

Conference: *Transforming the ocean law by requirement of the marine environment conservation*

Theme 4: *Protection of the marine environment in a highly legal approach*

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Title: *Imposing an international environmental jurisdiction: How developments on marine protected areas (MPAs) are fostering a new legal order for the conservation of ABNJ*

Abstract: The nature and designation of marine protected areas (MPAs) has undergone a process of rapid change in the last two decades. MPAs are invading maritime zones historically conceived to enlarge the sovereign rights of states to explore and exploit living and non-living marine resources – for example, the economic exclusive zone. The extent of the area covered by MPAs in zones beyond national jurisdiction, the high seas and the Area, is also increasing. However, the compatibility of MPAs with the high seas maritime freedoms and the legislative competence to designate MPAs in ABNJ is still not straight forward. Debates at international level, particularly at the United Nations General Assembly, have led to consensus recognition of the need to develop a specific instrument under the framework of UNCLOS to support the conservation of marine biodiversity in ABNJ. Such an agreement is crucial to regulate MPAs in these areas.

This paper discusses how advances in marine conservation through a more robust promotion of MPAs can impact the way that the oceans and seas are ruled. It aims to identify how the law of the sea is responding to the changing circumstances in the marine environment, including new scientific evidence and the new emphases of the international community in its approach to marine conservation. For this purpose, it analyses how the introduction of the concepts of biological diversity and the adoption of an ecosystem approach by CBD are influencing the implementation of UNCLOS' obligation to protect the marine environment and to protect “*rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species*” (particularly Arts.192 and 194(5)) through the designation of MPAs. It discusses the broader interpretation of UNCLOS's provisions towards the conservation of marine living resources engendered by the *South China Sea Arbitration* and the *Chagos Marine Protected Area* cases and how they can be used to support the designation of MPAs in ABNJ. Further, it discusses states practices on the designation of MPAs in ABNJ, such as the OSPAR high seas network of MPAs and the CCAMLR MPAs, in order to discuss the main obstacles currently facing the conservation of biodiversity in ABNJ.

Although UNCLOS provides an international framework for the oceans and seas, the Convention is not the only source of instruments in the law of the sea applicable to the oceans. Coastal states of enclosed or semi-enclosed seas have often employed regional approaches to address issues in the marine environment. In regionalising environmental protection, innovative legal instruments have been developed to adapt broad and general international instruments according to the specific real regional environmental challenges.

Regional organisations and sectoral organisations can assist in implementing international law more efficiently. Their specialised functions provide them with a relative autonomy of normative powers. However, in ABNJ, the “spontaneous, decentralized, and unhierarchical nature of international law-making” is associated with the fragmentation of the international law.

In the process of designating MPAs in ABNJ, the meaning of “marine regions” has been expanded for the sake of protecting vulnerable and unique ecosystems of the open oceans. Hence international collaborative efforts for certain regions are no longer confined to the traditional enclosed or semi-enclosed areas. Regional conservation measures for the protection of living resources have also been designated as a prerequisite for contracts of exploitation in the Area. Together these experiences are providing a useful insight into regulatory options for the development of international mechanisms for the conservation and sustainable use of marine biodiversity in ABNJ.

Article 118 of UNCLOS encourages states to engage in cooperation agreements for the conservation and management of living resources in the high seas and to take measures necessary for their conservation. Since the end of the last decade, the use of MPAs in ABNJ has emerged from different regional instruments. The analysis of international practice on designating MPAs in ABNJ aims to provide an understanding of how states are collaborating and succeeding, mainly through competent regional organisations, in overcoming the sovereignty barrier to designate MPAs in ABNJ. It investigates whether and how the development of regional instruments for the designation of MPAs in ABNJ have widened the conservation mandates of the regional and international organisations involved and are likely to influence other organisations with a mandate in ABNJ to pursue a more ambitious conservation approach. Particular emphasis is given to whether these regional initiatives, beyond implementing UNCLOS, are helping to develop a more specific regulation for the use of stronger conservation mechanisms in ABNJ.

Short Biography: *Beatriz de Sousa Fernandes* is currently a Ph.D. student at the School of Law of the University of Edinburgh. Her research is in the area of International Environmental Law in which she is specifically looking at legal aspects for increasing marine conservation through marine protected area. Her project intends to discuss how a more robust promotion of MPAs may be supported and/or impact the current way that the oceans and seas are ruled. It aims to identify how international law responds to the changing circumstances and values of the international community for achieving an effective marine conservation. She holds an LL.M. (International Environmental Law/Law of the Sea) from the *Universidade de Lisboa*, Portugal and an LL.B (Law) from the *Universidade Catolica de Salvador*, Brazil. She was a former *stagiaire* at the Commission for Sustainable Development of the Committee of the Regions of the European Union (Brussels) and an intern at the Convention on Migratory Species, (Bonn).