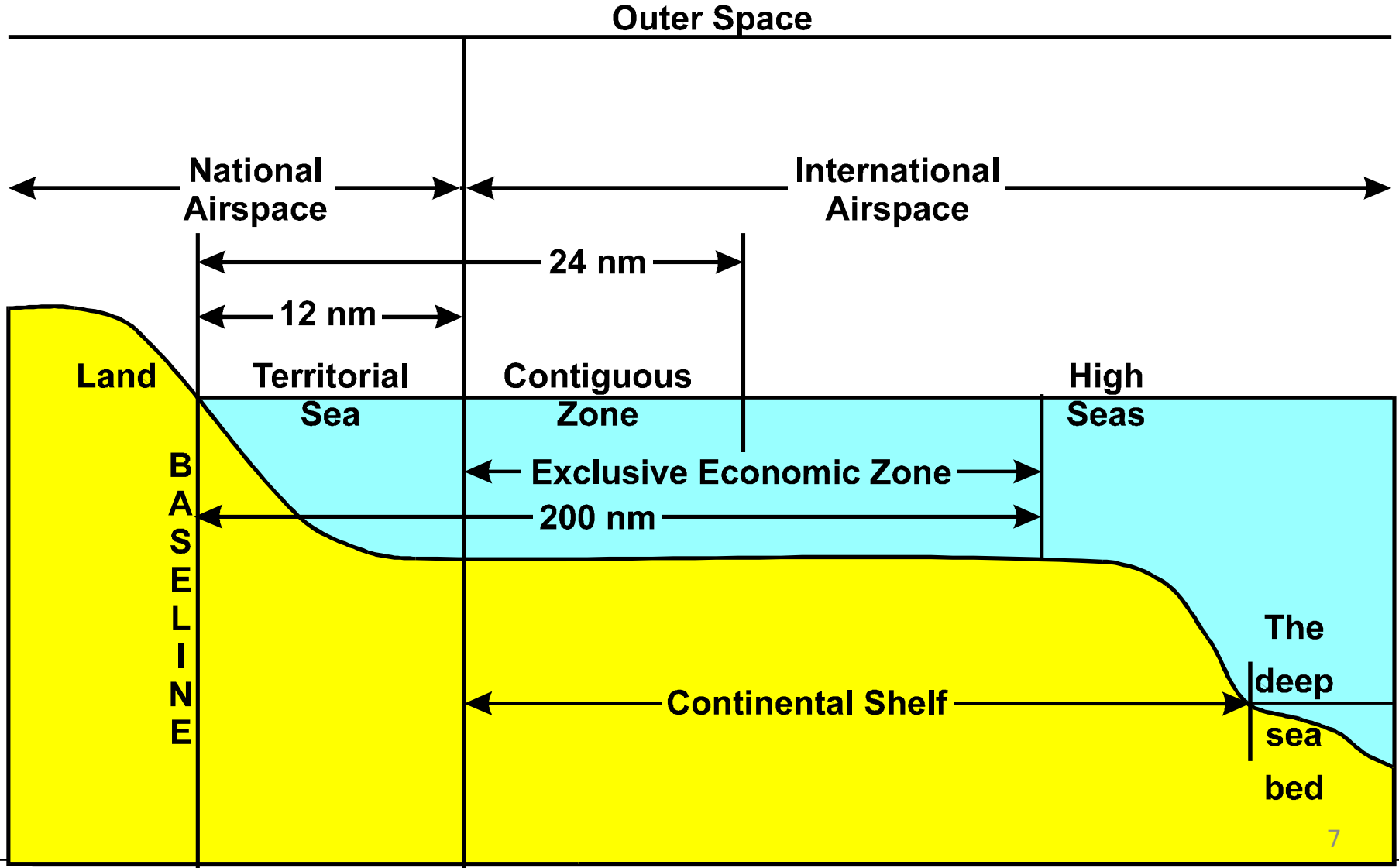
PrepCom

- A preparatory committee (PrepCom) has been established, and later, an intergovernmental conference is likely to be convened
- First meeting PrepCom was held in held from 28 March to 8 April 2016 at the UN in New York

Areas Beyond National Jurisdiction

- **High Seas - Water column beyond 200 nm EEZ limit**
- **The Area – Seabed beyond the outer limit of the continental shelf**

LEGAL REGIMES OF THE OCEANS AND AIRSPACE



BBNJ Negotiations and the Marine Environment

- View that new agreement necessary to fill gaps in existing regime governing the conservation & protection of living resources in ABNJ
- Call for need to improve coordination between international, regional and sectoral bodies
- Call for governance frameworks to address the gaps whilst not undermining these existing international, regional and sectoral bodies and governance frameworks.

BBNJ Negotiations - EIAs and Protected Areas

- **Currently lack of common EIA standards applicable across marine and maritime activities to establish reference for environmental baselines**
- **Difficult to assess and monitor the potential and actual impacts of activities, especially the cumulative impacts from the different activities**
- **Current sectoral approach also results in different criteria having been developed for the designation of different types of protected areas**

BBNJ Negotiations – Call for Coordinating Body

- Some suggest establishment of an overall body to help coordinate actions and processes to promote more effective management of areas beyond national jurisdiction
- The Coordinating Body would have responsibility for ensuring that EIAs for all marine and maritime activities include an assessment of their cumulative impact.

Part 2

BBNJ and Cables – Gaps in Current Legal Regime

Gaps in Current Legal Regime? – Cables on Extended Continental Shelf

- All States have the freedom to lay and repair cables on the extended continental shelf
- Rights of coastal States to regulate for laying and repair on their extended continental shelf to protect marine biological diversity in ABNJ are limited and unclear
- Groups calling for increased regulation may call for application of the “precautionary approach” and for EIA to measure “cumulative impact” of all activities that may affect BBNJ

Gaps in Legal Regime – Cables in The Area

- All States have the right to lay and repair cables on the bed of the high seas – a freedom of the high seas
- International Seabed Authority (ISA) has power to regulate exploration and exploitation of the shelf, but has no authority to regulate laying and repair of cables
- Groups calling for increased regulation may call for application of the “precautionary approach” and for EIA to measure “cumulative impact” of all activities that may affect BBNJ

Gaps in Current Legal Regime – Power Cables

- UNCLOS provisions treat fibre optic telecoms cables and power cables the same
- Coastal States believe they have right to regulate power cables because they are a risk to the marine environment
- Result could be increased calls for regulation of all cables

Gaps in Current Legal Regime – Companies, not States

- In most cases of activities in areas beyond national jurisdiction (high seas & outer space), **States** are responsible for the activities of private companies under their jurisdiction and control
- For submarine cables, **States** have the right to lay and repair cables
- In practice, cables are laid by **companies** that are not under the jurisdiction and control of any State

Gaps in Current Legal Regime – No “Flag State”

- Companies operating in areas beyond national jurisdiction are usually registered in a State and “fly the flag” of that State – they are nationals of that State
- State of Registration has a “due diligence” obligation to adopt laws and regulations and put an administrative structure in place to ensure that “its nationals” comply with applicable international laws and regulations

Gaps in Current Legal Regime – Responsibility and Liability

- If a cable company causes damage to marine biodiversity in the high seas when laying or repairing a cable, is any State **responsible**?
- Is the cable company **liable** for causing damage to marine biodiversity beyond national jurisdiction? If so, to whom?

Gaps in Current Legal Regime – Challenging Coastal State Regulations

- If a coastal States imposes regulations and conditions on the laying and repair of cables in its EEZ or on its continental shelf that are inconsistent with UNCLOS, who can challenge the coastal State?
- If Cables were registered, the “State of Registry” could exercise diplomatic protection on behalf of the cable company

Part 3

Conclusions and Recommendation

Conclusions

- 1. BBNJ Discussions are not likely to focus on submarine cables, but they are likely to raise issues on the gaps and loopholes in the current legal regime**
- 2. Negotiators are not likely to be sympathetic to an industry that is undertaking activities in areas of the global commons outside the regulation of any State or international organization**

Conclusions

- 3. States concerned with gaps and loopholes in the current regime may call for an international organization to be responsible for creating a registry of all cables outside of national jurisdiction**
- 4. It may be in interests of cable industry to be subject to regulations by cable-friendly States that will protect the interests of companies and challenge laws and regulations that are contrary to UNCLOS**

Recommendation

- **ICPC Should undertake a Study on Pros and Cons of Registering Cables in States**

Thanks for Your Attention

Questions?