

Sovereignty and challenges of the future ILBI:

# How to reconcile the individual interest of States at sea and the ‘common interest of mankind’ ?

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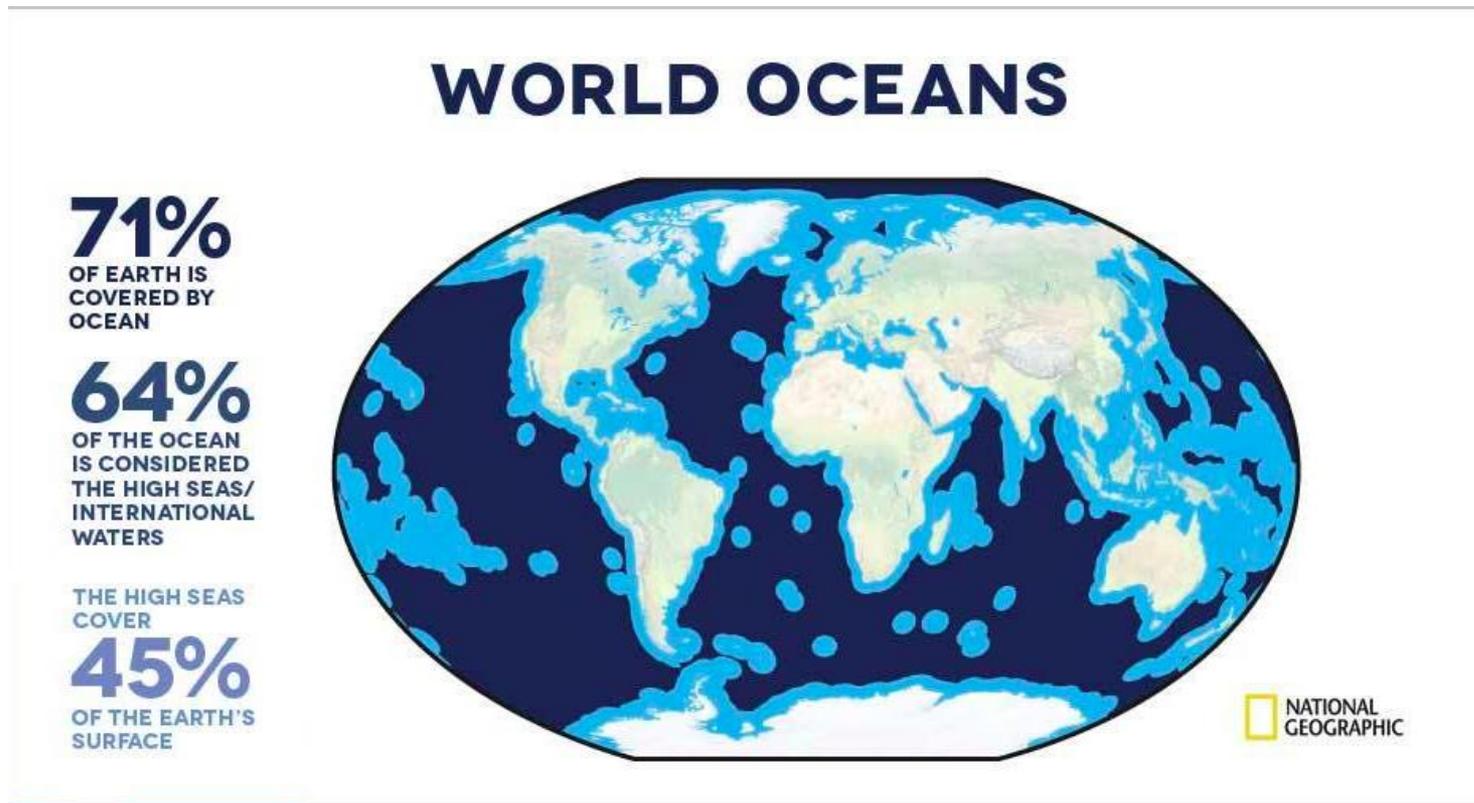
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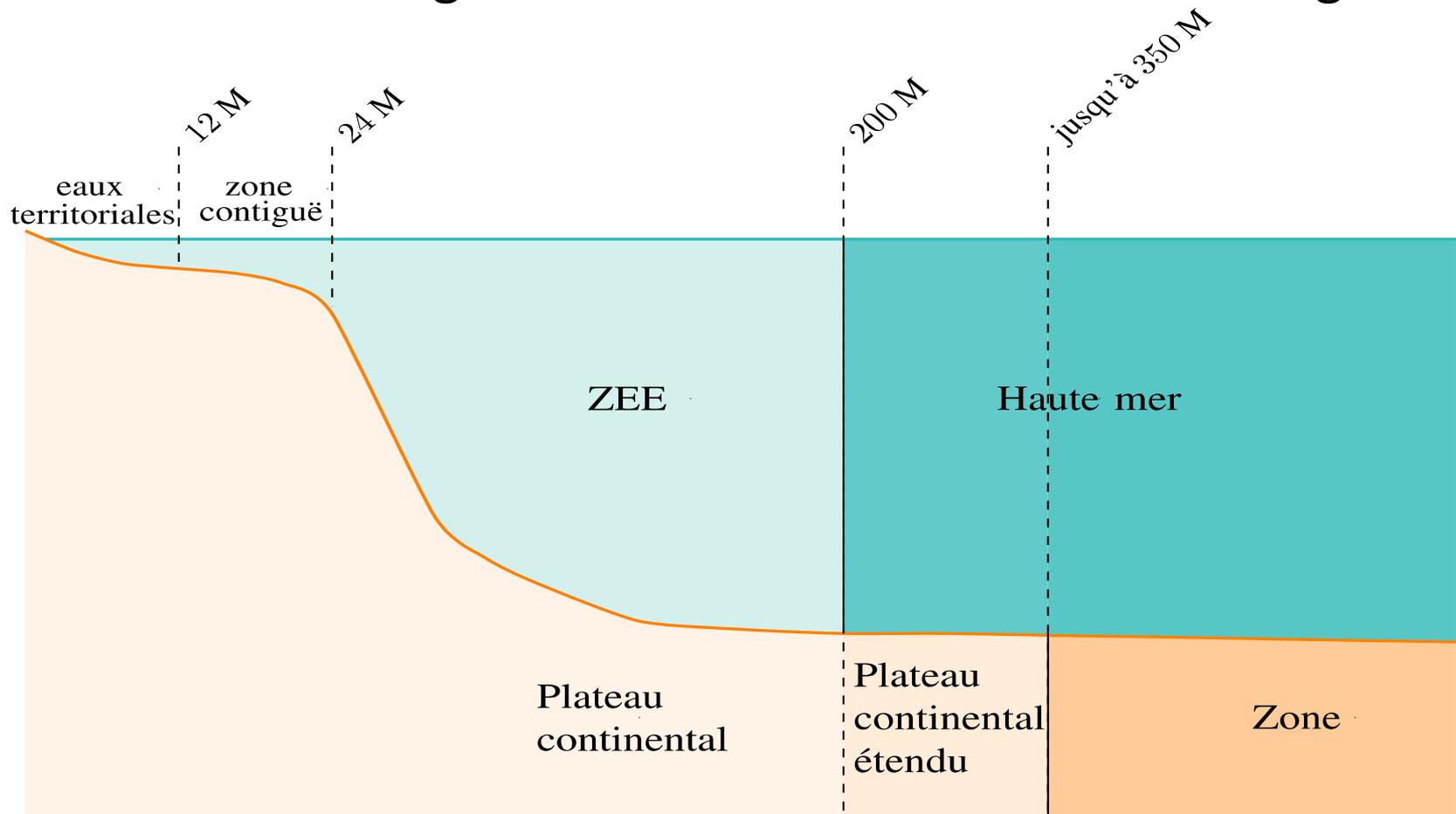
# Geographical scope of the future ILBI: ABNJ



- ABNJ = areas *beyond* the sovereignty of States
- ABNJ = the High seas (UNCLOS Art. 86) *and* the Area (UNCLOS Art. 1).

# Questioning the unity of areas beyond national jurisdiction (ABNJ): common and antagonist features

⇒ Common heritage of Mankind vs Freedom of the High seas.



## Common features of ABJN (the High seas and the Area)

1. Unconditional **need to cooperate** in regulating activities (ex. Article 197 UNCLOS).
2. Principle of **peaceful use** (Article 88 and 141 UNCLOS).
3. Principle of **non-appropriation or claiming of sovereignty** (Article 89 and 137(1) UNCLOS).
4. **Residual nature** of the two areas: final delimitation are not completed.

The dual and residual characters of ABNJ illustrate and exacerbate both:

- the **dependence of ABNJ to the creeping jurisdiction** and appetite of States for marine resources;
- the **confrontation more generally between individual and common interests at sea.**

⇒ **I. Sovereignty and ABNJ: How the confrontation between individual and collective interests manifests itself?**

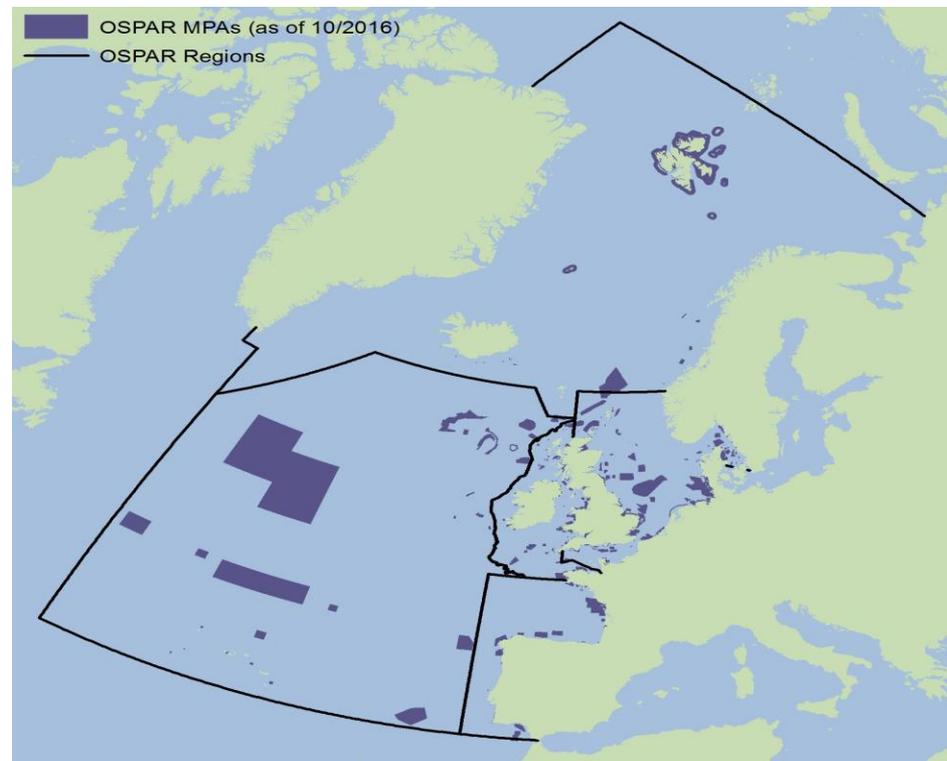
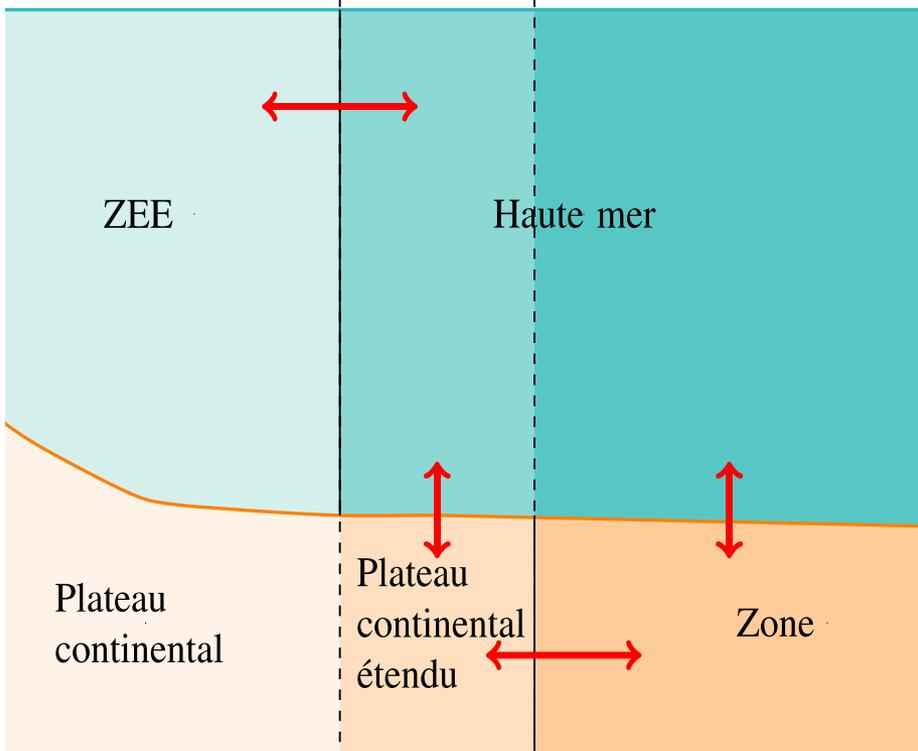
⇒ **II. What are the tools or options to reconcile these interests in the future agreement?**

# I. Manifestations of the confrontation between interests in ABNJ

## Individual interests in ABNJ

- MPAs above the extended continental shelf of **coastal States**: a “*principle of adjacency*” ?  
⇒ Example of OSPAR.

## Common interests in ABNJ



⇒ Difficulties in the North-East Atlantic (OSPAR) region: the **Rainbow (Portugal)** and the **Charlie Gibbs North (Iceland)** MPA cases.

*“Negotiations to designate the [Charlie Gibbs] MPA caused a **tension between those Contracting Parties whose sovereignty, hence access to resources, might be affected and those whose main concern is the common goal of creating a representative and ecologically coherent MPA network**” (D. Jonshon).*

# I. Manifestations of the confrontation between interests in ABNJ

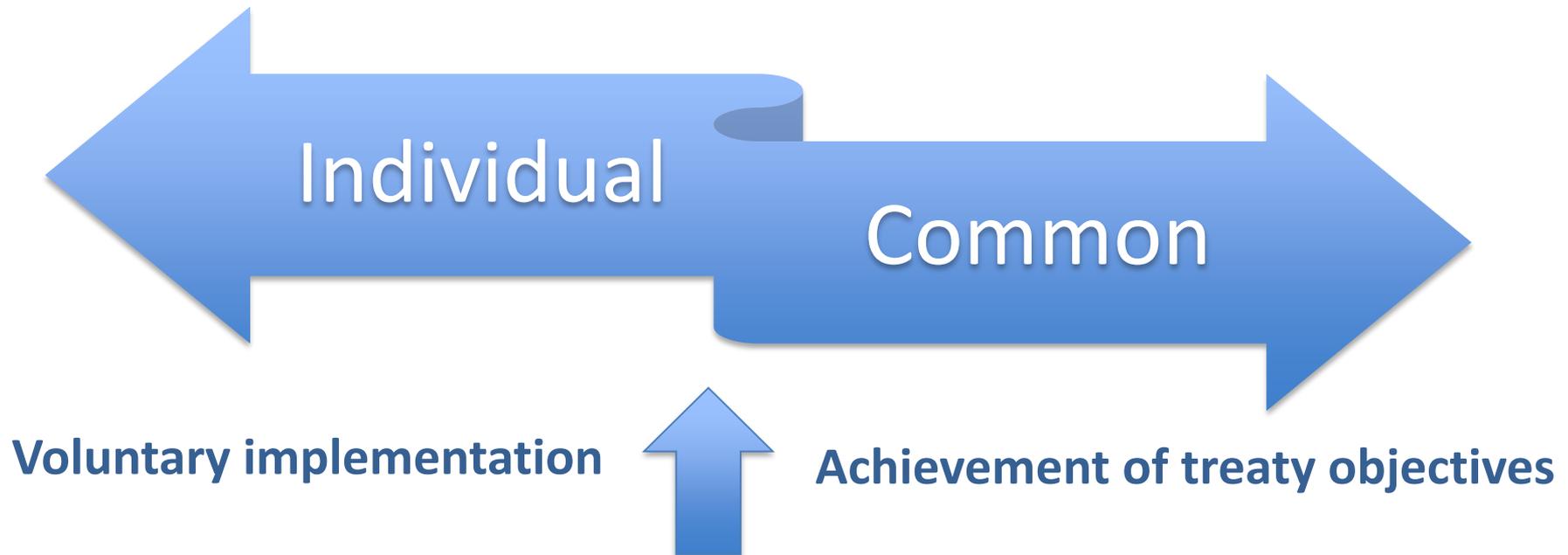
## Individual interests in ABNJ

- MPAs above the extended continental shelf of **coastal States**: a “*principle of adjacency*” ?  
⇒ Example of OSPAR.
- **Access of all States to resources of the ABNJ through the International Seabed Authority (ISA) and regional fisheries management organisations (RFMOs).**

## Common interests in ABNJ

- Rights of all States in the ABNJ (freedoms, access, etc.)
- Preamble of the Convention on Biological Diversity (CBD, 1992): **biodiversity conservation as the “*common concern of humankind*”.**
- ITLOS 2011 Advisory opinion: **conservation of marine environment in ABNJ as an *erga omnes* obligation.**

## II. Options and tools to reconcile interests in ABNJ



- **General principles:** reinforced obligation of cooperation, ecosystem approach (including climate), precautionary principle...
- **Institutional arrangement:** creation of a COP, Clearing-house mechanism, scientific committee.

- **Area-based management tools:** coordination, due regard, connectivity, global guidelines and mutual recognition.  
+ Reporting, monitoring and control of objectives.
- **MGR:** sharing of benefits, common pool of patents (ITPGRFA), notice-based access, publication / dissemination (Art 244).
- **EIA:** public participation, strategic and cumulative EIA, prevention of conflict of uses (MSP).
- **Outside the future ILBI,** options also exist to take the international community of States as a whole into account:  
⇒ example of the procedure in front of the CLCS.

## Conclusions and ways forward

- ⇒ Need to find the right balance between individual (mainly based on the LOS) and common interests (deriving mostly from environmental law), in light with the general objective of the treaty.
- ⇒ Need to take into account the duality and residual character of ABNJ and their inherent differences in the construction of a new regime.

**Thank you !**

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