BBNJ and the Limits of the Commons: Spatial and Functional Complexities

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Presentation Outline

1. Spatial uncertainties
2. Legal Implications
Overlapping Zones

- Continental Shelf
  - Sea-bed, Subsoil, Sedentary Species
    - (Extended Continental Shelf)
  - Exclusive Economic Zone (200 M)
    - Water Column, Sea-bed, Subsoil
      - (certain High Seas freedoms retained)
    - Contiguous Zone (24 M)
  - High Seas
    - (subject to Part VII of UNCLOS)

- Sea Level
The Challenges of Connectivity
Between Activities, Zones, Layers and Ecosystems

• **Activities** on the seabed impact on the water column and vice-versa
• **Ecological interconnectivity** between zones both horizontally and vertically

**Horizontal** connectivity: passive (ocean current driven) and active (e.g. migratory species)

**Vertical** connectivity: between seabed and water column (e.g. stages of life cycle)

Source: Guillermo Ortuño Crespo

Source: Woods Hole Oceanographic Institution
A Strange Kind of Fish...
Uncertain Outer Limits

• Many States make unclear ambit claims and have yet to deposit charts or coordinates with UN (LOSC, Article 75)
• Excessive claims:
  ▪ Excessive straight baseline claims
  ▪ Overly expansive claims from islands
• Disputed areas
• Dynamic coasts
Ambulatory Baselines and Shifting Limits

Animation by Arsana & Schofield, 2012
Slow Progress in Delineating Outer Continental Shelf Limits Beyond 200 M

- Coastal States must submit information to the CLCS (LOSC, Article 76(8))
- 83 submissions so far
  - Plus 47 submissions of preliminary information with 19 still outstanding
- Over **37 million km²** seawards of 200 M EEZ limits
- Less than one-third have received recommendations from CLCS
- Numerous overlaps between submissions totalling over **3.3 million km²**
- CLCS not mandated to deal with outer continental shelf disputes
Legal Implications: Scope of the Treaty

“Decides to convene an intergovernmental conference ... to elaborate the text of an international legally binding instrument 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” UNGA Res 72/249

• Does the treaty only apply only to activities in ABNJ?
• Can it also elaborate on coastal state rights and duties?
Coastal States and ABNJ: Potential Principles

- Due regard
- Cooperation
- Compatibility
- Respect and responsibility
- Adjacency
Managing Complexity

**Issue One:** How to manage the interaction between extended continental shelves and the ABNJ?

- A particular issue for MGRs: what does “sedentary species” mean in that context?
  - A new definition for the purposes of MGR?
  - Expanded role for coastal state in return for additional responsibilities?
- But also: ABMT/MPAs and EIAs
Managing Complexity

**Issue Two:** How to manage uncertainty over boundaries/jurisdiction?

- **Where no CLCS recommendation**
  - Treat as within national jurisdiction until a CLCS recommendation is issued
  - With overlapping claims, could request agreement on extent of the outer limits for the purposes of the BBNJ Treaty.

- **Where more than one State claims an EEZ or CS:** who is the coastal State?
  - Assume both are the coastal State? (MPAs/EIAs)
  - Trust arrangement until settlement of claims? (MGRs)
Thank you!

“I don’t know why I don’t care about the bottom of the ocean, but I don’t.”