

PRESENTATION SUMMARY

NO FISH LEFT BEHIND: FISHERIES UNDER BBNJ

MONDAY, 25 MARCH 2019
13:15 - 14:30



Fish Biodiversity Beyond National Jurisdiction: slipping through the governance net

Guillermo Ortuño Crespo (Duke University)

Following over a decade of discussions regarding the governance gaps for the conservation and sustainable use of biodiversity in areas beyond national jurisdiction (BBNJ), the international community has embarked in a process through the United Nations (UN) to negotiate a new international legally binding instrument that would help reinforce the legal regime in international waters. Early in the process, States at the UN stressed the importance of ensuring that a new framework for the sustainable use of BBNJ does not undermine existing legal frameworks. It is of utmost importance that in doing so, the UN makes sure that the full scope of marine BBNJ is accounted for and that avoiding institutional redundancies does not result in thousands of species continuing to slip through the cracks of the mosaic of sectoral intergovernmental instruments.

We find that, while our understanding of the ecological composition of BBNJ has improved significantly over the last several decades, significant taxonomic, spatial and legal gaps still remain. Further, our results show that most species of fish that inhabit areas beyond national jurisdiction are not monitored, assessed or managed by existing international management bodies. Revising the taxonomic mandates of all existing sectoral management frameworks may help us identify the BBNJ that is not currently being monitored in areas beyond national jurisdiction. By acknowledging the spatial and taxonomic gaps in our knowledge and monitoring capacity of BBNJ, we may be able to implement a more appropriate governance regime which works more efficiently with other existing frameworks; this is of particular importance for fish BBNJ.

This new landmark treaty has the potential of strengthening the direct marine biodiversity data exchange mechanism of OBIS and the data coordinating efforts of the Earth Observing community (e.g., the Global Ocean Observing System (GOOS) under the IOC among other groups. Further, the new international legally binding instrument may help ensure that RFMOs efficiently and consistently implement an ecosystem approach that accounts for impacts of fishing beyond target biodiversity. Establishing robust monitoring and research programs for BBNJ will allow the UN to track changes in the ecological status of high seas ecosystems which may be caused by natural or anthropogenic stressors; this is an important objective regardless of the commercial interest of BBNJ."

Cooperating with existing institutions related to fisheries management

Solène Guggisberg (Utrecht University)

Some States argue that fisheries should not be included in the international legally binding instrument (ILBI) on biodiversity beyond national jurisdiction (BBNJ), as they are already covered by the UN Fish Stocks Agreement (UNFSA) and managed by other institutions, the regional fisheries management organizations (RFMOs). However, the relationship between fisheries and BBNJ is more complicated than this statement suggests. Even if fisheries were excluded from the ILBI, the impacts of fishing in the high seas will somehow have to be taken into account in order to reach the general aim of the future treaty, as well as in the practical implementation of that instrument.

The overarching objective of the ILBI BBNJ is to ensure the conservation and sustainable use of BBNJ, hence protecting the interests of all States. However, the governmental stakeholders that are involved in the international fisheries regime do not represent the interests of all States. The UNFSA, while it is open to all States, is also in practice focused on States with a fishing interest. Out of the 44 landlocked countries in the world, only 5 have ratified that instrument—and all are part of the EU block. As to RFMOs, they are open to States with an interest in the fishery, which in general means fishing States. Non-users are not included in the management decisions and hence cannot counterbalance exploitative tendencies. Fishing, an activity with a major impact on marine biodiversity beyond national jurisdiction, has been left into the exclusive hands of user States, a group which is logically partial to its own interests.

Moreover, the regime regulating high seas fisheries suffers a number of institutional weaknesses, which will impact the practical implementation of the ILBI. There are gaps in coverage, with areas still with no RFMO in place. This will make area-based management and environmental impact assessments, in particular cumulative impact assessments, more difficult to conduct as there will be no sectoral partner for fishing in these areas. Also, as demonstrated by the state of stocks, the existing regime is not always performing as well as it ought to, with direct impacts on BBNJ. While the inadequate results of many RFMOs are due to a multitude of factors, the process of solving these varied issues is impaired by the absence of a supervisory body. RFMOs undertake performance reviews that list the areas in need of improvement, but they do not have to report back to any institution on the actual changes they have made to implement the recommendations. This situation where the international community has no power of oversight is difficult to reconcile with the need to address institutional or structural weaknesses that put at risk the long-term sustainability of such a central element of BBNJ.

To address these problems, the international community could

(1) Fully include fisheries within the ILBI BBNJ institutional set-up, with fishing as one of several sectors substantively covered and coordinated by a central body, potentially with a hierarchical relationship (i.e. sector-specific bodies answering to a new ILBI BBNJ institution); or

(2) Include fisheries in the scope of application of general principles articulated in the ILBI BBNJ and improve the existing fisheries management and institutional set-up in another forum (e.g. UNFSA through amendment or review procedure, or in an ad hoc manner through UNDOALOS, FAO, or another body).

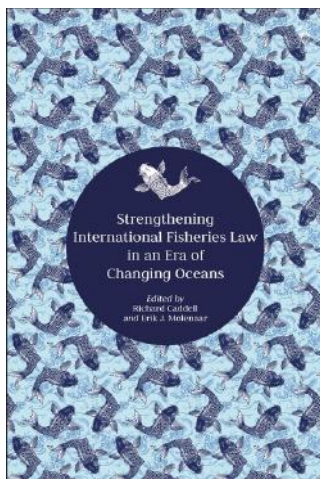
Environmental Assessment and fisheries management

Richard Caddell (Cardiff University)

The current negotiations towards an ILBI on the conservation and management of marine biodiversity in areas beyond national jurisdiction has particular value for attempts to address a more coherent and consistent series of obligations towards environmental assessment at sea. The current international obligations concerning environmental assessment, the range of assessment procedures, their thresholds, content and participatory standards remain rather opaque. Likewise, environmental assessment obligations have been subject to considerable scrutiny and divergences of opinion throughout the BBNJ process. This presentation considers how fisheries management may be strengthened through the development of clearer and more robust obligations towards environmental assessment in areas beyond national jurisdiction.

This presentation reviews the contexts in which environmental assessment has been most prevalent within international fisheries management in areas beyond national jurisdiction, primarily in addressing new and exploratory fisheries and the expansion of existing fishing footprints where vulnerable marine ecosystems may be compromised by poorly-coordinated fishing effort. In first instance, it can be seen that an intriguing form of assessment has emerged for new fisheries involving the prior approval of prospective fishing plans, commitments to return an agreed volume of environmental data from limited fishing operations and the elaboration of procedures to inform the graduated development of the fishery where a clearer picture of the ecosystem is built up over time. While these initiatives have not been without operational and practical difficulties, they have demonstrated the value of the procedures to build a more holistic understanding of the ecosystem and the prospective impact of future fishing operations. Likewise, the developments of standards of best practice concerning bottom-fishing and potential interactions with vulnerable marine ecosystems have also drawn heavily on a similar process of assessment to map deep-sea areas and establish clearer areas in which fishing may be further concentrated. Nevertheless, these initiatives have also exhibited operational shortcomings, and questions have been raised as to whether cumulative impacts in particular have been clearly considered in these processes.

This presentation also considers the value that clear and coordinated obligations in the prospective ILBI concerning prior assessment of new activities may have in respect of future fisheries management. In particular, this could complement and reinforce (and thus “not undermine”) the current obligations towards new and exploratory fisheries as developed under the UN Fish Stocks Agreement. This may prove to be especially valuable going forward, in an era in which fish stocks are exhibiting unprecedented shifts in movement and distribution and new fishing opportunities become increasingly commercially viable.



Strengthening International Fisheries Law in an Era of Changing Oceans, edited by Richard Caddell (Cardiff University) and Erik J. Molenaar (Utrecht University) is the first major collection since the entry into force of the UN Fish Stocks to consider the central question of how the current international framework for the regulation of fisheries may be strengthened in order to meet the challenges posed by changing fisheries and ocean conditions, especially those prompted by climate change. The book adopts a primarily legal focus, but also benefits from strong cross-disciplinary contributions from the fields of natural and applied sciences, economics, international relations and social policy. Particular focus is devoted to improving the interconnection between fisheries law and other fields of international regulation (including the current BBNJ negotiations), as well as advancing the implementation of ecosystem approach to fisheries and the addressing the vexed question of improving compliance with current norms, processes and institutions. Rigorous and comprehensive in scope, this will be essential reading for lawyers and non-lawyers interested in international fisheries regulation in the context of profoundly changing ocean conditions.

Speaker Bios

Guillermo Ortuño Crespo (Duke University)

Guillermo Ortuño Crespo is a Ph.D. candidate at Duke's Marine Geospatial Ecology Lab and a Fellow with the Nippon Foundation Nereus Program, he seeks to better understand the spatiotemporal patterns of distribution of highly mobile species through the use of different spatial modelling approaches.

With an interest in commercially exploited pelagic species and the bycatch of non-target species, he is investigating both ecological modelling and management perspectives, bridging the knowledge gap between the distribution of migratory species and the ecological role they play within the open-ocean.

Guillermo obtained a B.A. in Marine Biology from Rollins College and the Duke University Marine Laboratory, and recently completed a M.Sc. degree in Ecosystem-based Management of Marine Systems at the University of St. Andrews, Scotland. His background in biophysical science and policy has fueled interests in understanding the policy dimension behind the ecological questions that his research addresses, particularly the international efforts to better conserve biodiversity in areas beyond national jurisdiction.



Solène Guggisberg (Utrecht University)

Solène Guggisberg is a Nippon Foundation Senior Nereus Fellow at Utrecht University and Senior Research Associate at the Utrecht Centre for Water, Oceans and Sustainability Law and the Netherlands Institute for the Law of the Sea. Her current research focuses on fisheries governance, in particular in relation to compliance issues and the additional challenges posed by climate change.

She holds a degree in International Relations from the Graduate Institute of International and Development Studies in Geneva, an LLM from the University of Edinburgh, and a PhD on fisheries and environmental law from the Bucerius Law School in Hamburg, where she was also a scholar at the Max Planck Research School for Maritime Affairs.

Solène previously worked as an associate legal officer at the International Court of Justice, policy officer at the European Commission, consultant for the Food and Agriculture Organization, and junior counsel to Bangladesh in the maritime boundary proceedings between Bangladesh and Myanmar before the International Tribunal for the Law of the Sea.

Richard Caddell (Cardiff University)

Dr Richard Caddell is a Lecturer in Law at Cardiff University, where he teaches a number of courses in Maritime Law and is Convenor of the LLM Programme in Shipping Law. Between 2014 and 2017 he was Senior Research Associate and the Nippon Foundation Senior Nereus Fellow in International Fisheries Law at the Netherlands Institute for the Law of the Sea, Utrecht University. He was educated at Cardiff University, completing his PhD in 2009 on the international regulation of cetaceans. His primary research interests lie in the law of the sea, international environmental law and human rights, and has published widely on biodiversity conservation, marine environmental regulation, fisheries governance, energy law and Polar law.

He is the author of *Migratory Species and International Law: Challenges of Transboundary Conservation* (forthcoming, 2020) and co-editor (with Erik J. Molenaar) of *Strengthening International Fisheries Law in an Era of Changing Oceans* (2019) and (with D. Rhidian Thomas) of *Shipping, Law and the Environment in the Twenty-First Century* (2013). He serves on the editorial boards of the *Yearbook of International Environmental Law*, the *Review of European, Comparative and International Environmental Law* and the *Journal of International Wildlife Law and Policy*. Dr Caddell regularly acts as a legal advisor to national governments, inter-governmental bodies and NGOs on environmental and marine issues and is an academic member of Francis Taylor Building, Inner Temple, the UK's foremost Planning and Environment Law set of barristers.

