Australia's interaction with Asian countries in the negotiation for an international agreement for the marine biodiversity of areas beyond national jurisdiction

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Abstract

This article highlights Australia's interaction with Asian countries in the development of an international legal instrument on marine biodiversity in areas beyond national jurisdiction (ABNJ). An intergovernmental conference with four planned sessions is currently going on under the auspices of the United Nation's General Assembly (UNGA) for the adoption of a new legal instrument under the United Nations Convention on the Law of the Sea (UNCLOS). Although there is literature on how Australia and Asia have forged closer engagement on matters of trade, security and culture, literature is scarce on how and in what way they can engage in promoting the conservation of ABNJ. In terms of marine environmental discussion, Australia appears to date overall to have aligned itself closely to other western countries and some developed Asian countries. This article examines the potential scope for increased collaboration with Asia on reaching future legal agreement with respect to ABNJ.

Keywords Australia · Asia · Areas beyond national jurisdiction · Marine biodiversity · UNCLOS

Abbreviations

ABMT	Area-based management tool
ABNJ	Areas beyond national jurisdiction
ASEAN	Association of Southeast Asian Nations
ABS	Access and benefit-sharing
CBD	Convention on biological diversity
CPTPP	Comprehensive and progressive agreement for trans pacific partnership
EIA	Environmental impact assessment
EU	European Union
G77	Group of 77

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MGR	Marine genetic resources
MPA	Marine-protected area
RCEP	Regional comprehensive economic partnership
SEA	Strategic environmental assessment
TEIA	Transboundary environment impact assessment
UN	United Nations
UNGA	United Nations General Assembly
UNCLOS	United Nations Convention on the Law of the Sea
US	United States

1 Introduction

This article explores how Australia currently interacts with various Asian countries in the development of an international legal instrument for marine biodiversity in areas beyond national jurisdiction (ABNJ).¹ This is situated in the context of international environmental negotiations on marine biodiversity of ABNJ (Freestone, 2012; Hodgson et al., 2014) and regarding the importance of Australia's cooperation with Asian countries, considering both current geopolitical realities and Australia's geographical proximity to Asia. Australia's foreign policy gradually shifted from closer alignment with Western countries (Mascitelli & O'Mahony, 2014) to a greater interdependence on Asia which has gathered momentum in recent discussions on mutual security matters, alongside the development of economic and political cooperation (Laureson & Zhou, 2019). This created opportunities for a closer interaction between Australia and Asian countries.

Over the last decade, the significance of the conservation of ABNJ has received increased attention (Ardrin et al. 2014). This article examines Australia's engagement with the countries in the Asian region for the adoption of a new agreement under the 1982 United Nations Convention on the Law of the Sea (UNCLOS). The increasing acknowledgment of the need for an agreement under UNCLOS for ABNJ prompted the commencement of negotiations in 2015 through the United Nations General Assembly (UNGA) and the formation of a preparatory committee (hereafter referred to as PrepCom) to develop appropriate consideration on four specific elements of the proposed agreement. The PrepCom concluded its work with some recommendations for the proposed agreement. Currently, an intergovernmental conference with four planned sessions is occurring, which planned to complete its last session in the first half of 2020 and adopt a new legal instrument. However, the fourth session was postponed due to COVID19 until a new date to be decided by the UNGA.

Australia–Asia collective efforts can be assessed by referring to how they articulated expectations for developing a legal instrument for the ABNJ at negotiations in the UNGA. In particular, examining evidence of Australia and Asia's position on four thematic areas of the proposed international legal instrument: 'marine genetic resources' (MGR) and

¹ ABNJ consists of 'the high seas and the Area' (UNGA 2019). According to UNCLOS, the 'Area' means the 'seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction' and the 'high seas' is defined 'as all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State'. United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3 (UNCLOS), arts 1(1), 86 [hereinafter UNCLOS].

'sharing of benefits', 'area-based management tools' (ABMTs) including 'marine-protected areas' (MPAs), 'environmental impact assessments' (EIA) and 'capacity-building and transfer of marine technology' (UNGA, 2019, p. 1), aids in assessing the level of relevant articulated expectation, divergence and convergence. Significantly, proposals that Australia and Asian countries made at PrepCom sessions and intergovernmental conference sessions were used to analyse Australia and Asia's stand on the future legal instrument.

This article, therefore, aims to examine how Australia can strengthen and facilitate current expectations of good order at ABNJ through its ongoing interactions with Asian countries at the ABNJ negotiations. Therefore, understanding the nature of the discussion Australia had with Asian countries in regulating the ABNJ is the main focus of this article. Accordingly, this article proceeds in three main sections. First, it examines political, cultural and economic interconnections that Australia has with its neighbouring Asian countries. Second, it makes an inquiry into Australia's interest in the establishment of international regimes for ABNJ biodiversity. Third, it evaluates Australia's convergence with Asian countries to develop the proposed legal instrument at the UN negotiations.

2 Australia's approach to engagement with Asian countries

The following section briefly explores how Australia's current relevant policies towards Asia constitute a deeper level of interaction with Asian countries than at any earlier point in time. The exploration focuses on three areas of engagement with Asia—trade activities and investment prospects, relations through regional institutional framework, and political relations (Capling, 2008; East Asian Bureau of Economic Research, & China Center for International Economic Exchanges, 2016). Such exploration assists additionally in coming to a better understanding of Australia and Asia's cooperation on bilateral and multilateral matters (Zhu et al., 2010).

The importance of improving relations with Asia is reflected in the increased recognition of Australia's regional neighbours as both trade and investment partners. Importantly, four out of Australia's top five two-ways trading partners are from Asia, including emerging developing country superpowers such as China and India. This has prompted Australia's initiation of a number of trade-related regional initiatives, including the Regional Comprehensive Economic Partnership and Tarns Pacific Partnership (Department of Industry and Science, 2015). Australia's relations with China, however, have deteriorated since April 2020, after Australia demanded an independent inquiry into the origin of the COVID 19 outbreak (Kassam, 2020; Liu, 2021). This deterioration has also caused decline of exports of goods from Australia to China (Australian Bureau of Statistics, 2020). China's rise as an influential economic partner with Australia and its move in the direction of being the most powerful nation in the world has caused shifts in Australia's policy towards China, in particular a policy shift leading to China becoming Australia's largest trading partner (Australian Government, 2019).

In recent years, Australia as noted has become increasingly engaged with Asia through regional-level multilateral institutional frameworks (Ivanov, 2017). Seminal in the incremental development of Asian–Australian relations has been the relaxation of the latter's policies towards Asia in the late 1960s, followed by growing stability in South-East Asia (Capling, 2008; Griffith Asia Institute, 2012). By pursuing alignment portfolios in various policy matters and regional forums, it can be suggested that Australia's recent connection with Asia is a reflection and an amalgam of a persistent desire to bring distinct,

region-oriented relations by attuning itself to the importance of maintaining consistency in local trust-building efforts. Australia witnessed emerging regional architectures in East Asia and considered the Association of Southeast Asian Nations (ASEAN) and ASEAN+3 as possible platforms for its partnership with the south-east Asian subregion (Cook, 2018; Milner et al., 2012). One of the most important initiatives for deepening relationship between Australia and the ASEAN included the initiation of dialogue partnership by Australia with ASEAN by becoming one of ASEAN's first ten dialogue partners in 1974 (Australian Government, 2020).

It is fundamental to Australia's relations with Asia that Australia has the ability to capitalise on political benefits from such relations. Australia publicly supported India and Japan in their bids to get a permanent seat in the UN security council in 2008 (The Economic Times, 2008). Relations with Japan were also strengthen through Trilateral Security Dialogue² (Rai, 2018). Member countries of the Dialogue put confidence on each other to establish stable security in the Asia-Pacific region (US Department of State, 2009). The trust Australia placed in Japan provides an important basis for the two countries to deepen their long-standing political relationship. Australia, by ascribing importance to the informal sharing of information and close coordination among non-EU developed countries, being Japan and three western allies: the USA, New Zealand and Canada, enabled creation of the JUSCANZ Group (Klaus and Singer, 2018). The JUSCANZ Group of like-minded countries in this respect reflects a joint perceived imperative of counterbalancing EU opinions on matters that have direct relevance to its members (The Free Library, 2014).

For all the ongoing cooperative efforts, it does not say that Australia's policy setting has remained all time stable and amicable with Asia. Throughout Australia's recent life span (Baogang, 2017), relations with some countries in Asia were strained over several issues. For example, relationship with Indonesia got fractious when the Australian government banned live cattle exports to Indonesia in 2011 (Trewin, 2014) and when two Australian men were executed over drug smuggling (Lynch 2008). These challenges were paralleled by ones towards the imposition of normative and legal consensus in times of discord with its neighbours (e.g. see Australia's case against Japanese whaling activities) (Jordan, 2012; Klein et al., 2008). Also, Australia seriously lacks political alignment in global forums and usually sits in a different camps from its Asian neighbours.

Current discourse, laid out most systematically recently, is that Australia and Asia are still in the process of building confidence at a regional level and that continuous multilateral negotiations among regional members are progressing, despite some difficulty. Most of these partners are affluent Asia countries with whom Australia has more tighter economic relations. Australia also edged into the cultural diversities of Asia and is unequivocal about being closely involved in Asian values. Nonetheless, it is difficult to envision a collective mindset, bar a few regional initiatives (Djalal, 2012). In this sense, it is clear that the Asia-Australia relationship follows the same path. For example, Australia considers that the 'Asian century is an Australian opportunity' (Australian Government, 2012, p. 1); however, most recent government attention is mainly devoted to cooperation in the Indo-Pacific region rather than to the concept of an 'Asian century' (Australian Government, 2017b). This does not shift the focus from Asia in a real sense, but, as observed in 2017, 'the Indo-Pacific democracies of Japan, Indonesia, India and the Republic of Korea are of first-order importance to Australia, both as major bilateral partners in their own right and

² The other member is USA.

as countries that will influence the shape of the regional order' (Australian Government, 2017b, p. 40). Evidently, all four countries are Asian.

It is also observed that, although equally important are the regional-level partnerships among Asian nations themselves, which are improving amid cultural, political and economic disparity (Karim, 2008), Australia has often been positioning its interests relative to Western values and more often supports the Western initiatives (Tow & Albinski, 2002). Due to this close relationship, Australia collectively and more often acts with the West in matters related to defence, security, trade and the environment (Abbott & Hosuk, 2017; Commonwealth Department of Defence, 2002). In the UN Regional Groups of Member States, Australia is included in the Western European and Others Group, despite its geographical location in the Asia Pacific (Luif, 2003).

Initiatives for regional cooperation regarding various interests and differences with Asian countries (within the context of conserving marine biological diversity in ABNJ) have rarely been a focus of major attention and the following section will identify knowledge about Australia's interest in the regulation of ABNJ and discuss Australian and Asian countries collaboration in terms of ABNJ negotiations.

3 Australia's interest in regulating ABNJ

Characterised as a middle-ranking power and a constructive contributor on a number of global issues, Australia responded to recent calls for conservation of ABNJ actively and positively (Zischka et al., 2017). Australia's successful interaction for conserving marine biodiversity in ABNJ is partly dependent on the sector's recognition of Australia as a committed middle power that promises to promote global norms of responsible protection and use of ABNJ resources. One of the key potentials in being a middle power norm promoter of sustainable governance is that unlike great powers, such role can translate influence at a regional level (Wight et al., 1979; Wood, 1988), thus enabling a nation to provide 'leadership as morally cosmopolitan norm entrepreneurs' (Acharya, 2010, p. 159). Australia's participatory approach in conserving ABNJ biodiversity rests on the belief that shared responsibilities are crucial in building stronger cooperation among countries with distinct priorities in their own national interests. Consequently, it has been engaging in discussions with regional and international bodies and nations to promote common and shared responsibilities associated with the sustainable use of marine resources in ABNJ (National Biodiversity Strategy Review Task Group, 2009; Permanent Mission of Australia to the United Nations, 2016).

Being one of the pioneers in oceans policy (Michaelis, 1998), Australia asserts the need for global cooperation in the conservation of marine biodiversity of ABNJ (Goodman & Matley, 2018). It recognises the growing importance of protecting biodiversity in ABNJ, as it plays a role in mainstreaming such defence measures and acknowledges complexities related to lacking participation (Australian Government 2017a). Notwithstanding the lack of cooperation, the nation does facilitate shifts in existing normative, legal and institutional frameworks towards building a better system of marine biodiversity conservation in ABNJ (Zischka et al., 2017). By virtue of the belief, it is committed to international and regional initiatives (Vince & Nurse-Bray, 2013) and holds extensive maritime responsibilities, indicating a positive standpoint in favour of preservation, sustainable use in and exploitation of such jurisdictions (Forbes 2008). It is active in combating cross-border threats to conserve maritime biodiversity and fisheries, including overfishing, destructive

fishing practices and pollution (Australian Marine Conservation Society, 2019; Warner et al., 2014). Importantly, Australia's issuing of the Oceans Policy in 1998 since defined a need to control and protect its national interests both in areas within Australian maritime jurisdiction and ABNJ (Warner, 2012). Indeed, Australia is a regular participant under the auspices of various global organisations in negotiations for the adoption of legal instruments to protect the environment and biodiversity.

Australia has been engaging in discussions with regional and international bodies and nations to promote common and shared responsibilities regarding marine biodiversity (National Biodiversity Strategy Review Task Group, 2009). Regarding such issues of ABNJ, Australia is working in close collaboration with the UN and other international organisations to promote sustainable ocean governance. It supports the creation of legal obligations to sustainably conserve and use marine biodiversity in ABNJ (Department of the Environment and Energy 2016) and shows some concerns in relation to the development of future agreements for ABNJ (Zischka et al., 2017). Moreover, Australia urges fellow parties to 'further explore the specific mechanisms for achieving effective, [and] efficient implementation at the regional level' (Permanent Mission of Australia to the United Nations, 2016, p. 6).

Various recommendations and initiatives proposed by Australia on the protection and sustainable use of ABNJ serve as a reflection of collective actions from countries that have interrelated and mutually reinforcing responsibilities over common biodiversity preservation and use (Long & Chaves, 2015). For example, Zischka and colleagues suggest that Australia should 'continue to champion the shared global responsibility to protect [biodiversity beyond national jurisdiction] and work in international collaboration with other nations to achieve and implement a legally binding ocean governance framework under UNCLOS' (Zischka et al., 2017, p. 3). Such submissions were made based on the knowledge that no country owns the maritime space beyond their national jurisdiction, which concerns such areas outside the sovereignty of individual states (Freestone, 2012). Australia is more inclined to utilise international legal instruments (e.g. Convention of Biological Diversity (CBD), UN Fish Stocks Agreement (UNFSA), and United Nations Framework Convention on Climate Change (UNFCCC)) and its participation in international and regional level organisations to deal with the environmental and biodiversity conservation and sustainable use of ABNJ.

One of the key challenges Australia is now facing in terms of promoting such norms regards the distinct expectations and interests of Asian countries. In addition, the country must also confront a number of substantial challenges emanating from different cultural and political characteristics from certain Asian regions. A critical example regards Australia's action against commercial whale hunting in the guise of 'scientific research'. Australia rigorously discussed the need to protect whales, dolphins and porpoises, as well as southern bluefin tuna since the late 1980s (Michaelis, 1998). The two distinct approaches to whaling—that is, 'the long-running contest between whaling states and anti-whaling states over limited whaling versus no whaling' (Anton, 2010, para. 1)—have been a principal focus of the International Whaling Commission. As a supporter of anti-whaling, Australia naturally seeks further integration internationally to deal with Japan's maritime activities (O'Connor, 2016). This is also followed by Australia's apparently successful case at the International Court of Justice (International Court of Justice, 2014) against Japanese whaling in the Antarctic. Despite these efforts, Japan recently withdrew from the International Convention for the Regulation of Whaling 1946 and has since resumed commercial whaling (McCurry, 2019). This presents yet

another challenge to Australia in its bid to interact with Asia for the conservation of ABNJ biodiversity.

4 Australia and Asian countries in ABNJ negotiations

The current legal framework for marine biological diversity in ABNJ is based on the principles outlined by the UNCLOS and other international legal and policy instruments (Freestone, 2012; Hodgson et al., 2014; Rochette et al., 2015). Given the importance of the governance of high seas and deep seabed, to which no state can claim sovereignty and which are least protected, after many years of discussion in the UN, an intergovernmental conference with four planned sessions is currently underway regarding the adoption of a new legal instrument under UNCLOS (Blasiak et al., 2016; Prip, 2016; UNGA, 2019; Wright et al., 2016; Zischka et al., 2017). Discussions for which global rules are mostly needed; namely, MGRs including concerns about benefit-sharing, EIAs, ABMTs and capacity building and technology transfer were carried out. This article used these discussions as a possible platform of interactions between countries. Various opinions expressed by Australia and Asian countries are explored in the following sections, with emphasis on the four main elements for negotiation. A closer examination of them can reveal both ambivalences and commonalities in the attitudes hold by Australia and Asia on the sustainable use of ABNJ in general and four key elements in particular.

Recent ABNJ negotiations led Australia to better focus on devising necessary strategies for engagement with its neighbouring Asian counties (UNEP-WCMC 2017). In some occasions, Australia backed recommendations made by Asia amid negotiations, exclusive of a coordinated strategy to do so. Notably, Japan recommended that other relevant bodies should be recognised by the proposed legal instrument. At the same time, Japan, with the support of Australia, advocated for greater acknowledgement of 'the critical role' the existing legal instruments currently play (Morgera et al., 2017b, p. 5). Among these instruments, UNCLOS continues to be important in matters in ABNJ, whereas it was proposed to acknowledge conventions such as the CBD, UNFSA and UNFCCC. For example, the UNFSA facilitates management of fish stocks (both straddling and highly migratory) on the high-seas areas in ABNJ (UNFSA, 1995). Both Australia and Japan did acknowledge the need of close cooperation with existing bodies in the ABNJ governance (Morgera et al., 2017b). Rather than balancing both factors, Australia and Japan together proposed that both conservation and sustainability are promoted. Australia further supported the Group of 77 (G77) and China's proposal to strengthen North–South and South–South relations, along with triangular cooperation and collaboration with regional, subregional and sectoral bodies (UN DOALOS, 2016). Most of the Asian developing countries are member of the G77, and in many occasions they expressed their opinion via G77 not individually. Nonetheless, debates persisted between Australia and some of its Asian counterparts (in particular, Pakistan) over the country's proposal for coastal states rights within 200 nautical miles (Morgera et al., 2017b, p.6), and for taking away preferential treatment imposed on developing countries (supported by Canada, the European Union, Japan, the USA, and Switzerland) (Morgera et al., 2017b, p.9).

4.1 MGRs and benefits sharing

The proposed legal instrument may provide a mechanism through which to manage in situ access to genetic resources in ABNJ, enabling equitable conditions for subsequent contact with and use of MGR (Correa, 2017). Given the difficulty for developing countries to exploit these resources, a demand was made that all states must be benefited from economic returns, including the sharing of benefits (UN DOALOS, 2016). In the second Prep-Com discussions, Bangladesh, speaking on behalf of developing nations, stated that MGRs do not respect jurisdictional boundaries, and the proposed legal instrument should encourage pragmatic approach for benefit-sharing throughout the chain of discovery and research and development, with additional benefit-sharing from commercialisation (Morgera et al., 2016a, p.7). However, MGR-related access and benefit-sharing (ABS) requires many complex legal issues be negotiated (Leary, 2019). Australia, China and the G77 called for a definition of MGR and in doing so created an opening for other countries to give careful attention to definitional clarity in this regard (Morgera et al., 2016a, p. 7).

Australia's stance on sharing benefits in ABNJ overlapped with many of its Asian neighbours' views, easing the potential for both prospective and flexible future relationships. Australia supported a functional, cost-effective benefit-sharing regime, emphasised non-monetary benefits and encouraged research that needs for MGRs (Morgera et al., 2017a, p. 4). China also preferred non-financial benefits over monetary benefits and, with the G77, proposed a non-exhaustive list of them (Morgera et al., 2018, p. 5).

Australia had adopted a modest regional initiative in 1996 with South-East Asian partners including Indonesia, Malaysia, the Philippines and Thailand, which facilitated the development of joint guidelines that enable access to 'biological resources' and share benefits equitably throughout the region (McLaughlin, 2003 p. 346). Perhaps most important in this partnership was the requirement that necessitated countries to hold fast to five themes: legislation, administration, licensing, implementation and communications (Heafey, 2014; McLaughlin, 2003, p. 346). The Australian Government's emphasis on the way genetic resources were to be exploited provides a broad understanding of the nation's stance on the regulation of MGR, including issues of access and benefit-sharing (UNGA, 2017). In 2011, Australia recommended adopting a middle ground, 'combining benefit-sharing from MGRs with incentives for exploration, development and technology diffusion' (Miller, Morgera, and Nyingi, 2011, p. 7). Also, when such benefits are shared, Australia prioritise scientific cooperation and sharing of scientific information (Miller, Morgera and Nyingi 2011, p. 7). These submissions were made in response to various calls made by the G77 and China (UNGA, 2017). Also, Australia with Canada, EU, Japan, New Zealand, Norway, Russia, South Korea, Switzerland and the USA acknowledged that issues on intellectual property rights lied outside the purview of the ABNJ discussion (Kantai et al., 2019a, p. 4). Hence, the importance of maintaining cooperation with Australia's regional neighbours for management of shared resources has been recognised.

4.2 ABMT and MPA

ABMTs, defined 'as regulations of human activity in a specified area to achieve conservation or sustainable resource management objectives' (IUCN, 2016, p. 13), address the 'ecological, biological, cultural, economic and social values of a particular area and ecosystem' (PSID Submission, 2016). At their core, ABMTs are conceptualised as tools

that identify the problems that jeopardise ecosystem integrity. This 'can have a wide variety of management objectives, including the preservation of important ecological or geomorphologic processes, the conservation and management of species, the protection of beautiful seascapes, cultural, archaeological or historic sites, recreation and public enjoyment, environmental monitoring and assessment, and scientific research' (UNGA, 2007, p. 33).

Both Asian countries and Australia have adopted ABMTs, including MPAs, as a positive response to the management of ABNJ; in turn, more regional responsibilities have been subsequently recommended and proposed (Warner, 2017; De Lucia 2019). Japan proposed 'climate change as a consideration for designating ABMTs, rather than an objective' for designating ABMTs (Morgera et al., 2017b, p. 11). Australia, pointing to the strategic environmental assessments (SEA) of cumulative effects, suggested that it will be much more efficient to consider 'a broader range of ABMTs in a cohesive, comprehensive and coordinated way' (Morgera et al., 2017b, p. 11) and further recommended that long-term conservation methods in such tools should be collectively encouraged (Permanent Mission of Australia to the United Nations, 2016). It was Australia's view that SEAs are more efficient than EIAs (Morgera et al., 2016a, p. 12) and Australia gave recognition to the significance of SEAs as a method that identifies conditions for applying ABMTs (Morgera et al., 2016b, p. 6). India demanded a focus on the different traits of each ocean as being central to the conducting of SEAs (Morgera et al., 2016a, 2016b, p. 12). Different to the consensus-based decision-making proposed by G77 and China, Australia supported Singapore for a more transparent decision-making in the form of potential global-regional-hybrid decision-making models (Morgera et al., 2017b, p. 12), likewise encouraging more responsibilities to regional and subregional bodies rather than implementing duties by state (Morgera et al., 2018, p. 6). With the support of Japan and Australia, Singapore proposed that a non-prescriptive language on such models during the fourth PrepCom session (Morgera et al., 2017b, p. 12). Based on Australia's recognition that such a model can be additionally strengthened by the scientific knowledge of regional organisations (Morgera et al., 2016a), Japan recommended science based criteria and a contact person for consultation be introduced (Morgera et al., 2017b, p. 12). Thus, while Australia wished to promote ABMTs by regional institutions, as well as more coordinated and coherent approaches through global standards and principles, China instead favoured a balance between conservation and sustainable use (Morgera et al., 2018, p. 6).

Among Australia's initiatives, it has recognised regional level cooperation and coordination based on global principles and best-practice standards as necessary conditions for the effective implementation of MPAs (Morgera et al., 2016b, p.7). In fact, Australia proposed that ABMTs established by regional bodies can operate under global standards and principles (Morgera et al., 2016a, p. 6). Both Australia and Singapore mutually cautioned against the USA's proposal that regional and sectoral bodies should be prioritised over establishing management measures (Morgera et al., 2016a, p. 13), whereas India proposed to cooperate with regional bodies (Kantai et al., 2019b, p.9). Remain engaged with regional and subregional level countries and other organisations in the decision-making and promoting global standards on ABNJ have been embraced by Australia during PrepCom sessions (Morgera et al., 2016b, 2017a, 2017b).

Australia, in association with Asian coastal countries, proposed inclusive ABMTs for ABNJ and ensure rights for coastal states. During the first intergovernmental session and drawing on a combination of threats, coastal states may face due to the activities that occur in ABNJ, Indonesia developed a proposal that the new legal instrument can offer protection to such states from adverse effects of practices in the ABNJ (Morgera et al., 2018, p. 8).

Respecting Indonesia's proposal, Australia, with the EU, agreed to consult with the coastal states' (Morgera et al., 2016b, 2018, p. 8) and respect their rights over their continental shelves (Morgera et al., 2018, p. 8). For example, Australia supported Norway's proposal to recognise 'coastal states over their continental shelf' in designating and designing ABMTs (Morgera et al., 2016b, p.7). One important remark Sri Lanka made was to pay attention to linkages between EIAs and MPAs by recognising coastal states rights and continental shelf claims equally (Morgera et al., 2018, p.9).

Australia, supported by Japan and South Korea, drew attention to the importance of 'representative network of MPAs' that value existing legal instruments (Kantai et al., 2019a, p. 5). Australia, with Japan, supported sustainable and long-term conservation through ABMT during fourth PrepCom session (Morgera et al., 2017b, p.11) and also with Japan, Singapore and two western countries (the USA and Canada) regarded the precautionary approach as a key principal in the designation process of ABMTs (Kantai et al., 2019a, p. 6). Australia, with Japan, Russia and Singapore, disagreed with some criteria developed under the legal instrument for ABNJ, for example, criteria on the negative effects 'of climate change and ocean acidification' (Kantai et al., 2019a, p. 6) and opposed the inclusion of 'economic and social factors' as had been suggested by some other members including an Asian country, Bangladesh (Kantai et al., 2019a, p. 6).

4.3 EIA

EIA typically require a detailed analysis of the environmental effect that a proposed action imposes, careful consideration of alternatives to said action, and discussions on measures that could mitigate potential environmental harm (Morgan, 2012). Naturally, EIA for high-seas activities should be compatible with existing 'internationally accepted standards, processes and protocols' (PSIDS, 2016, p.10), with Australia being no exception in committing to responsible evaluation practices (Permanent Mission of Australia to the United Nations, 2016). Australia, Japan, and Korea along with some non-Asian developed countries suggested that any EIA activity conducted in ABNJ should be decided and authorised by the parties (Morgera et al, 2017b, p. 13). In contrast, the G77/China proposed for an international decision-making structure (Morgera et al., 2017b, p. 13). Australia, with New Zealand, was in favour of the EIA process valuing existing legal instruments (Kantai et al., 2019a, p.8).

During the third PrepCom meeting, submission was made by Australia recommending for 'binding minimum standards for conducting EIAs, with decision-making and financing resting with the flag or sponsor state' (Morgera et al., 2017a, p. 8). Australia along with Indonesia supported the FSM proposal for providing notification to 'adjacent coastal states on potential impacts arising from activities in ABNJ, allowing input and comments during the EIA process' (Morgera et al., 2017a, p. 8). During the same session, the inclusion of a separate procedure for Transboundary Environment Impact Assessments (TEIA) under proposed legal instrument had been the subject of attention by: Australia, New Zealand and Indonesia, who believed TEIA had already been addressed through domestic processes (Morgera et al., 2017a, p. 8). Australia also backed SEAs in the proposed legal instrument for ABNJ despite China's reiteration that evaluation does not fall under the scope of UNCLOS. In some occasions, Australia's view did conflict with broader Asian and western sentiments. For example, China and the Philippines, along with other countries, supported the inclusion of socio-economic and cultural effects, whereas Australia, with the USA and Israel, stood opposed (Kantai et al., 2019b, p. 14). During the second intergovernmental

session also, aligning with the USA, Australia opposed the proposal of measuring effects in terms of social and economic (Kantai et al. 2019a, p. 10). Also, when conducting EIAs, Australia was reluctant to support the EU proposal of consulting 'relevant states' instead of 'adjacent coastal states' when conducting EIAs (Morgera et al., 2016b, p. 11). Attention was drawn to consult the potentially affected coastal states as an obligation in the event of potential transboundary harm (Morgera et al., 2016b, p. 9).

Although regional initiatives are encouraged, no legally binding arrangements have been developed in most Asian subregions (Warner, 2014). However, the discourse on regional EIA efforts provided a key consideration during the third PrepCom meeting, further encouraging Australia to claim its willingness to 'work collectively to establish best practice international standards and principles which support and catalyse effective action and that respect, and do not undermine or duplicate, regional and sectoral management' (Bliss, 2016, p. 2). Australia and Japan supported USA's proposal of using 'CBD Article 14 (impact assessment) and Principle 17 of the Rio Declaration on Environment and Development (EIA)' to determine the activities in ABNJ (Morgera et al., 2016b, p. 10). These conversations supported by Australia and India and several other countries also shed light on states' responsibilities in determining if any of their activities had led to harmful effects on the marine environment (Kantai et al., 2019a, p. 8). Australia, together with New Zealand, Argentina and Norway, also suggested reliance on Article 206 of the UNCLOS as a guideline only, as they were cautious about its operationalisation (Morgera et al., 2017b, p. 13).

4.4 Capacity-building and technology transfer

Building capacities and transfer of marine technology are two key aspects in the proposed legal instrument. Capacities include 'technology development, networks of marine science and technology centres, open data, sample sharing, training, mentoring and skill development'—each of which are compatible with Part XIV of UNCLOS (Intergovernmental Oceanographic Commission, 2016). There were strong recommendations by Japan and the EU that states (and particularly developing nations) should be assisted in fulfilling legal obligations of capacity building and marine technology transfer (Morgera et al., 2016a, p. 14). Although Australia supported this recommendation, it acknowledged that the benefit-sharing mechanism must be designed in such a way that further applies in capacity building (Bliss, 2016). Capacity building needs and resource mobilisation through training programmes and workshops related to small developing islands and developing countries were focused on by Australia (Morgera et al., 2016a, p. 15). In terms of capacity development in the global South through adequate funding, Sri Lanka and Nepal, with the Greenpeace organisation, were particularly in favour of initiating a fund (Morgera et al., 2016b, p. 15).

That said, Australia has disagreed with some Asian countries regarding funding. The G77 and China, along with other developed and developing countries, stated that financial aid should be both voluntary and mandatory (Kantai et al., 2019a, p. 12). Previously also, Australia joined with the USA and Japan in opposing the China and G77's proposal for accessible, predictable and sustainable funding (Morgera et al., 2017b, p. 15). Australia also stated 'that it is not practical to frame accessible and predictable funding as an absolute obligation, with Canada stating that this implies mandatory, assessed contributions' (Kantai et al., 2019a, p. 12). However, Australia, together with Japan, proposed that consideration be given to financial benefits accrued from MGR being used for capacity development and technology transfer (Morgera et al., 2017b, p. 15).

Such discord regarding this element may be a crucial issue for many developing Asian countries.

Collaboration will be key in promoting wider advantages at regional levels. Hence, Australia, having greater research capacity, could facilitate scientific knowledge in ABNJ by developing equal research power and transfer technology for its regional Asian partners (Harden-Davies, 2017). Consistent with Australia's ability to facilitate capacity building and technology transfer, Australia, together with Japan and Canada, supported the US proposal for voluntary technology transfer methods being based on mutually agreed terms, during the fourth PrepCom session (Kantai et al., 2019a, p. 14). Given the importance of these aspects to developing countries, Bangladesh sought to clarify data and technology sharing methods and confirm under what conditions technology transfer might occur and decisions might be made about whether the nature of technology transfer should be voluntary-based, whereas India and Singapore proposed what they considered to be viable operationalisation options in terms of UNCLOS technology transfer responsibilities (Morgera et al., 2016a, p. 14).

Australia along with the USA, the EU, Japan, Canada and Switzerland wished to remove the preferential treatment for developing countries (Morgera et al., 2017b, p.9). Australia also sided with China on matters related to respecting intellectual property rights based on mutually agreed terms (Morgera et al., 2018, p. 12). Some Asian nations such as Bangladesh remained doubtful in terms of voluntary provisions with respect to technology transfer (Kantai et al., 2019b, p.15). In capacity building and technology transfer negotiations, Australia aligned more with Canada in its negotiations, whereas Japan and Norway became key allies of Australia's proposal (Morgera et al., 2017b).

5 Concluding remarks

Because the literature has been largely silent on the topic of how Australia cooperate with Asia in ocean spaces beyond national jurisdiction, this article examined potentials of Australia and Asia in pursuing a partnership to develop an international legal instrument geared towards conservation of marine biodiversity of ABNJ. During recent decades, Australia moved closer to Asia, whose geographical proximity and location transpires within the same oceanic region. Lack of evidence prevails on how and why they establish or failed to establish a collaborative position amid UN negotiations on forthcoming jurisdictional agreements on ABNJ. This article identifies there is scope for interaction and collaboration with Asian countries for the adoption and implementation of a future legal instrument aimed at protecting ABNJ. In all, this article shows that the positions of Australia and Asia over four elements of the proposed legal instrument for ABNJ in a sense not fundamentally different to each other and that often Australia sided with Asia on matters such as north-south and south-south cooperation, ensuring coastal states' rights and strengthening of regional level management regimes. However, Australia's overall alignment with the western and other developed countries was not significantly changed in this negotiation.

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