

THE ABNJ AND AFRICAN INTERESTS

Reflections on World Oceans Day by Ms. Stephanie Oserwa Schandorf

Today marks World Oceans Day, which by a resolution of the United Nations (UN) is slated for 8th June every year. A day set aside for celebrating the oceans cannot be underestimated. Oceans cover over 70% of the Earth's surface, contain close to 97% of the Earth's water supply, host some of the world's most significant ecosystems and are the primary means of global trade and transportation.

Unfortunately, a germane question remains as to whether African States and communities have been able to exploit the benefits of the oceans as an impetus for their development agendas. Indeed, one of the most important developments for the global community and the peculiar nature of African interests is the future of the Areas Beyond National Jurisdiction (ABNJ) – comprising both the high seas and the deep seabed referred to as the Area. The phrase “the Area” was arrived at as the compromised description of maritime spaces which fall outside the jurisdiction of States on the basis of maritime delimitations set out by the United Nations Convention on the Law of the Sea (UNCLOS), 1982. In other words “the Area” plus the high seas is synonymous to the ABNJ.

At the time when UNCLOS was developed, it was thought to be comprehensive enough to cater for contentions in the ABNJ, being the single most detailed and significant instrument of international law. However, with rapid advancements in technology, the Convention has been found inadequate, especially with regards to the ABNJ.

Why is the ABNJ so important? The high seas, covering 64% of the world's oceans and comprising a substantial proportion of its biodiversity, contains aquatic resources of immense pharmaceutical, economic and environmental significance. Furthermore, the Area is rich in polymetallic nodules and metalliferous muds with economically viable minerals such as gold, silver and iron. Competition amongst States for these crucial resources has heightened debates on how to achieve more equitable access to the ABNJ, especially for African States which have little technological capacity to harvest its resources.

In addition, great emphasis has been placed on the need for a suitable regime to ensure the conservation of biodiversity in the region. To this end, UN Resolution 69/292 was adopted in June 2015 by the UN General Assembly to commence negotiations towards the development

of an international legally-binding instrument under UNCLOS to address matters concerning the conservation of marine biodiversity and governance of the ABNJ.

As Africa participates in the search for a suitable governance regime for the ABNJ following the Resolution, certain crucial issues remain pertinent: global governance institutions and what role they will play; the legitimacy of these institutions and processes; and the pressing limits of international law in providing an effective legal framework for the ABNJ. Furthermore, there is the question as to whether any legal regime for the region will be satisfactory, comprehensive or constrained. A satisfactory regime would consider the interests of many; a comprehensive one would address all contentious issues; and a constrained one would be limited by interests and opinions that will have to be embodied in the evolution of international law.

As we celebrate World Oceans Day, there is the need to reflect on how best the resources of the ABNJ can be harnessed to attain the sustainable development of the world in general, and Africa in particular.

Stephanie Schandorf is the Research Lead on ABNJ at the Centre for Maritime Law and Security Africa (CEMLAWS Africa). This article is a snapshot of a broader and evolving body of work by CEMLAWS Africa aimed at providing a comprehensive understanding of the complex issues of law, policy and governance in the ABNJ.