

**IFLOS/KMI Symposium:  
30th Anniversary of Entry into Force of UNCLOS:  
The 'Constitution for the Oceans' in Light of Emerging Challenges  
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***Panel 4: Relationship of the BBNJ Agreement's ABMT Mechanism  
and Relevant Ocean Governance Institutions***

**Relationship of the IMO  
and the BBNJ Agreement**

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# Outline of Presentation



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# Part 1

## ABMTs, including MPAs, under the 2023 Treaty

# 2023 Agreement and High Seas MPAs

- 2023 Agreement aims to establish a legal mechanism for the creation of ABMTs, including Marine Protected Areas (MPAs), on the high seas
- MPAs can be established under the 2023 Agreement by a majority vote of the **conference of the parties (COP)**
- The objective is to place 30% of the world's oceans into protected areas by 2030, a key biodiversity pledge made at the COP 15 UN biodiversity summit in Montreal in 2022.

# Article 5. Relationship with . . . Relevant Global . . . Sectoral Bodies

- This Agreement shall be interpreted and applied in a manner that **does not undermine relevant legal instruments (1982 UNCLOS)** and frameworks and **relevant global, regional, subregional and sectoral bodies (IMO)** and that **promotes coherence and coordination with those instruments, frameworks and bodies.**

# Article 19. Proposals for ABMTs

1. Proposals regarding the establishment of ABMTs, including MPAs, under this Part shall be submitted **by Parties**, individually or collectively, **to the secretariat**.
2. **Parties shall collaborate and consult**, as appropriate, **with relevant stakeholders, including States and global . . . sectoral bodies**, as well as civil society, the scientific community, the private sector, Indigenous Peoples and local communities, for the development of proposals, as set out in this Part.

# Article 22. Establishment of ABMTs including MPAs

1. COP may, where proposed measures are within the competences of ... **other global sectoral . . bodies**, make **recommendations** to . . to **global . .sectoral bodies** to promote the adoption of relevant measures through such . . bodies, in accordance with their respective mandates.
2. In taking decisions under this article, the **COP shall respect the competences of, and not undermine,** relevant legal instruments and frameworks and **relevant global . . sectoral bodies**

## Article 22. COP Consultations with Relevant Global Sectoral Bodies

The COP shall make arrangements for **regular consultations** to enhance cooperation and coordination with and among relevant legal instruments and frameworks and **relevant global . . . sectoral bodies** with regard to **ABMTs, including MPAs**, as well as coordination with regard to related measures adopted under such instruments and frameworks and by such bodies.



## Part 2

# 1982 UNCLOS and IMO Conventions – Jurisdiction over Ships on the High Seas

# UNCLOS Article 92.

## Status of Ships

1. Ships shall sail under the **flag** of one State only and, save in exceptional cases expressly provided for in international treaties or in this Convention, shall be subject to its **exclusive jurisdiction on the high seas. . .**

# UNCLOS Article 94. Duties of the Flag State

1. Every State shall **effectively exercise its jurisdiction and control** in administrative, technical and social matters over ships flying its flag.
  - Such measures shall include those necessary to ensure:
    - that the master, officers and, to the extent appropriate, the crew are fully conversant with and required to observe **the applicable international regulations** concerning the **safety of life at sea**, the prevention of collisions, **the prevention, reduction and control of marine pollution**, . .

**Effect of Article 94:** Flag States have an obligation to ensure their ships comply with the IMO Conventions on Protection & preservation of the marine environment (MARPOL 73/78, etc)

# International Maritime Organization (IMO)

- UN Specialized Agency with responsibility for the safety and security of shipping and the prevention of pollution from ships
- **Main Role:** create a regulatory framework for the shipping industry by establishing global standards for safety, security and the prevention of pollution from commercial ships
- Major IMO Conventions on safety of navigation and ship-source pollution of the marine environment have been ratified by **98-99%** of the world's tonnage of shipping
- Major IMO conventions on ship-source pollution are regularly updated through amendments to their annexes which are binding on parties to the Convention under "tacit acceptance procedures"

# Advantages if MPAs established by IMO under its Conventions

- Major IMO Conventions such as MARPOL 73/78 and SOLAS 1974 have been ratified by 98-99% of States
- The 2023 High Seas Treaty is not likely to achieve universal acceptance for many years
- Major shipping organizations and major environmental NGOs have observer status at the IMO and can participate in discussions on the establishment of MPAs

# Major Challenge: Enforcement of MPAs established under IMO Conventions

- Ships on the High Seas are subject to the **exclusive jurisdiction of the flag State**
- **Flag States** have the primary obligation under IMO conventions to regulate ships registered in its territory and flying its flag and to enforce IMO regulations on the safety of navigation and pollution of the marine environment
- **Port States** have the power to inspect and enforce IMO regulations on ships which voluntarily enter their ports or internal waters,  
but if the violations take place on the **high seas**, all the port State can do is report the violation to the flag State

# Major Problem with IMO Conventions - Implementation by Flag States

- Flag States have an obligation under Article 94 to **effectively exercise jurisdiction and control** over ships flying their flag
- Flag States are required to take measures on the safety of navigation and the prevention of pollution that conform to the **“generally accepted international regulations, procedures and practices”** on the safety of life at sea, the maintenance of radio communications, and the prevention, reduction and control of marine pollution
- Unfortunately, many commercial ships are registered in States that are either unable or unwilling to ensure that the ships flying their flag comply with IMO Regulations on safety and pollution (e.g. Dark Fleet of oil tankers)

# Other Challenges

1. Very difficult to monitor ships on the high seas to determine if they respect an MPA or routeing measures
2. IMO is responsible for commercial ships – not fishing vessels or naval vessels
3. Current IMO conventions on liability and compensation for ship-source pollution of the marine environment provide for compensation only if there is measurable economic loss to a coastal State
  - If there is a **major oil spill on the high seas** from an oil tanker, the tanker owner is not liable to pay any compensation or engage in any clean-up



# Challenges in Regulating Shipping in High Seas MPAs

1. Impact the MPA may have on major shipping routes of commercial ships
  - If ships routed around a large MPA they will burn more fuel which may result in more pollution
  - If ships are routed to avoid whale strikes or other damage to marine life, will this be seasonal or permanent?
2. Will major flag States ratify the 2023 Treaty?
3. Will ship owners register their ships in States that are not parties to the 2023 Agreement and who will make no effort to enforce the IMO regulations on shipping activities high seas MPAs?

## Part 3

# Recommendations

# Recommendations on Cooperation

1. Global NGOs with observer status at the IMO should build bridges between key players at the IMO (States and major shipping organizations) and officials from COP Secretariat
2. Major shipping organizations (ICS, INTERTANKO, BIMCO, etc) should be encouraged to take initiatives to support the 2023 Treaty and its ratification by major flag States
3. Representatives from the IMO should attend meetings of bodies established under the 2023 Treaty
4. COP Secretariat should have observer status at the IMO
5. IMO should review its regulations on PSSAs and Routeing Measures to determine how they can be amended to address issues that will arise from MPAs on the high seas

# Recommendations for Studies by Academics, NGOs and Shipping Organizations

1. Studies should be undertaken on extent to which commercial shipping is a threat to the marine environment in areas identified as potential high seas MPAs
2. Studies should be undertaken to determine whether the IMO regulations on PSSAs, MARPOL Special Areas and Routeing Measures can be utilized to minimize the threat to the marine environment from shipping in potential high seas MPAs
3. Studies should undertaken on the development of systems to track ships on the high seas using electronic signals, commercial databases, satellites, etc

**Thanks for Your Attention !**

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