

BBNJ Agreement and Submarine Cables: Consideration of the Agreement and Next Steps

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Outline

- I. Consideration of the BBNJ Agreement as an Implementation Agreement under UNCLOS
- II. Consideration of the BBNJ Agreement for the Industry
- III. Consideration of Next Steps for the Industry

I. Consideration of the BBNJ Agreement as an Implementation Agreement under UNCLOS



Gaps and Limitations in the Existing Governance Framework of Areas Beyond National Jurisdiction (ABNJ) that the BBNJ Agreement Aims to Address

Current governance and regulatory framework for ABNJ is **fragmented** in nature:

- Fisheries (FAO/UNFSA/RFMOS)
- Shipping (IMO)
- Seabed mining (ISA)
- Submarine Cables (No international organization)

UNCLOS **lacks modern environmental governance principles and tools** (e.g., ecosystem approach and precautionary principle)

UNCLOS also **lacks detailed provisions** for the establishment of area-based management tools (**ABMTs**), such as marine protected areas (**MPAs**) or environmental impact assessments (**EIAs**), both crucial mechanisms for protecting the marine environment and its associated biodiversity

Addressing the Gaps and Limitations Using an Implementation Agreement

- The 1982 United Nations Convention on the Law of the Sea (UNCLOS) is a framework Convention: a **'Constitution for the Oceans'**
- UNCLOS has an **'in-built flexibility'** which allows for the further development of the law of the sea in response to new discoveries, advances in technology, and emerging challenges
- The **implementation agreement** has been used successfully as a tool for the further development and elaboration of the Convention
- BBNJ Agreement will be the third implementation agreement **under** UNCLOS if and when it enters into force, where it will sit alongside its sister implementation agreements:
 - 1994 Part XI Implementation Agreement
 - 1995 UN Fish Stocks Agreement



In framing the BBNJ Agreement as an implementation agreement, the following UNCLOS provisions are further developed and elaborated upon in the Agreement

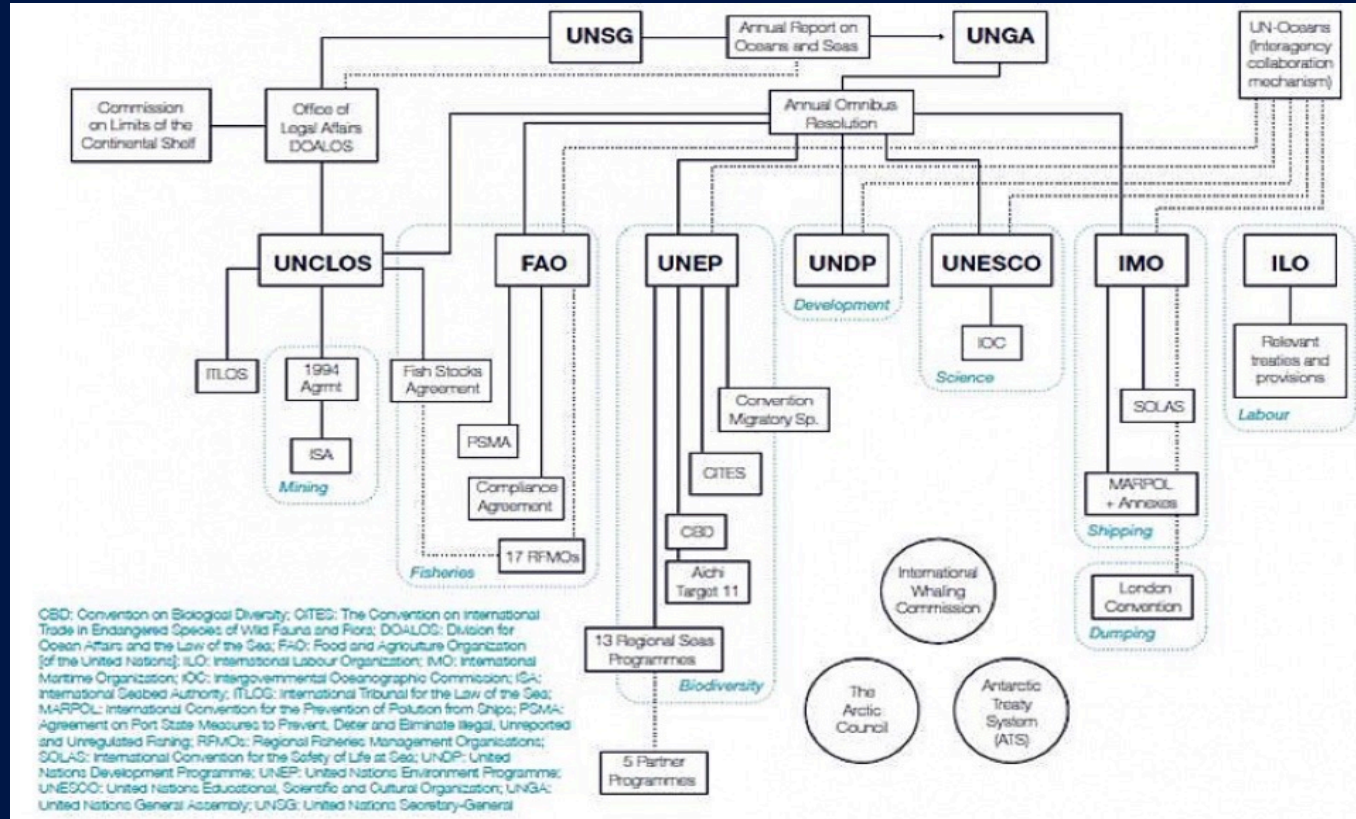
DUTIES TO COOPERATE TO PROTECT AND PRESERVE THE MARINE ENVIRONMENT

- Cooperation and Consultation mechanisms

OBLIGATIONS TO PROTECT AND PRESERVE THE MARINE ENVIRONMENT

- Detailed provisions for ABMTs and EIAs/SEAs
- Inclusion of modern environmental principles, including the precautionary principle/approach and an ecosystem approach in guiding principles/approaches

How will the BBNJ Agreement fit into the UNCLOS regime and the existing ocean governance framework?



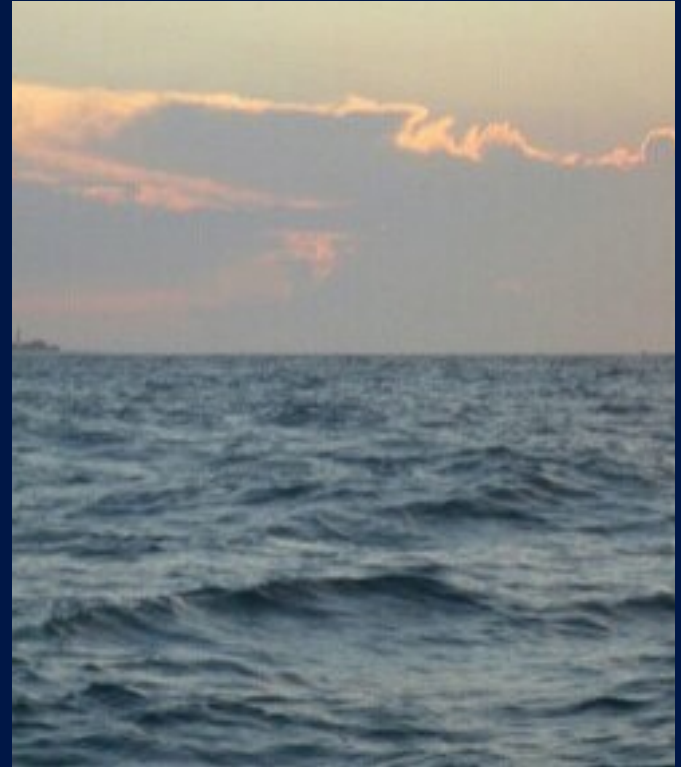
II. Consideration of the BBNJ Agreement for the Industry



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Consideration of the ICPC Objectives

- Preserve **UNCLOS freedoms and protections** for submarine cable installation and repair
- Ensure recognition of submarine cables as a **sustainable use** of the oceans and critical infrastructure
- Promote **regulatory certainty** in treaty implementation to ensure timely and predictable permitting for new builds and repairs



UNCLOS Freedoms and Protections for Submarine Cable Installation and Repair

UNCLOS Created a Legal Order for International Communication

- In the UNCLOS Preamble, the Parties recognize the desirability of establishing a legal order for the seas and oceans. . . . which will **facilitate international communication . . .**
- UNCLOS **confirms the right of States to use the seabed for cables** and pipelines (UNCLOS, Arts. 87(1)(c), 112) and **affirms this right** (with only slight restrictions) for both the **exclusive economic zone** and the **continental shelf** (UNCLOS, Arts. 58(1), 79) and obliges States to adopt laws to regulate liability for breakage of cables and pipelines and cases of indemnity (UNCLOS, Arts. 113-115)
- Submarine cables are **covered by the UNCLOS compulsory dispute settlement** provisions (UNCLOS, Art. 297(1)(a))

Whether and to what extent the UNCLOS freedoms and protections for submarine cables are preserved under the BBNJ Agreement: Look at the Linkages!

TITLE OF THE BBNJ AGREEMENT:

- Agreement **under** the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction

PREAMBLE:

- *Recalling* the relevant provisions of the United Nations Convention on the Law of the Sea of 10 December 1982, including the obligation to protect and preserve the marine environment (pr. para. 1)
- *Stressing* the need to **respect the balance of rights, obligations and interests** set out in the Convention (pr. para. 2)

ARTICLE 2:

The general objective can only **be achieved 'through effective implementation of the relevant provisions of the Convention** and further international cooperation and coordination'

NUMBER OF REFERENCES TO UNCLOS IN THE BBNJ AGREEMENT: 40+!!

Relationship between BBNJ Agreement and UNCLOS

Article 5

Relationship between this Agreement and the Convention and relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies

1. This Agreement shall be interpreted and applied in the context of and in a manner consistent with the Convention. **Nothing in this Agreement shall prejudice the rights, jurisdiction and duties of States under the Convention**, including in respect of the **exclusive economic zone** and the **continental shelf** within and beyond 200 nautical miles.
2. This Agreement **shall be interpreted and applied in a manner that does not undermine relevant legal instruments and frameworks** and relevant global, regional, subregional and sectoral bodies (**IFBs**) and that promotes coherence and coordination with those instruments, frameworks and bodies.

Ensure recognition of submarine cables as a **sustainable use** of the oceans

- “Area-based management tool” means 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. (BBNJ Agreement, Art. 1 (1))
- “Marine protected area” means a geographically defined marine area that is designated and managed to achieve **specific long-term biological diversity conservation objectives** and **may allow, where appropriate, sustainable use provided it is consistent with the conservation objectives**. (BBNJ Agreement, Art. 1(9))

Both definitions include conservation and sustainable use objectives!

All conservation and sustainable use measures taken with respect to AMBTs shall be compatible with the measures taken by other IFBs and shall not undermine the competences of such other IFBs.

Promote **regulatory certainty** in treaty implementation to ensure timely and predictable permitting for new builds and repairs

At the close of the IGC after a 36-hour marathon session, the States adopted an Agreement that defers the development of the terms of reference, the modalities for cooperation and consultation, and the various mechanisms to the first meeting of the Conference of the Parties (COP-1)

Creates both uncertainty and opportunity



IISD Credit: IISD Earth Negotiations Bulletin

III. Consideration of Next Steps for the Industry



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Status: 89 Signatures and 4 Ratifications

NUMBER OF SIGNATURES

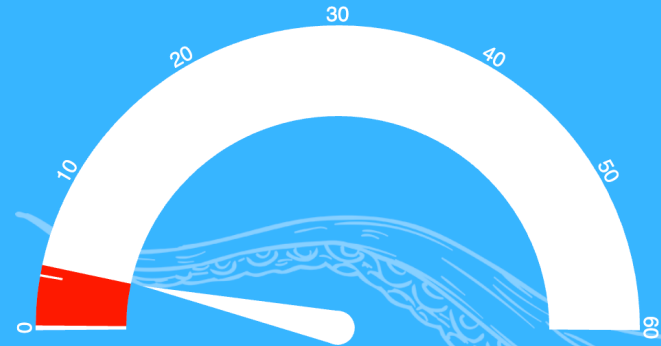
See how many countries have signed the Treaty so far on the Signature Count. By signing, countries mark their commitment to ratifying the Treaty.

89

[COUNTRY PROGRESS TABLE](#)

[COUNTRY PROGRESS MAP](#)

NUMBER OF RATIFICATIONS



60 = Treaty Enters into Force

Once 60 countries have ratified the Treaty, we will aim to get universal ratification by all 193 UN Member States.

The Road Ahead . . . in the medium- to long-term



Bringing the BBNJ Agreement into force

Marketing and promoting broad participation in the Agreement

Engaging in a comprehensive ratification and domestication process



Implementing the BBNJ Agreement: 'Institutions are the glue'

Extent of operationalization of the institutions will dictate the ambition and overall success/robustness of the Agreement

Prospects for Collaboration between Government and Industry: Engagement/Dialogue/Awareness

- Participation and contribution to **international efforts** to ratify and implement the BBNJ Agreement
 - DOALOS programs
 - PrepCom and associated activities, including side events
- Participation and contribution to **regional efforts** to ratify and implement the BBNJ Agreement
 - Regional workshops and programming
- Participation and contribution to **national efforts** to ratify and implement the BBNJ Agreement
 - Promote the inclusion of all ministries that regulate the submarine cable industry
 - Contribute to inter-agency initiatives
 - Promote the appointment and support of National Focal Points and make them aware of Industry issues and objectives

Prognosis for the Future

The BBNJ Agreement could provide the basis for a more integrated legal and institutional framework to further implement key provisions of the Convention relating to the protection and preservation of the marine environment

- Ambition of the BBNJ Agreement will be determined at COP-1
- Success of the BBNJ Agreement will be determined by the level and mix of its participation
- Securing funding for the implementation of the Agreement and administration of its institutional arrangements is crucial to meeting the objectives of the BBNJ Agreement

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Thank you for your kind attention.

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