



The BBNJ Agreement and Shipping – Regime Interaction and ABMTs

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1. Introduction

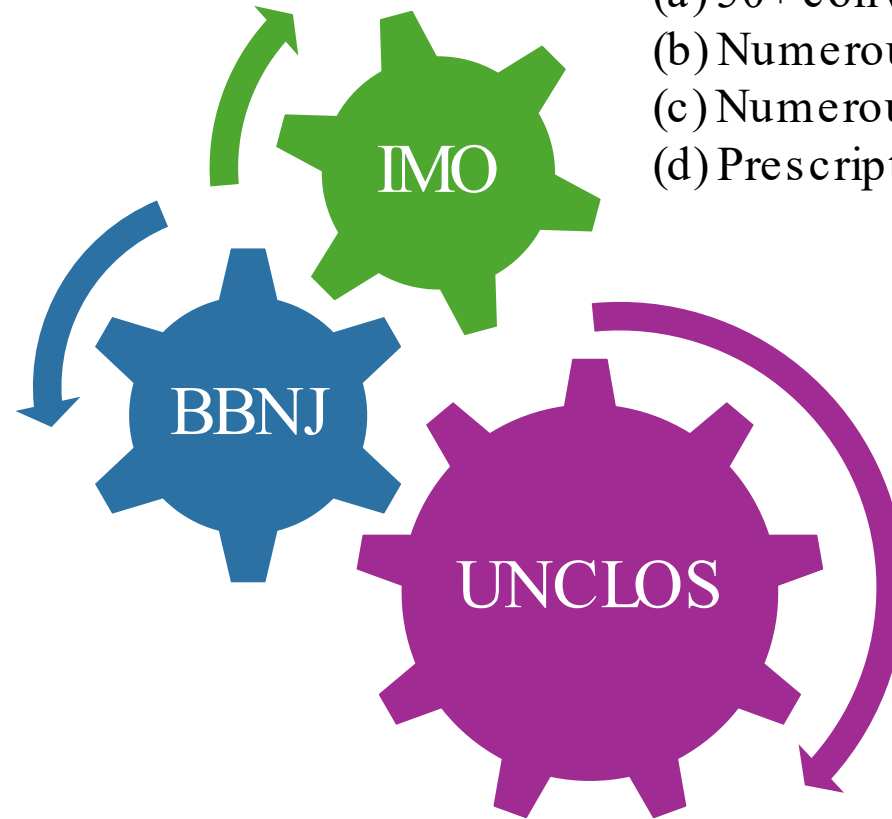
- Core questions:
 - How do pertinent legal regimes concerned with shipping converge to enable the goals of the BBNJ Agreement?
 - What additional role might IMO play under the auspices of the BBNJ Agreement on top of the role it already plays in regulating international shipping on the high seas?
 - What shipping regulatory tools within IMO's mandate are useful as ABMTs under the BBNJ Agreement, and what are their strengths and constraints for BBNJ purposes?
- Focus:
 - UNCLOS, BBNJ, IMO conventions.
 - IMO ABMTs: measures adopted under the 1948 IMO Convention and safety and pollution prevention conventions.

The notion of ABMT in BBNJ from a shipping perspective

- BBNJ definition of ABMT:
 - “...a tool, including a marine protected area, for a geographically defined area through which one or several sectors or activities are managed with the aim of achieving particular conservation and sustainable use objectives in accordance with this Agreement” (Art 1(1)).
- Connotations:
 - Includes IMO ABM measures.
 - Delineation of high seas areas where there is some type of international shipping activity.
 - Ocean space where international shipping needs to be ‘managed’.
 - Purpose: to address international shipping to achieve/assist conservation and sustainable use objectives.

2. Regime interface with respect to shipping

Framework for conservation and sustainable use of biological diversity in ABNJ



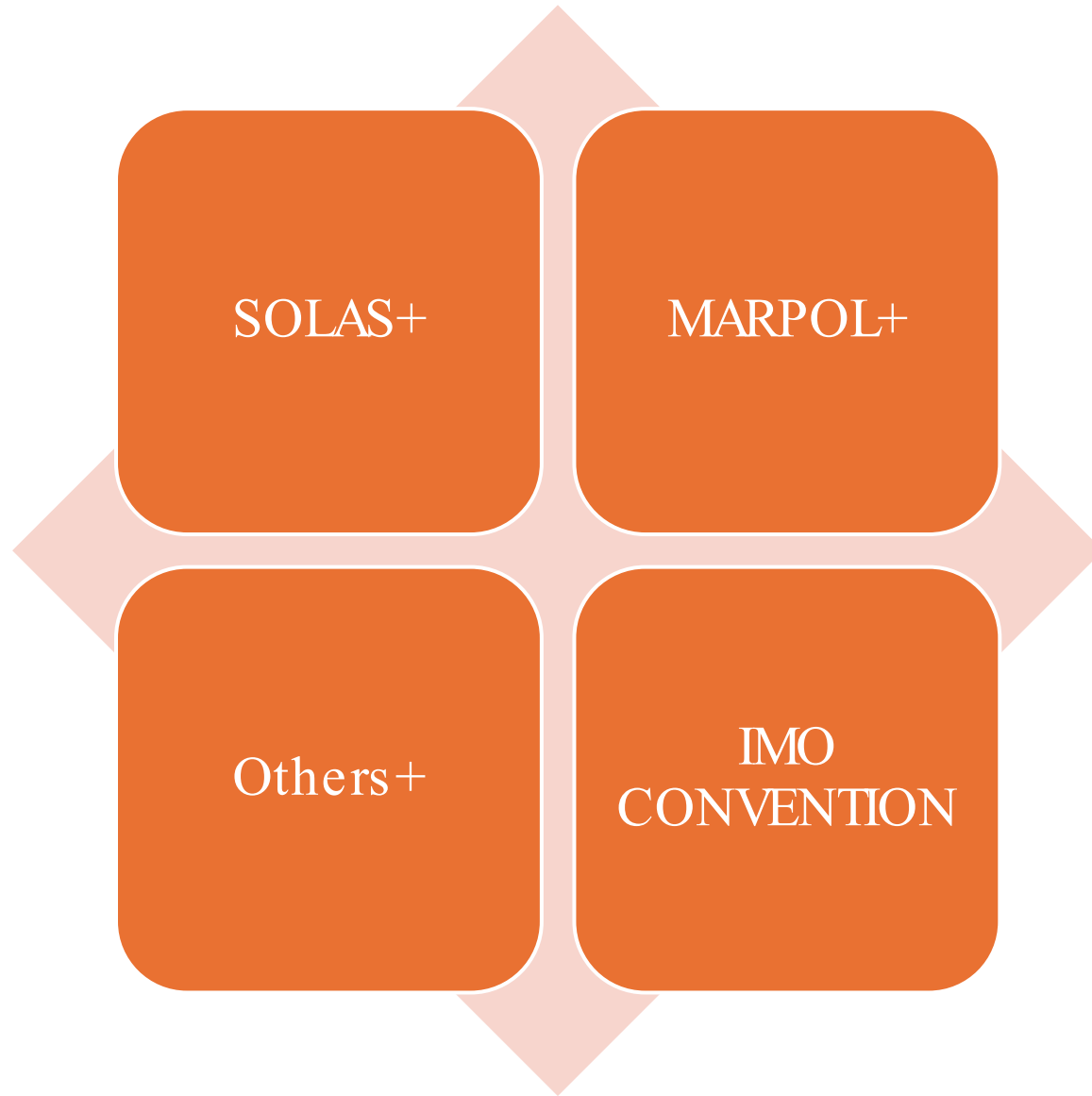
- (a) 50+ conventions/protocols on shipping
- (b) Numerous mandatory & voluntary codes
- (c) Numerous guidelines
- (d) Prescriptive & goal-based standards

The 'constitution' for the world's oceans

Interface	Provisions	Content pertinent to ABMTs	Pertinent instruments
Reference rules (GAIRS)	94(3), (4), (5)	Duties of the flag State	STCW Convention; SOLAS; COLREGS; MARPOL; BWMC
	210	Pollution by dumping	London Convention & Protocol
	211(1) & (2)	Pollution from vessels	MARPOL
	212	Pollution from or through the atmosphere	MARPOL annex VI
	216	Enforcement with respect to pollution by dumping	London Convention & Protocol
	217	Enforcement by flag States	MARPOL; BWMC; London Convention & Protocol
	218	Enforcement by port States	MARPOL; AFSC; BWMC; London Convention & Protocol
	219	Measures relating to seaworthiness of vessels to avoid pollution	SOLAS; LLC; STCW
	222	Enforcement with respect to pollution from or through the atmosphere	MARPOL Annex VI
	226	Investigation of foreign vessels	SOLAS; MARPOL; BWMC
Consistency rule	237	Obligations under other conventions on the protection and preservation of the marine environment	BBNJ as a special convention/agreement
Compatibility rule	311	Relation to other conventions and international agreements	Can BBNJ be affected?
'Corpus' rule	192	Duty to protect and preserve the marine environment	BBNJ? "...corpus of international law relating to the environment, which informs the content of the general obligation in Article 192". SCS Arbitration (para 941)

Interface: BBNJ

- To be interpreted and applied in the context of and in a manner consistent with UNCLOS (Art 5(1)).
 - Nothing in this Agreement shall prejudice the rights, jurisdiction and duties of States under the Convention ...**(including IMO rules of reference)**
- To be interpreted and applied in a manner that (Art 5(2)):
 - (a) does not undermine relevant legal instruments and frameworks (**e.g., IMO conventions**);
 - (b) does not undermine relevant global ...sectoral bodies (**e.g., IMO**); and
 - (c) promotes coherence and coordination with those instruments, frameworks and bodies.
- Promotion of cooperation between IFBs (Art 8(1)).
- **Promotion of BBNJ objectives at the IMO** (Art 8(2)).
- Objective to strengthen cooperation and coordination in the use of ABMTs, **including IMO measures** (Art 18(2)).



Interface: IMO instruments

3. The IMO's mandate

- UN specialized agency, established by a dedicated convention setting out its mandate as “the machinery” of cooperation among States on maritime matters.
- The competent international organization for international shipping under UNCLOS.
- IMO conventions conferring functions.
- Unique composition to support regulatory mandate accompanied by complementary industry meta regulation.
- IMO represents a ‘sectoral’ community of interests; ideally placed to support BBNJ goals.



4. BBNJ/ABMTs

- ABMT proposals to be submitted to the Secretariat by individual/group of Parties (Art 19(1)).
- Duty of Parties to collaborate/consult with relevant sectoral bodies (e.g., IMO in shipping) for the development of proposals (subject to criteria)(Art 19(2)).
- Transmission of proposals to STB (Art 20(1)); must be inclusive and transparent and open to global bodies (e.g., IMO)(Art 21(1)).
- Global bodies (e.g., IMO) invited to submit views regarding any relevant additional measures falling within their competence (Art 21(b)(v)).
- Proponent considers inputs and submits revised proposal to SBT.

BBNJ continued (Art 22)

- COP decides on establishment of ABMTs.
- COP may decide on measures compatible with IFBs, in cooperation and coordination with them (e.g., IMO and its conventions).
- May when proposed measures are within competencies of global bodies (e.g., IMO), make recommendations to Parties and global bodies to promote adoption of relevant measures within their mandates.
- COP shall respect competencies and not undermine relevant IFBs (e.g., IMO and its conventions).
- COP shall make arrangements for regular consultations to enhance cooperation and coordination, as well as coordination with measures adopted by IFBs (**structured relationship with IMO**).

Procedures: BBNJ (other)

- Emergency measures (Art 24):
 - COP shall take decisions to adopt emergency measures when serious or irreversible harm cannot be managed in a timely manner by an IFB (e.g., IMO) following consultations.
- Implementation (Art 25):
 - Parties shall promote adoption of measures within relevant IFBs (e.g., IMO) to support implementation of COP decisions and recommendations.
 - Parties shall encourage States whose vessels operate in an area subject to ABMTs to adopt supporting measures.

5. IMO/ABMTs

ABM tool	Issuing authority	Purpose	Function	Spatial scale
Load lines zones, areas and seasonal periods	IMO (ICLL)	Regulation	Maritime safety	Regional
MARPOL emission control areas	IMO (MARPOL)	Regulation	Pollution prevention; public health protection	Regional; subregional
MARPOL special areas	IMO (MARPOL)	International cooperation; regulation	Pollution prevention; pollution response; public health protection	Regional; subregional
METAREAS	WMO, IMO (SOLAS)	International cooperation; provision of service	Maritime safety (weather and ice forecasts)	Regional; subregional
NAVAREAS	IMO, WMO (SOLAS)	International cooperation; provision of service	Maritime safety (navigational information)	Regional; subregional
Particularly sensitive sea areas (PSSAs)	IMO (IMO Convention; PSSA Guidelines)	Regulation	Pollution prevention; marine conservation	Regional; subregional; local
Places of refuge/safety	IMO (ISC; IMO POR Guidelines)	Provision of service	Maritime safety; pollution prevention; pollution response	Local
Polar Code areas (Arctic waters; Antarctic area)	IMO (MARPOL, SOLAS)	Regulation	Maritime safety; pollution prevention	Regional
Pollution emergency planning and response	IMO (OPRC)	International cooperation; provision of service;	Pollution prevention; pollution response	Regional; subregional; local
Quarantine	WHO (IHR)	Regulation	Public health protection	Local
Reporting measures (area specific)	IMO (SOLAS)	Regulation	Maritime safety; pollution prevention; maritime security; public health protection	Regional; subregional; local
Routing measures	IMO (UNCLOS; SOLAS; COLREGS)	Regulation	Maritime safety; pollution prevention; marine conservation	Regional; subregional; local
Search and rescue zones	IMO (SAR Convention)	International cooperation; provision of service;	Humanitarian search and rescue)	Regional; subregional

MARPOL special areas/ECAs

- Definition (para 2.1):
 - "a sea area where for recognized technical reasons in relation to its oceanographical and ecological conditions and to the particular character of its traffic, the adoption of special mandatory methods for the prevention of sea pollution by oil, noxious liquid substances, sewage, or garbage, as applicable, is required."
- Authority: MARPOL annexes:
 - Annexes I (oily wastes); II (liquid noxious substances in bulk); IV (sewage); garbage (V).
 - Emission Control Areas (Annex VI):
- Usefulness for BBNJ:
 - In principle, can be applied to high sea areas (Antarctic Area, Mediterranean precedents)
 - Can mitigate pollution from discharges and emissions of substances from all kinds of shipping regulated by the Annexes.
 - To balance conservation goals and international shipping.

Procedure for special areas

- Submission of proposal for a clearly defined area by interested MARPOL State Parties (para 2.3):
 - Criteria:
 - Oceanographic conditions
 - Ecological conditions
 - Vessel traffic characteristics
 - Existence of reception facilities
 - Existing management regime (para 2.10): “Consideration should be given to the extent to which a management regime is used in managing the area. Proposals for designation of a Special Area would be strengthened if measures are being taken to manage the area's resources”.
- MEPC consideration + technical review; adoption by MEPC entailing a formal amendment to MARPOL using the tacit acceptance procedure (Art 16).
- Limitations:
 - Special areas depend on port reception facilities for effectivity; can take many years to become effective!

PSSAs

- Definition (Guidelines para 1.1):
 - “APSSA is an area that needs special protection through action by IMO because of its significance for recognized ecological, socio-economic, or scientific attributes where such attributes may be vulnerable to damage by international shipping activities.”
- Authority:
 - “The IMO is the only international body responsible for designating areas as Particularly Sensitive Sea Areas and adopting associated protective measures.” (PSSA Guidelines para 3.1).
 - Mandate for spatial designation: IMO Convention supported by PSSA Guidelines.
 - Mandate for APMs: supported by IMO conventions (e.g., SOLAS, MARPOL).
 - Authorizing body: MEPC by resolution.

Procedure for PSSAs

- Submission by IMO Member Government:
 - Based on ecological, socio-economic and scientific criteria (low threshold).
 - Must demonstrate vulnerability to threats posed by shipping (traffic characteristics, natural factors).
 - Must propose APMs from IMO conventions; subject to technical review.
 - Must demonstrate impact on safety of navigation.
- Usefulness for BBNJ:
 - Versatility: can help mitigate a wide range of shipping impacts and no size limitations.
 - APMs can be mandatory or voluntary.
 - Can target all or selective types of shipping.
 - Complementary to MPAs as an additional protective layer (e.g., Galapagos).
 - Mostly applied within areas of national jurisdiction but can be applied to the high seas.
- Limitations:
 - Limited to evidenced threats posed by shipping to the area concerned.
 - Enforcement of high seas APMs: limited depending on APM, whether voluntary or mandatory, and primarily by flag State.

Routing & Reporting measures

Authority:

- IMO “is recognized as the only international body for developing guidelines, criteria and regulations on an international level for ships' routing systems” (SOLAS Chap V/10.2).
- SOLAS State Parties request routing and reporting measures: e.g., designated routes, areas to be avoided, ship reporting system, etc.
- MSC adopts measures following technical review.

Usefulness for BBNJ:

- Versatility: can be fashioned and be mandatory or voluntary.
- Can target all or selective types of shipping (e.g., for tankers).
- Provide APM ‘teeth’ of PSSA.
- Complementary to MPAs as an additional protective layer.
- Mostly applied within areas of national jurisdiction but can be applied to the high seas.

Limitations:

- Measures adopted tend to be the least intrusive to shipping.

6. Issues?

- Prescription:
 - Where to draw the line between COP and IMO competencies?
 - Who submits BBNJ requests for IMO designations?
 - BBNJ Art 25 duty of Parties to promote ABMTs in IFBs.
 - Special areas: MARPOL State Parties.
 - PSSAs: Submission by Member Government.
 - What if COP wants a more ambitious ABMT than the IMO is willing to adopt/designate?
- Enforcement:
 - Flag States
 - Port States? It depends on the legal basis of the ABMT (e.g., MARPOL)
- Assessment of ABMT performance:
 - COP ABMTs: power to review, change, etc.
 - MARPOL special areas: revisited periodically by MEPC.
 - PSSAs: not really reviewed, despite provision in PSSA Guidelines.
 - Routing & reporting: MSC review and IMO Routing updated regularly.

7. Concluding observations

- Extension of IMO competence, or expansion of scope of IMO ABMTs?
- Does the COP mandate potentially entail a degree of creep into matters traditionally understood to appertain to IMO?
- Likely need for IMO to attend COP as observer.
- Likely need for COP Secretariat to have ‘consultative status’ at IMO.
- Possible need for IMO to update special area & PSSA guidelines to expressly accommodate BBNJ.
- BBNJ provides IMO an opportunity to play a larger role in ocean management and conservation beyond traditional standard-setting in shipping: but is it ready?



IMO Secretary-General Kitack Lim says landmark treaty will reinforce efforts to protect biodiversity.