



## Key Issues

# UNCLOS Implementing Agreement

In December 2017, the UN General Assembly agreed that a formal Diplomatic Conference should be held to adopt a new UNCLOS implementing agreement to permit regulation for the environmental protection of the High Seas. This work could potentially have implications for the future regulation of shipping. In liaison with IMO, ICS plans to be present throughout these negotiations which will commence in New York in September 2018.

The United Nations Convention on the Law of the Sea (UNCLOS) provides the fundamental legal framework for protecting the oceans, and under the authority of UNCLOS the shipping industry is comprehensively regulated by IMO. But the regulation of other ocean activities, especially on the High Seas, is not so well developed.

In 2016, the United Nations, in New York, started some high level preparatory negotiations on a new UNCLOS implementing agreement concerning conservation of Biodiversity in areas Beyond National Jurisdiction (BBNJ) – in other words the High Seas. While shipping is not the main focus of this UN initiative, which is primarily aimed at strengthening the regulation of deep sea fishing and new activities such as seabed mining, this work is likely to lead to the establishment of Marine Protected Areas on the High Seas.

In order to ensure that sectors such as fishing cannot argue for exclusion on the grounds that there are already other mechanisms in place to regulate them, it is proposed that the agreement should be as comprehensive as possible in scope. This means that it may also apply to shipping, even though there is currently no suggestion that shipping is insufficiently regulated by IMO.

Potentially therefore, there is a risk that this UN work could adversely impact on shipping, interfering with principles such as freedom of navigation, or otherwise cut across the work of IMO. It could also potentially upset the current balance that exists between the rights and obligations of flag states, coastal states and port states.

Alongside IMO, ICS has therefore attended three sessions of the UN Preparatory Committee that have already taken place in New York, also speaking at an IMO side event to help explain to the UN negotiators how shipping is comprehensively regulated. Most of the national UN negotiators are drawn from foreign affairs, environment and ocean ministries which are not necessarily closely engaged in the work of IMO. A similar event is being planned in New York for September 2018, in conjunction with the Norwegian Government.

The UN negotiations are still at an early stage and the issues are complex because, in addition to IMO, the ocean is already regulated by a large number of different UN and regional agencies. But for the moment it appears that most of the key governments are broadly aware of the importance of ensuring that any new measures that could affect shipping should not be taken forward without the full involvement of IMO. None of the key players seem to have serious concerns about shipping or question the ability of IMO to deal with MPAs should it be decided to apply them to shipping on the High Seas. But it will be important for the shipping industry to be vigilant.

It currently seems that there is little appetite among governments to establish a new UN agency to administer the new implementing agreement. However, it is possible that ocean issues – such as the designation of High Seas MPAs – could be determined by regular Conferences of Parties, administered by the UN Division of Ocean Affairs and Law of the Sea. It is hoped that the detail and appropriateness of any measures that might apply in such MPAs – for example special navigational measures to avoid harm to rare species of whales – would still be determined by the relevant specialist agency, in this case IMO. It is also hoped that such decisions would have to be based on proper scientific analysis, e.g. with input from bodies such as GESAMP (the Joint Group of Experts on the Scientific Aspects of Marine Environmental Protection).

