

DEVELOPMENT OF AN INTERNATIONAL LEGALLY BINDING INSTRUMENT UNDER UNCLOS ON THE CONSERVATION AND SUSTAINABLE USE OF BIOLOGICAL DIVERSITY IN AREAS BEYOND NATIONAL JURISDICTION (BBNJ)

ICS¹, ECSA² AND ASA³ POSITION PAPER

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Summary

The global shipping industry has been following UN discussions regarding the development of a legally binding instrument under the United Nations Convention on the Law of the Sea, 1982 (UNCLOS) on the conservation and sustainable use of marine Biological diversity of areas Beyond National Jurisdiction (BBNJ).

Industry respectfully submits that when considering the new instrument, due regard is given to:

- the UN 2030 Agenda for Sustainable Development and, in particular, to ensuring a careful balance between sustainable use and protection of marine biodiversity;
- ensuring that the proposed Instrument is consistent with the 1982 United Nations Convention on the Law of the Sea (UNCLOS) and, in particular, the provisions concerning the maintenance of freedom of the high seas, and rights of navigation enshrined in articles 87 and 90 of UNCLOS;
- fully respecting the carefully agreed balance between the different bases of jurisdiction under UNCLOS (flag State jurisdiction, coastal State jurisdiction and port State jurisdiction);
- fully respecting also existing, relevant legal instruments;
- ensuring that relevant global and sectoral bodies are not undermined. For the shipping sector, this is principally the International Maritime Organization (the IMO).

Further information

Shipping powers the global economy, transporting raw materials, oil, gas and goods into homes, manufacturing plants and factories worldwide. Around 85% of world trade is carried

¹ *The International Chamber of Shipping (ICS) is the principal global trade association for the shipping industry engaged in international trade, representing shipowners and operators in all sectors and trades. Its membership comprises national ship-owners' associations in Asia, Europe and the Americas whose member shipping companies operate over 80% of the world's merchant tonnage. Its primary role is to represent shipowners with the various international regulatory bodies that affect shipping, including and most especially the International Maritime Organization and the International Labour Organization.*

² *The European Community Shipowners' Associations (ECSA) is a trade association whose membership comprises the national shipowner associations of the European Union and Norway and whose focus is representation at the EU regulatory institutions. Many of the members of ECSA are also members of the International Chamber of Shipping.*

³ *The Asian Shipowners' Association is a trade association whose membership comprises eight national shipowner associations from the Asia-Pacific region.*

on ships. Shipping directly facilitates the growth of world trade, economic development, and the improvement of global living standards. The international shipping industry is therefore an important stakeholder in any agreement under UNCLOS. On a sectoral level, shipping should be considered an important partner to any new treaty that could affect maritime activities or the rights and freedoms of navigation established under UNCLOS.

In this respect, it is noted that General Assembly resolution 72/249 reaffirms that the new instrument to be developed should be fully consistent with the provisions of UNCLOS. This is welcome because the maintenance of freedom of the high seas, and rights of navigation enshrined in articles 87 and 90 of UNCLOS are principles that are vital to the smooth operation of shipping. UNCLOS also carefully balances the rights and obligations of flag States, coastal States and port States. In the context of regulating international shipping, this balance has worked well, as demonstrated by the steady improvement of shipping's safety and environmental performance.

This regime has been a success largely because while UNCLOS provides the basic legal framework for ocean governance, detailed regulation of the shipping industry is carried out by the expert body, the International Maritime Organization (IMO), operating under delegated authority from the UN. The global shipping industry strongly believes that this mandate should be duly recognised in any new agreement and IMO consulted as appropriate when developing regulations under the new instrument that affect shipping.

The IMO has developed a comprehensive framework of global conventions, which are enforced worldwide, through a combination of flag State inspection and port State control. In the interest of ensuring legal certainty, it will be important for governments considering the detail of the new instrument to take account of any potential overlap, duplication of, or conflict with existing IMO Conventions.

While discussions on the detail a new treaty have yet to commence, one area of potential regulation is the establishment of Marine Protected Areas (MPA) on the High Seas. To some extent, these areas already exist for shipping through the designation by IMO of Special Areas under MARPOL and Particularly Sensitive Sea Areas (PSSA). However, in the context of BBNJ this will be complicated by a large number of UN and regional agencies, each with the competence to agree marine protection measures. In all cases, it will be important to ensure that the establishment of MPA on the High Seas does not adversely affect ship routing measures or impact the rights of freedom of navigation. Meaningful consultation with IMO and the shipping sector will lead to the input of specialised technical expertise and ensure that the balance is maintained between environmental protection and freedom of navigation.

Finally, there is no question about the global shipping sector's commitment to cleaner seas and it shares the objectives of the international community to protect and conserve the marine environment in a sustainable way. In this regard, ICS, ECSA and ASA stand ready to provide technical input in order to assist in the development of a new treaty.