

Regional Ocean Governance in the Southeast Atlantic Sub-region and the Creation of Transboundary Marine Protected Areas

(Overcoming Self-interests and Apprehensions for the Benefits of fighting together against Common Challenges)

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ABSTRACT

Our ocean, our common resource, is in danger, and can no longer contain the pressures that it receives from the effects of human related activities such as marine and land-based pollution, IUU Fishing and the accelerating effects of climate change. In the face of the degradation of this marine ecosystem and resources, which is reflected at every geographical scale with the specificities that pertain to it, regional ocean governance has been demonstrated by several scholarly works supported by the International Community, as fundamental in the effective governance of this milieu. However, this level of management of the ocean, particularly in the Southeast Atlantic Sub-region, has shown weaknesses that require its strengthening. In this work, therefore, the objectives were to showcase the need to reinforce the governance of the marine and coastal environment of this Sub-region that is so very much threatened, in spite of all the existing legal, policy and institutional framework put in place. In this regard, the establishment of Transboundary Marine Protected Areas or Networks of Marine Protected Areas at both sub-regional and bilateral levels within the Southeast Atlantic Sub-region was use here as a strategic tool that should enable the strengthening of the governance of the ocean in this specific geographical sphere. Consequently, the study of legal, policy and institutional frameworks running from the global to the national levels enabled the understanding of the role this ecosystem-based management in the strengthening of the governance of the ocean in the Sub-region. The study also allowed us to see that though there are challenges (such as trust and funding) in the establishment and management of this tool in the Sub-region, there are also opportunities (such as increased collaboration among concerned stakeholders) that have and are believed would continue to foster their use as a strategic instrument for achieving ocean governance.

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LIST OF ACRONYMS

AFMESI	African Marine Environment Sustainability Initiative
AMD	African Maritime Domain
AU	African Union
CBD	Convention on Biological Diversity
CCAMLR	Convention on the Conservation of Antarctic Marine Living Resources
CCBST	Commission for the Conservation of Southern Bluefin Tuna
CCRF	Code of Conduct for Responsible Fisheries
CECAF	Fishery Committee for the East Central Atlantic
DOALOS	Division of Ocean Affairs and Law of the Sea
EEZ	Exclusive Economic Zone
ECOWAS	Economic Community of West African States
FAO	Food and Agriculture Organization
FCWC	Fishery Committee for the Western Central Gulf of Guinea
FEU	Fisheries Enforcement Unit
HELCOM	The Baltic Marine Environment Protection Commission
ICCAT	International Commission for the Conservation of Atlantic Tunas
ICJ	International Court of Justice
IGO	International Governmental Organization
ILO	International Labour Organization
IMO	International Maritime Organization
INGO	International Non-Governmental Organisation
IOC-UNESCO	Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organisation
ILBI	Legally Binding Instrument under UNCLOS for the conservation and sustainable use of Biodiversity of areas beyond National Jurisdiction
IMO	International Maritime Organisation
ISA	International Seabed Authority
ITLOS	International Tribunal for the Law of the Sea
IUCN	World Conservation Union
IUU	Illegal Unregulated and Unreported Fishing
LOSC	Law of the Sea Convention
MPA	Marine Protected Area
NGO	Non-Governmental Organisation
OECD	Organization for Economic Cooperation and Development
OSPAR	Convention for the Protection of the Marine Environment of the North-East Atlantic
PSMA	Port States Measures Agreement
RAMPAO	The establishment of the regional network of marine protected areas in West Africa
REC	Regional Economic Community
RFMA	Regional Fishery Management Agreement
RFMO	Regional Fisheries Management Organization
ROG	Regional Ocean Governance
SDG	Sustainable Development Goal
SDG 14	Life Below Water

TBMPA	Transboundary Marine Protected Areas
UNCLOS	United Nations Convention on the Law of the Sea
UNE	United Nations Environment
UNEP	United Nations Environmental Programme
UNFSA	United Nations Fish Stocks Agreement
UNGA	United Nations General Assembly
UNODC	United Nations Office on Drug and Crime
UNSC	United Nations Security Council
WWF	World Wildlife Fund

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Introduction

I. Context and Object of the Study

A. Context and Justification of the Study

Our ocean, our common resource is in danger, and can no longer contain the pressures that come with the effects of human related activities such as marine and land-based pollutions, IUU Fishing, the accelerating impacts of climate change and the urgent need to protect biodiversity within and beyond national jurisdictions.¹ From the global to the regional levels, solutions are being sought in order to secure the ocean for both present and future generations through the achievement of the ‘ocean that we want’ goal.² Making the world to be more than ever before aware that the problems of ocean space are closely interrelated and need to be considered as a whole.³ These holistic and integrating approaches in the ongoing awareness moves is giving a new face to the global ocean governance frameworks that is moving away, gradually, from business as usual using bolder and more context specific oriented solutions such as regionalisation.

This study stems from the general push for more effective and efficient solutions to the constantly amplification of both the old and new ocean stressors.⁴ While regional ocean governance is being communicated by different groups of researchers as the solution that would close the existing gaps between the global ocean governance and the national ocean governance en route to achieving the ‘ocean that we want’.⁵

It is also in the face of the degradation of the marine ecosystem and its resources, that attentions were drawn towards ecosystems-based management tools including Marine Protected Areas

¹ G7, “G7 Ocean Deal”, Germany, 2022

²The United Nations Decade of Ocean Science for Sustainable Development (2021-2030), “The Science We Need for the Ocean We Want United Nations Decade of Ocean Science for Sustainable Development”, UNESCO; <https://www.oceandecade-conference.com/en/creating-the-ocean-we-want.html>; <https://www.pnas.org/doi/10.1073/pnas.2100205118>.

³ “United Nations Convention on the Law of the Sea” of 10 December 1982, 198 U.N.T.S. 3, in the Preamble. Peter Bautista Payoyo, Ocean governance: Sustainable Development of the Seas, United Nations University Press, 1994, p.11. Lena Schøning, “A Critical Assessment of the Contribution of Integrated Ocean Management to the Protection of the Marine Environment (A Combine Study of the Premises and Compatibility of Integrated Approaches to Ocean Management with the Demands of Management Objective of Protecting the Marine Environment)”, Dissertation for the Degree of Philosophy, Faculty of Law, UiT The Arctic University, 26 March 2021.

⁴ While plastic pollution would be considered as one of the new stressors facing the ocean, climate change and IUU fishing would not be as they have been observed as a call for concern for almost a century and more.

⁵Glen Wright et al., The Partnership for Regional Ocean Governance (PROG) has developed a good number of research work in this light: “PARTNERING FOR A SUSTAINABLE OCEAN: The Role of Regional Ocean Governance in Implementing Sustainable Development Goal 14”, PROG, Institute for Advanced Sustainability Studies (IASS) and Institute for Sustainable Development and International Relations (IDDRI), 2017.

(MPAs)⁶ as strategic solutions to the ongoing global marine environmental problems. Indeed, the depletion of the marine biodiversity both within and beyond national jurisdictions is so alarming that the International Community, no longer able to turn a blind eye, created avenues for discussions on the consideration of not only MPAs,⁷ but also transboundary Marine Protected Areas (TBMAs)⁸ as essential ecological and economic solutions to the ongoing problems of biodiversity depleting, and the negative spill-over effects that it has on the wellbeing of local communities.

Again, because problems facing the ocean cannot be handled by the nation-State as the only stakeholder, the process of ocean governance be it globally, regionally or nationally is seeing the interventions of non-State actors contributing to the development of prescribed solutions like TBMAs in the fight of common challenges.⁹ Some of these stakeholders are either International Organisations, Non-governmental International Organisations (NGOI), Non-Governmental Organisations (NGOs), Civil Society Organisations or even the local communities themselves.¹⁰

It is within this context of joint efforts to fight common problems that in July 2021, a Nigerian-based Non-Governmental Organisation, by name African Marine Environment Sustainability Initiative (AFMESI),¹¹ in response to the Blue Action Fund called for submissions of projects on MPAs in the Atlantic, and working with other like-minded organisations and individuals to submit a proposal for a TBMA between the Republic of Cameroon and the Federal Republic of Nigeria, given the richness of biodiversity between both countries and the need for effective conservation management, contacted other stakeholders in Cameroon in order for this project to be developed and for funding to be eventually secured. Unfortunately, this project did not get all

⁶ IUCN, "MEASURES SUCH AS AREA-BASED MANAGEMENT TOOLS, INCLUDING MARINE PROTECTED AREAS" (Suggested responses to questions on area-based management tools (ABMTs), based on the document entitled, "Chair's indicative suggestions of clusters of issues and questions to assist further discussions in the informal working groups at the second session of the Preparatory Committee").

⁷ Pierre Leenhardt & al., "The rise of large-scale marine protected areas: Conservation or geopolitics?" *Ocean and Coastal Management*, <https://doi.org/10.1016/j.ocecoaman.2013.08.013>.

⁸ Kelly Sayce & al., "Beyond traditional stakeholder engagement: Public participation roles in California's statewide marine protected area planning process", *Ocean & Coastal Management* Volume 74, March 2013, Pages 57-66 <https://doi.org/10.1016/j.ocecoaman.2012.06.012>.

⁹ Donald R. Rothwell and David L. VanderZwaag (Eds.), *Towards Principled Ocean Governance: Australian and Canadian Approaches and Challenges*, Routledge, 2006, Pp. xvi-xvii.

¹⁰ https://www.panda.org/discover/our_focus/biodiversity/protected_areas/pa4lp/wamer/; José Ângelo Guerreiro da Silva, Raquel Curto Fernandes e Castro Ribeiro, Ana de Carvalho Cameira Mocinho Viras, Catarina Bentes Silva Grilo, "Transboundary MPAs: a challenge for the twenty-first century" in *Management of Environmental Quality: An International Journal*, Vol. 23 Iss: 4, 2012, pp. 328 – 346.

¹¹ <http://www.afmesi.org>.

the required accreditations for funds to be secured at the level of the Blue Action Fund. Nevertheless, the idea for a possible TBMPA between Cameroon and Nigeria is a project that should be considered as falling within the development plans of these two countries and their commitment to different international agreements.

On the part of the Southeast Atlantic Sub-region, the development of MPAs, and particularly TBMPAs, is still very farfetched, as compared to what is observed in other sub-regions such as the Northeast Atlantic¹² and Western Indian Ocean¹³ Sub-regions which have good practices in the development of this ecosystem-based tool for the strengthening of their respective regional ocean governance.

Whereas the use of this tool in the Southeast Atlantic should come as a necessity and an advantage, for a sub-region that has a very rich marine biodiversity, and it is a global maritime route. Almost half of the populations of its countries lives on the coast and depends directly on the different ecosystem services that this environment offers.¹⁴ Unlike its other sisters' Sub-regions, the Southeast Atlantic doesn't reveal the same kind of coordination or strength observed in the management of the few existing MPAs or even to initiate like others under their Regional Sea Conventions a Network of MPAs.¹⁵ The Convention for Cooperation in the Protection, Management and Development of the Marine and Coastal Environment of the Atlantic Coast of the West, Central and Southern Africa Region (the Abidjan Convention) under its Secretariat is that primary regional instrument implementing Part II of the United Nations Convention on the Law of the Sea (hereinafter 'UNCLOS' or 'the Convention'). This, therefore, brings the Abidjan Convention at the forefront of the development of possible TBMPAs or Networks of MPAs within the Sub-region.¹⁶

¹² Under the OSPAR Commission, this Sub-region has built a Network of MPAs within and out of the national jurisdictions of its contracting States; <https://oap.ospar.org/en/ospar-assessments/committee-assessments/biodiversity-committee/status-ospar-network-marine-protected-areas/assessment-sheets-mpa/2020/>

¹³ United Nations Environment Programme (UN Environment) - Nairobi Convention WIOMSA, "West Indian Ocean Marine Protected Areas Outlook", the United Nations Environment Programme/Nairobi Convention Secretariat, 2021.

¹⁴ Donald R. Rothwell and David L. VanderZwaag (Eds.) (2016), *supra* Note 9.

¹⁵ *Op. Cit.* Note 12.

¹⁶ <https://www.archyde.com/marine-protected-areas-the-abidjan-convention-must-be-an-official-instrument-of-cooperation/>

B. Subject of the Study

This research work has two main subjects of interest. Indeed, while its first focus is on Regional Ocean Governance (ROG), the second is on TBMPAs as one of its strategic catalysers.

ROG has been recognised in different international agreements like the UNCLOS, as important and necessary implementation route for both global legal and policy frameworks.¹⁷ It has been described by scholarly works like that of the Partnership for Regional Ocean Governance (PROG) as a key lever for successful implementation of SDG14¹⁸ and the different ongoing global efforts to secure a healthy and secured ocean. The importance of ROG in meeting the implementation gaps that exist between the global and the national legal and policy frameworks is still to receive sufficient attention and considerations. The transboundary nature of the marine environment requires collective actions that can be contextually well initiated and supported by regional organisations.

Also, the ROG of a Sub-region like the Southeast Atlantic is highly beneficial for both its countries and coastal populations who not only share common activities and are being impacted negatively almost at the same degree by climate change or IUU fishing. Therefore, in order for an effective regional cooperation to succeed in the sub-region, developing and managing ecosystem-based management tools like TBMPAs will certainly benefit the different regional ocean governance efforts of sustainably using and conserving of their shared marine and coastal environment.

Therefore, and for the purpose of clarification, it is good to note that TBMPAs are MPAs that are established in areas under the national jurisdiction of any individual State. Thus, an MPA is an area in the coastal State's territorial waters or EEZ, or the High Sea that benefit from a special status because of its ecological and potential socio-economic benefits.

¹⁷ UNCLOS, Part XII, Article 194; Glen Wright et al. (2017), *supra* note 5, P. 4.

¹⁸ *Idem*.

II. Disciplinary Scope and Delimitation of the Subject

A. Disciplinary Scope of the Study

As seen above, this study focuses on both regional ocean governance and TBMPAs, while specifically looking at the role of the latter on the former in the Southeast Atlantic Sub-region. This study, therefore, is a legal analysis that will also encompass policy components of regional ocean governance and TBMPAs (a). However, the work correspondingly relies on one hand on the international and national perspectives (b), and other hand on the environmentalist and socio-economic perspectives (c).

a. Legal and Policy Approaches

The legal approach of this work derives from the general International Law of the Sea, while making appropriate usages of other legal instruments such as those enshrined in International Environmental Law and other sources of general International Law found in regional legal instruments such as the regional sea convention of the study area and existing RFMAs.

The policy basis of this work on the other hand are grounded on the different political endeavours such as those found in instruments like the United Nations 2030 Agenda, Aichi Target 11 and the Post-2020 Global Biodiversity Framework of the Convention on Biological Diversity (CBD) and other non-legal instruments guiding the implementation of ocean governance and that of TBMPAs.

Besides the international legal and policy basis, we shall be examining some key national frameworks in the light of the development of a TBMPA between Cameroon and Nigeria.

b. Internationalist and Nationalist Perspectives

The integrative and holistic spirit¹⁹ that guides global actions today requires that a study like this, which is multidisciplinary and multidimensional in nature, should be able to examine the role of all actors, Governmental and non-Governmental bodies and even local communities who play or

¹⁹ Chapter 17, Agenda 21, developed at the 1992 United Nations Conference on Environment and Development (UNCED or Rio Summit).

ought to play a role in the governance of the ocean and the development and management of TBMPAs.

Indeed, from the United Nations General Assembly (UNGA) to the Conference of Parties (COPs) to international fora like the United National Ocean Conference at the global level, or to the different Sub-regional efforts from Regional Seas bodies and Regional Fishery Management Organisations (RFMOs) and the different national political initiatives, all have a strategic role to play in the achievement of a strong regional ocean governance through the development of TBMPAs.

Finally, the importance of other non-States actors such as Non-Governmental Organisations and local communities, would not be left aside as their role has been proven vital in protecting and preserving the marine and coastal environment and their biodiversity.

c. Environmentalist and Socio-economic Perspectives

The development of TBMPAs has as initial focus the ecological protection of the designated transboundary area. It is, therefore, normal that this work would be centred on the environmentalist perspective whereby the protection and conservation of the marine and coastal environment is paramount at all levels and in all sectors.

However, because the effective and efficient ecological protection of biodiversity cannot be gotten without putting the wellbeing of humans first, this work would analyse the impacts and benefits that TBMPAs would have on the implementation of sub-regional ocean governance, and on the socio-economic lives of the local populations.

B. Delimitation of the Subject

The delimitation of the subject of this study would be done through the definition of key concepts (a) and its spatial delimitation (b).

a. Definition of Concepts

This study focuses on the development and management of Transboundary Marine Protected Areas as it applies to the existing efforts and needs of strengthening Regional Ocean Governance

(ROG) in the Southeast Atlantic Sub-region. In this regard, defining the keywords behind this research is of relevance to its better understanding.

Defining ROG requires first and foremost that the concept of ‘ocean governance’ from which it derives be understood. Looking, therefore, at the Preamble of the UNCLOS, ‘ocean governance’ would be found in the following paragraphs of this Constitution of the Ocean:

“Conscious that the problems of ocean space are closely interrelated and need to be considered as a whole,

Recognising the desirability of establishing through this Convention, with due regard for the sovereignty of all States, a legal order for the seas and oceans which will facilitate international communication and will promote the peaceful uses of the seas and oceans, the equitable and efficient utilisation of their resources, the conservation of their living resources, and the study, protection and preservation of the marine environment.”²⁰

In other words, ocean governance is the integrating management of ocean affairs through multisectoral and multidimensional approaches, whereby all sectors and levels are considered for the effective implementation of Provisions of the UNCLOS which are generally required to be by the State and from the State. But because of the transboundary nature of everything related to the ocean, such as fishing, fighting against pollution or climate change impacts, States are called upon to cooperate at all levels and especially at the sub-regional level in order to secure better results.

For the PROG, there is no one definition of ROG. However, it could be seen as the cooperation and coordination across territorial and sectoral boundaries of “efforts among multiple countries [of a specific regional or sub-regional] to work together to conserve and sustainably use their oceans, coasts, and marine resources [...]”²¹

Defining TBMPA, the World Conservation Union (IUCN) says it is:

“An area [...] of the sea that straddles one or more [maritime] boundaries between states, [...] regions, autonomous areas and/or areas beyond the limits of national sovereignty or jurisdiction, whose constituent parts are especially dedicated to the protection and maintenance

²⁰ UNCLOS, Preamble, Para 3 and 4.

²¹ <https://www.prog-ocean.org/about/regional-ocean-governance/>

of biological diversity, and of natural and associated cultural resources, and managed cooperatively through legal or other effective means.”²²

For the purpose of this work, TBMPAs at the sub-regional level of the Southeast Atlantic Sub-region would be identified with the development/creation and management of a Network of MPAs within this sub-region.

b. Spatial Delimitation

The further understanding of this work requires its spatial delimitation because though global efforts to achieve the good governance of the marine and coastal environment are being ensured, their effective and efficient implementation and impacts are being accepted, felt and carried out differently from one region/sub-region to the other,²³ or from one country to the other. That is why the UNCLOS prescribes that:

“States shall cooperate [...], as appropriate, on a regional, [on sub-regional] [and bilateral basis] directly or through competent international organisations, in the formulating and elaborating international rules, standards and recommended practices and procedures consistent with this Convention, for the protection and preservation of the marine environment, taking into account regional, [sub-regional] [and bilateral] features.”²⁴

Consequently, the spatial delimitation of this work would centre on the development of TBMPAs within the Southeast Atlantic Sub-region and precisely between the Republic of Cameroon and the Federal Republic of Nigeria.

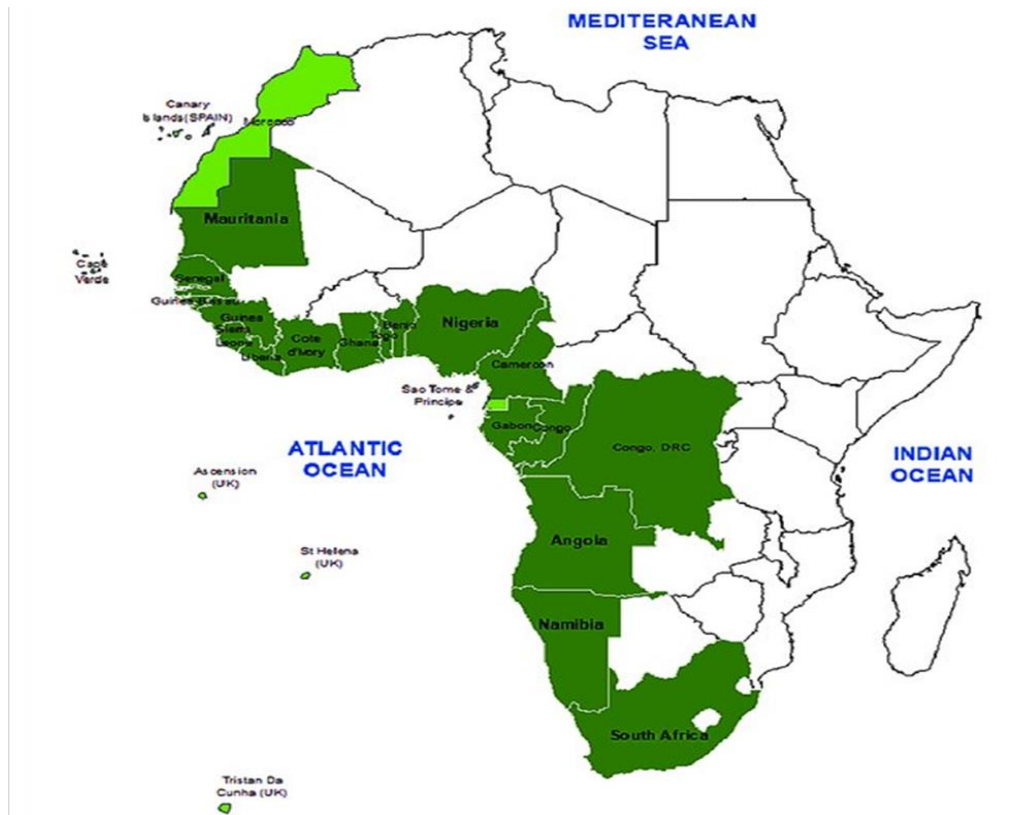
The Southeast Atlantic Sub-region has 22 countries moving from Mauritania down to South Africa. Each of these countries are coastal with very rich marine biodiversity, non-living marine resources. The protection and the preservation of the coastal and marine environment of this sub-region is still feels like it is ‘left behind’ while others are advancing, even though one would observe sporadic efforts to implement international legal and policy frameworks, and particularly ecosystem-based management tools like the one at the centre of this study.

²² Peter Mackelworth, *Marine Transboundary Conservation and Protected Areas*, Routledge, 2016, p.3; PARKS: Protected Areas Programme, “High Seas Marine Protected Areas”, *The International Journal for Protected Area Managers*, Vol. 15 No 3, World Commission on Protected Areas (WCPA) of IUCN, 2005.

²³ Glen Wright et al. (2016), *supra* Note 5.

²⁴ UNCLOS, Part XII, Section 2, Article 197.

FIGURE 1 : THE SOUTHEAST ATLANTIC SUBREGION



SOURCE: ABIDJAN CONVENTION SECRETARIAT [2018], CAROLE DURUSELL

The second spatial delimitation of this work is focusing on Cameroon and Nigeria. These are two neighbouring countries which share connectivity historically, economically, customarily, socially, and even boundary wise. These two countries are strategically positioned in the Southeast Atlantic Sub-region and share so many points of interests, including very rich and diversified marine living and non-living resources, which often are found straddling both countries maritime boundaries and could be a source of conflict if not well managed. Developing this research work around the necessity of creating a TBMPA between these two sister-nations is important not only for both countries, but also for the strengthening of regional ocean governance in the studied Sub-region.

This study shall, therefore, be examining the appropriateness of TBMPAs (a Network of MPAs) at the sub-regional and the bilateral level for a better understanding of their impacts of the role they would play in the strengthening of ROG in the Southeast Atlantic Sub-region.

III. Research Questions and Objectives of the Study

On his Twit of 30 July 2022 Nigerian born Seyifunmi Adebote, wrote:

"If we do not protect our oceans collectively and globally, the repercussions will be disastrous for us all biologically, economically, and almost certainly geopolitically."²⁵

This cry for concerted, holistic, and integrated actions at all levels, including the bilateral level, are what the world is advocating in order to effectively and efficiently protect and preserve marine biodiversity through TBMPAs. In between that, regional ocean governance, which is specifically considered in this thesis as sub-regional ocean governance, ought to be useful in a time like this where the fear that our ocean might not be able to sustainably provide for us and for future generations is on the tables of discussions of almost all international fora.²⁶

In the light of the above needs, while other sub-regions such as the Northeast Atlantic Sub-region under the Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR) Commission and the Sub-region of the Baltic Sea under the Baltic Marine Environment Protection Commission (Helsinki Commission/HELCOM)²⁷ have been able to integrate TBMPAs in the form of Network of MPAs in their geographical area of competence, these efforts are still missing in the Southeast Atlantic Sub-region, and even directly between States. Whereas, in this sub-region, and particularly between Cameroon and Nigeria that are sharing so much together including with their coastal and marine environments, there is still a gross absence of Networks of MPAs and/or TBMPAs.

The objectives of this work are regrouped around the need to review the state of ocean governance in the Southeast Atlantic Sub-region and to examine the legal and policy basis of TBMPAs at both Sub-regional and national levels, on one hand. And on the other hand, to bring out the role of TBMPAs in strengthening regional ocean governance framework, while examining the challenges of developing a TBMPA between Cameroon and Nigeria. In a nutshell, these objectives would enable us to answer questions such as:

²⁵https://twitter.com/IbukunJ_Adewumi/status/1553680564531519488?cn=ZmxleGlibGVfcmVjcw%3D%3D&refsrc=email

²⁶<https://www.oceansconference.org/> ; <https://www.unep.org/events/conference/un-ocean-conference-2022>; <https://www.un.org/en/conferences/ocean2022#:~:text=The%20Ocean%20Conference%2C%20co%2Dhosted,shared%20solutions%20that%20are%20anchored.>

²⁷ Both organisations are part of UNEP and Non-UNEPs Regional Seas Conventions.

- What are there the legal obligations of establishing Transboundary MPAs within the Southeast Atlantic?
- Consequently, what are legal and policy implications of developing Transboundary MPAs in the Sub-region and between two States with respect to Regional Ocean Governance?
- How beneficial would the creation of a Transboundary Marine Protected Areas be for the Sub-region and for the populations of Cameroon and Nigeria?

IV. Methodological Approach and Announcement of the Plan

A. Methodological Approach

The general data collection of this work is carried with the help of existing literature which deals directly or indirectly about MPAs/TBMPAs. Other sources would be relevant scholarly works on legal, policy or natural science approach, which have developed other topics in which TBMPAs are compounded like those on international law, international law of the sea, international environmental law, marine reserves management, etc. Because this thesis seeks to analyse the effectiveness and efficiency of the norms and policies governing the development of TBMPAs at the sub-regional and bilateral levels, thus moving from the paper to action, the examination of the functionality of existing institutions is also going to be studied. TBMPAs touch the element of maritime boundaries of States; in that regard, this work would also be making use of the works of international jurisprudence or international case law as it analyses the benefits of this environmental tool in maintaining peace.

B. Plan of Study

Basing ourselves on the research questions which were exposed above, this work has two main parts, each one having two chapters. The first part would be titled “The Legal and Policy basis of TBMPAs in the Southeast Atlantic Sub-region in the light of Regional Ocean Governance”. This part first dwells on examining both the legal and policy health of regional ocean governance in the Southeast Sub-region (Chapter 1), before looking at the policy and normative framework that should govern TBMPAs in the sub-region (Chapter 2). The second part focuses on “Opportunities and Challenges of Creating and/or Managing a TBMPA between Cameroon and Nigeria”. Here, we would be analysing the challenges that would come with the development or enforcement of a TBMPA between these two countries, on one hand (Chapter 1) and the benefits

that would be harvested not only at the national level, but particularly at the community level (Chapter 2), on the other hand.

Part one: The Legal and Policy Basis of Transboundary Marine Protected Areas in the Southeast Atlantic Sub-region in the Light of Regional Ocean Governance

The consideration of TBMPAs as a strategic tool to enable the strengthening of ROG within the Southeast Atlantic Sub-region requires that attention be given to the legal basis, while not disregarding the policy basis that establish their existence either solely at the level of the sub-region itself, or at an inter-States level. For this purpose, the study of the status of the governance of the marine and coastal environment within this Sub-region is necessary (Chapter 1), for us to carry out an examination of the basis of establishing TBMPAs (Chapter 2).

Chapter 1: Ocean Governance in the Southeast Atlantic Sub-Region

Like most coastal States sharing the same geographical marine and coastal space, those of the Southeast Atlantic Sub-region have become self-aware of the importance of their joint efforts under International Law²⁸ and in the implementation of global ocean governance frameworks. In other words, to achieve good governance of the ocean in this sub-region, there is a need for cooperation to be enhanced at that level and between its States. Making cooperation a requirement for the effective and efficient management of marine living and non-living resources. From this sub-regional cooperation are created and even likely to be birthed legal and policy, and even institutional frameworks that are called to address the common problems that they are facing.

Indeed, the state of regional ocean governance in the Southeast Atlantic Sub-region has known quite an evolution from the Third United Nations Law of the Sea Conference (UNCLOS III)²⁹ to the present negotiation of the Internationally Legally Binding Instrument under UNCLOS for the conservation and sustainable use of Biodiversity of areas beyond National Jurisdiction (ILBI).³⁰ Besides these legal instruments, regional ocean governance in this sub-region is also benefiting from the development of policy instruments (Section A). From the legal and policy frameworks existing in the Southeast Atlantic, and on which ocean governance is based, diverse institutional contexts have been put in place from the global, regional levels and particularly the sub-regional level itself which serves as the enforcement of the other three (Section B).

²⁸ M. Forteau, “Regional International Law”, Max Planck Encyclopaedia of Public International Law [MPEPIL], September 2006, p.1; Y. Tanaka, *The International Law of the Sea (2nd Edition)*, Cambridge University Press, 2015, p.3.

²⁹ E. L. Miles, *Global Ocean Politics: The Decision Process at the Third United Nations Conference on the Law of the Sea (1973-1982)*, Martinus Nijhoff Publishers, 1998.

³⁰ After five rounds of negotiations (IC5: 15 to 26 august 2022), Delegates at the Intergovernmental Conference on the drafting of the ILBI still did not come to either an understanding or an agreement. <https://press.un.org/en/highlights/BBNJ>; <https://www.un.org/bbnj/> (accessed on 09/09/2022 at 10:08 am).

Section A: Legal and Policy Frameworks of Ocean Governance in the Sub-Region

To demonstrate their special interests in their shared maritime domain, and the need to ensure the sustainable wellbeing and management of the resources therein, States of the Sub-region have jointly been adopting for decades now different global legal and policy instruments to better govern their marine and coastal environment sub-regionally.

Clearly, the legal (Paragraph 1) and policy (Paragraph 2) basis that gives grounds to States of this Sub-region to cooperate for the achievement of an ocean governance within their Sub-region are not found only in the global frameworks but also in the regional ones.

Paragraph 1: An Overview of the Legal Basis of Ocean Governance in the Sub-Region

The governance of the marine and coastal environment of the Southeast Atlantic Sub-region, like any other sub-region of the globe, has benefited from the need to not only contextualise the International Law, but to enable it also fit within the time and needs of the people it is called upon to be enforced on.³¹ That is why ocean governance in the sub-region, even with all its pitfalls, is obviously built not only on global, regional but also and essentially on sub-regional norms.

In other words, the steps taken by the countries of the sub-region to ensure the good governance of their joint marine and coastal environment reflects efforts towards the implementation of legal frameworks at all levels and even at the level of the sub-region itself.

³¹M. Forteau (2006), *supra* note 28.

1) Global Legal Regimes underpinning Regional Ocean Governance in the Southeast Atlantic Sub-Region

Ocean governance within the Sub-region is in a constant struggle to encapsulate the different Multinational Environmental Agreements (MEAs) that regulate the uses of the ocean as a whole and which are binding upon its States along its coast.³²

It is, therefore, no doubt that examining ocean governance in the Sub-region gives room to immediately look at the impact of the UNCLOS and its Implementing Agreements,³³ and other global legal regimes like the CBD or the 2015 Paris Agreement of the United Nations Framework Convention on Climate Change that cover areas of competence that are nexus to that of the ‘Constitution of the Ocean’.

Indeed, in response to the urgency to protect and preserve its very rich biodiversity,³⁴ all the twenty-two countries of the Sub-region have ratified the UNCLOS.³⁵ Making, therefore, this universal norm commonly known as the ‘Constitution of the Ocean’ applicable within every single country.

2) Regional Normative Frameworks enabling the Establishment of the Southeast Atlantic Sub-regional Ocean Governance Framework

The legal framework of ocean governance within the Sub-region would not be fully understood without the study of what is ongoing at the African level.

Indeed, the African maritime domain (AMD) is very vast and vital for the wellbeing and sustainable development of every one of its sub-regions. That is why the African Union as the regional governing body over-seeing the sustainable development of the continent at large is

³² UNEP, “Report on the Proposed Revised Text of the Abidjan Convention”, Pointe Noire, Republic of the Congo, UNEP(DEPI)/WACAF/COP.10/12, 12-16 November 2012. See also Galax ETOGA, *infra* Note 76.

³³ R. Billé (UNEP 2016), “Regional Oceans Governance Making Regional Seas Programmes, Regional Fishery Bodies and Large Marine Ecosystem Mechanisms Work Better Together”, UNEP Regional Seas Reports and Studies No. 197; These are the Fish Stocks Agreement of 1995 and the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982; (https://www.un.org/depts/los/convention_agreements/texts/unclos/closindxAgree.htm, accessed on 09/09/2022 at 11:14 am).

³⁴ Ibukun J. Adewumi et al., “The Salient Dynamics of Cross-Border Ocean Governance in a Regional Setting: An Evaluation of Ocean Governance Systems and Institutional Frameworks in the Guinea Current Large Marine Ecosystem”, *Front. Mar. Sci.*, 04 January 2022, Sec. Global Change and the Future Ocean, <https://www.frontiersin.org/articles/10.3389/fmars.2021.674804/full> (accessed on 09/09/2022 at 11:38 am).

³⁵ https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&clang=_en (accessed on 09/09/2022 at 12:24 pm).

doing everything it ought to ensure that its AMD is well governed in order to ensure the “Africa that we want”.³⁶

Thus, the legal framework of ocean governance in Africa has known transformation and evolutions as time and circumstances both at the global and regional levels have influenced it.

Before any further analysis, it is good to say here that as of now, Africa doesn’t have a Regional Ocean Governance Strategy as it is still under development.³⁷ Rather, it has its 2050 Africa Integrated Maritime Strategy and the Africa Blue Economy Strategy. With these two framework instruments, one is likely to think that these are enough to ensure the good governance of the marine and coastal environment in Africa. This is not the opinion of Dixon Waruinge, Head of the Secretariat of the Nairobi Convention who strongly believes that Africa urgently needs a Regional Ocean Governance Strategy³⁸ that would strongly meet the need of strengthening ocean governance in Africa.³⁹

Precisely, there is no specifically articulated regional legal instrument on the Law of the Sea in Africa. There are several other legal regimes that are associated in their implementation to the law of the sea, and thus to the normative protection and preservation of the marine and coastal environment at the continental level, but that is what it is for now. This situation is creating, therefore, a weakness in governance that is observed in the region. For him, this weakness in governance, or the absence of an adequate continental legal regime is at the centre of ocean-related issues.⁴⁰ It is, thus, surprising that there is no regional law of the sea instrument at the level of the African Union after the very strong contributions of African States in the holding and the carryout of negotiation during the Third United Nations Convention on the Law of the Sea

³⁶ See generally the AU Agenda 2063: The Africa that We Want and its document on the 2050 Africa Integrated Maritime Strategy; see <https://au.int/en/agenda2063/overview>; https://au.int/sites/default/files/documents/33126-doc-06_the_vision.pdf and https://www.un.org/pga/69/131014_statement-hl-africa-we-want/ (accessed on 09/09-2022 at 12:28).

³⁷ UNEP, “Draft African strategy for ocean governance”, Third consultative meeting on the development of an African strategy for ocean governance (Online, 15 and 16 June 2021), UNEP/ASOG/WG.3/2, 29 April 2021; https://wedocs.unep.org/bitstream/handle/20.500.11822/36279/Draft%20African%20Strategy%20for%20Ocean%20Governance%20English_K2101242-1%20%281%29.pdf?sequence=6&isAllowed=y (accessed on 09/09/2022).

³⁸ Ocean Insight, “Ocean governance and integrated ocean management in the WIO region 01”, Meerwissen, August 2022, <https://oceaninsight.podigee.io/13-new-episode>.

³⁹ G. Wright (2017), *supra* Note 5.

⁴⁰ P. Vrancken, “The African Perspective on Global Ocean Governance” in David Joseph Attard, David M Ong, Dino Kritsiotis, *The IMLI Treatise On Global Ocean Governance: Volume I: UN and Global*, Oxford Scholarly Authorities on International Law [OSAIL], 26 July 2018.

(UNCLOS III).⁴¹ In other words, there might be other legal regimes such as the 1991 Treaty Establishing the African Economic Community (AEC),⁴² the African Maritime Transport Charter⁴³, Organisation for the African Unity (OAU) Convention on the Prevention and Combating of Terrorism⁴⁴ and even the Constitutive Act of the African Union (AU)⁴⁵, the absence of a well-defined law of the sea regime harmonising both the global and national regimes within the AU governance system is likely to continuing showing the weaknesses .⁴⁶

There is, therefore, the constant need to address the issues affecting the ocean not only regionally, but also sub-regionally in order to better coin the problem and obtain effective solutions. Hence the development of sub-regionalisation of international MEAs within the Southeast Atlantic Sub-region.⁴⁷

3) The Sub-regional Legal Framework of the Southeast Atlantic

It is obvious from the above sub-paragraphs that the legal framework existing in the Southeast Atlantic Sub-region is not ex-nullus. It is a direct application of international MEAs within this specific geographical area, and in accordance with the needs thereto, existing collaboration and understanding of its countries when the ocean and its governance are concerned. The sub-regional legal instruments provide, therefore, a fundamental basis for regional cooperation towards the protection of the marine environment and adjacent coastal areas, as it is the case in the Sub-region.⁴⁸

⁴¹ Adopted 10 December 1982, entered into force 16 November 1994. 1833 UNTS 3; (1982) 21 ILM 1261; On 16 November 1993, when the sixtieth instrument of ratification or accession required for the UNCLOS to come into effect in terms of Article 308(1) was deposited, 45 per cent of the sixty States were African States.

⁴² Adopted 3 June 1991, entered into force 12 May 1994. (1991) 30 ILM 1241. The Community was ‘an integral part of the OAU’ (Article 98(1) of the Treaty).

⁴³ Adopted on 11 June 1994, this instrument never came into effect. L Savadogo, ‘La Charte africaine des transports maritimes: Principes, règles et techniques’ in TM Ndiaye and R Wolfrum (eds), *Law of the Sea, Environmental Law and Settlement of Disputes* (Martinus Nijhoff 2007) 545–52.

⁴⁴ Adopted 1 July 1999, entered into force 6 December 2002. OAU Doc AHG/Dec 132 (XXXV).

⁴⁵ Adopted 7 November 2000, entered into force 26 May 2001. 2158 UNTS 3.

⁴⁶ P. Vrancken (2018), *supra* Note 40.

⁴⁷ United Nations Environment Programme, “the Abidjan Convention for Cooperation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region and the Protocol concerning Cooperation in Combating Pollution in cases of Emergency”, United Nations, 1981, pp. 1-4.

⁴⁸ See Abidjan Convention’s Action Plan, Section IV on Legal Components. Action Plan for the Protection and the Development of the Marine Environment and Coastal Areas of the West and Central African Region, UNEP Regional Seas Reports and Studies No. 27, 1983.

The Sub-region, which falls within the geographical ‘decoupage’ of the global ocean⁴⁹ into regions or sub-regions, is recognised as one of the then United Nations Environment Programme (UNEP) (now United Nations Environment (UNE)) Regional Seas Conventions’ areas.⁵⁰ Indeed, under the UNEP’s auspices, the Sub-region was given a legal instrument to enable the governance of the shared marine and coastal environment of its Twenty-two States. This is the Convention for Cooperation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region (known as the Abidjan Convention).⁵¹ Under the Abidjan Convention, five Protocols have been enacted among which are the Protocol on Cooperation in Combating Pollution in the Event of Emergencies⁵², the Calabar Protocol on Sustainable Mangrove Management, the Grand Bassam Protocol on Pollution from Land-based Sources and Activities, the Malabo Protocol on Environmental Standards and Guidelines for Offshore Oil and Gas Activities and the Pointe Noire Protocol on Integrated Coastal Zone Management.⁵³ The Abidjan Convention and its Protocols, which for the purpose of this work have as common objective “to protect, conserve and develop the Abidjan Convention Area and its resources for the benefit and well-being of its people”,⁵⁴ have on one hand recognised the ecological uniqueness of the marine environment and coastal areas in the Sub-region, and on the other have also outlined in their content the current urgent need to fight against the threats to it. However, this urgency is not only felt in the letter, but also in the daily reality of the populations of each of its Contracting States, its implementation part is still facing immense gaps even with the collaboration of other sectoral legal regimes.

Besides the Abidjan Convention, the legal sources of ocean governance in the Southeast Atlantic Sub-region are found in International Fishery Law and International Law of the Sea, as

⁴⁹ To demonstrate the transnational nature of the oceans and the negative impacts that affect them, the International Community, both researchers and policymakers, seem to have come to the agreement of acknowledging the global marine and coastal environment that is divided into 4 oceans as being just one and only one ocean. See European Committee of the Regions, “A message from the oceans - There is only one ocean, and it brings us all together”,

<https://www.youtube.com/watch?v=K2MMDse76H0>, 02 December 2021 (accessed 09/09/2022 at 13:15). Andrew Steer, “There’s Only One Ocean. This Is Its Moment”, World Resources Institutes, October 30, 2018,

<https://www.wri.org/insights/theres-only-one-ocean-its-moment> (accessed 09/09/2022 at 13:18).

⁵⁰ <https://www.unep.org/explore-topics/oceans-seas/what-we-do/regional-seas-programme> and https://www.unep.org/explore-topics/oceans-seas/what-we-do/working-regional-seas/regional-seas-programmes/west-and?_ga=2.26873464.450924032.1662722454-66682880.1662542805 (accessed on 09/09/2022 at 13:22).

⁵¹ Adopted 23 March 1981, entered into force 5 August 1984. (1981) 20 ILM 746.

⁵² This Protocol was signed in 1981, together with the Convention itself.

⁵³ The last four Protocols were adopted in 2019 during a meeting of Abidjan Convention plenipotentiaries.

https://www.unep.org/explore-topics/oceans-seas/what-we-do/working-regional-seas/regional-seas-programmes/west-and?_ga=2.144724788.1055725277.1619684984-2041677393.1612174695.

⁵⁴ *Supra* Note 47.

prescribed by International Law,⁵⁵ and which are enshrined in the creation of Regional Fishery Management Agreements (RFMAs).⁵⁶ The Sub-region has within its geographical area over three sub-regional RFMAs which aim at not only protecting and preserving the fish stocks, but also their ecosystem within and outside of the national jurisdictions of its States.⁵⁷ These are among others the Convention on the Conservation and Management of Fishery Resources in the South East Atlantic Ocean (SEAFO),⁵⁸ Convention on Regional Fisheries Development in the Gulf of Guinea (COREP).⁵⁹ These are what form the corpus of regional fishery law in the Southeast Atlantic Sub-region. Thus, for a better contribution to the management of this marine area and the living resources therein, this regional fishery legal instruments try to address all the different issues related to fishery such as the impacts of bottom-fisheries on the marine environment, the broad consideration of impacts of fisheries on ecosystems, and of course target species and IUU fishing.⁶⁰

From legal regimes, ocean governance in the Southeast Atlantic Sub-region also takes its source from existing policy frameworks.

Paragraph 2: Is there any Sub-Regional Policy Framework on Ocean Governance?

In order to know if there is any sub-regional policy framework applicable or existing in the Sub-region, it is necessary to first examine the global (1) and regional (2) policy instruments that are used in implementing the sub-regional one (3).

⁵⁵ Y. Tanaka, *supra* Note 28.

⁵⁶ <http://www.seafo.org/>.

⁵⁷ With the ongoing negotiations of the ILBI, Southeast Atlantic RFMOs are fully engage in participating because just as the

⁵⁸ <http://www.seafo.org/About/Convention-Text>.

⁵⁹ <https://www.fao.org/fishery/en/organization/rfb/corep>.

⁶⁰ Julien Rochette et al., “Regional Oceans Governance Mechanisms: A Review”; this an article that builds on a study commissioned to the authors by UNEP and referenced as: UNEP. Regional Oceans Governance - Making Regional Seas Programmes, Regional Fishery Bodies and Large Marine Ecosystem Mechanisms Work Better Together. UNEP Regional Seas Report and Studies No. 195; 2015 (In press).

1) Global Policy Frameworks

Over the past decades, several global policy instruments have been looked upon as the basis for the development of a strong ocean governance, which ought to be reflected at all levels and even in all sectors/disciplines.

Even though they are not policy instruments *per se*, the Decisions and Resolutions of General Assembly (UNGA),⁶¹ together with those of the United Nations Security Council (UNSC),⁶² Meetings of States Parties to the UNCLOS,⁶³ or the Ones of the COPs of the United Nations Framework Convention on Climate Change (UNFCCC),⁶⁴ are contributing immensely in the development of global policy frameworks that are shaping ocean governance in the Sub-region. These are the expressions of the political will of the International Community that have enabled the development of global policy frameworks such as the 1992 Rio Declaration and Agenda 21 and its Chapter 17⁶⁵ which established strategic principles and outlined the importance of sub-regional ocean governance in the implementation of the requirements of Part XII of UNCLOS on the Protection and Preservation of the Marine Environment.

Today, the combined outcomes of the works of the aforementioned bodies is the fundamental expression of the policy framework of ocean governance engulfed in the 2030 UN Agenda and its 17 Sustainable Development Goals,⁶⁶ particularly Goal 4 on Life below Water. This global policy instrument gives a new impetus to the obligation to preserve and conserve the ocean and its resources⁶⁷ even with current difficulties in its achievement.⁶⁸ are the declarations of the

⁶¹ UNGA, “Oceans and the law of the sea, Resolution adopted by the General Assembly on 9 December 2021 [without reference to a Main Committee (A/76/L.20 and A/76/L.20/Add.1)] 76/72; UNGA, “Report of the Secretary-General on Oceans and the law of the sea”, A/76/311/Add.1, 8 November 2021; UNGA, “Report of the Secretary-General on Oceans and the law of the sea”, A/76/311, 30 August 2021.

⁶² The UN Security Council in February 2012 came up with Resolution 2039 which urged States within the Sub-Region (precisely the Gulf of Guinea) to develop counter-piracy policies at regional and national levels. Bem Ibrahim Garba, “OCEAN GOVERNANCE AND MARITIME SECURITY IN THE GULF OF GUINEA”, Centre for International Maritime Security, 31 July 2020; <https://cimsec.org/ocean-governance-and-maritime-security-in-the-gulf-of-guinea/>

⁶³ https://www.un.org/depts/los/meeting_states_parties/thirtiethmeetingstatesparties.htm

⁶⁴ <https://unfccc.int/topics/ocean>; <https://unfccc.int/event/ocean-and-climate-change-dialogue-2022>; UNFCCC, Subsidiary Body for Scientific and Technological Advice Ocean and Climate Change Dialogue 2022 Information notes by the Chair (30 May 2022); UNFCCC, Joint COP26 Presidency Event Informal consultation on oceans and climate (Summary), 29th June 2021.

⁶⁵ United Nations Conference on Environment & Development, AGENDA 21, Rio de Janeiro, Brazil, 3 to 14 June 1992, Chapter 17, Para 17.1.

⁶⁶ <https://www.globalgoals.org/> (accessed 09/09/2022 at 16:17).

⁶⁷ See Chapter 2 on TBMPAs Role in Strengthening Regional Ocean Governance.

⁶⁸ Jonathan D. Moyer and Steve Hedden, “Are we on the right path to achieve the sustainable development goals? World Development, Volume 127, 2020, <https://www.sciencedirect.com/science/article/pii/S0305750X19303985> (accessed 09/09/2022 at 15:49). Population Matters, “AS PROGRESS CONTINUES TO FALTER, HOW DO THE SDGS GET BACK ON TRACK?”

Ocean Conference that serve as a reminder to all involved stakeholders of the urgency in securing a strong governance of the ocean,⁶⁹ while each year inviting them for more effective and feasible commitment towards the achievement of SDG 14.

Also, global policy instruments from which feeds ocean governance in the Southeast Atlantic Sub-region find their strength the development of initiatives such as the United Nations Decade of Ocean Science for Sustainable Development (2021-2030), coordinated by the Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organisation (IOC-UNESCO).⁷⁰ This initiative which was mandated by a Decision of the UNGA has brought a new sight to the traditional approach to ocean governance as is calling for innovation and ‘dutiful’ engagements by all, drawing specific attention in the key role of approaches such as co-designing and co-management at all level, including the African regional level.⁷¹

2) Regional Policy Endeavours

The development of an African policy framework on ocean governance has gained some muscles over the decades since the entering effect of the UNCLOS, and the need for the continent to affirm the importance and the urgency in sustainably making use of its maritime domain.⁷²

Through these perspectives, regional policy instruments such as the 2050 Africa Integrated Maritime Strategy (2050 AIMS) and the Africa Blue Economy Strategy⁷³ were adopted by the Member States of the AU in order to ensure that not only is Africa ‘not left behind’ in the global efforts to leave an ocean that is profitable for both present and future generations,⁷⁴ but also to

22 July 2022, <https://populationmatters.org/how-do-the-sdgs-get-back-on-track> (accessed 09/09/2022 at 15:55); <https://oceanconference.un.org/documents> (accessed 09/09/2022 at 17:00).

⁶⁹ <https://oceanconference.un.org/documents> (accessed 09/09/2022 at 17:00).

⁷⁰ V. Ryabinin, “The UN Decade of Ocean Science for Sustainable Development”, POLICY AND PRACTICE REVIEWS, Frontiers, Front. Mar. Sci., 31 July 2019, <https://www.frontiersin.org/articles/10.3389/fmars.2019.00470/full>; <https://en.unesco.org/ocean-decade> and <https://www.oceandecade.org/> (accessed 09/09/2022 at 15:19).

⁷¹ <https://www.oceandecade.org/decade-actions/> (accessed 09/09/2022 at 15:45). On 07 September 2022 took place at the University of Hamburg, Germany the Conference on “Equity Perspectives on Global Ocean Law and Governance (2022)” <https://www.jura.uni-hamburg.de/die-fakultaet/professuren/proelss/wissenschaftliche-veranstaltungen/2022-equity-in-global-ocean-law-and-governance.html> (accessed 09/09/2022 at 17:49). This conference is said to have been “motivated by the United Nations Decade of Ocean Science for Sustainable Development (2021–2030), aims to trace the extent to which these concepts have been – or could be – incorporated into global ocean law and governance”.

⁷² See P. Vrancken (2018), *supra* Note 40.

⁷³ AU-IBAR, 2019. Africa Blue Economy Strategy. Nairobi, Kenya, https://www.au-ibar.org/sites/default/files/2020-10/sd_20200313_africa_blue_economy_strategy_en.pdf (accessed 09/09/2022 at 16:19).

⁷⁴ *Idem*.

ensure that the people of this continent are able to have an Africa that they want; free of poverty, wars, and the effects of environmental stressors among many other things.

Another regional policy achievement at the continental level is the outcome of the AU Conference of Ministers responsible for Maritime Transport held in Abuja (Nigeria) in 2007. This conference gave birth to the Maritime Transport Declaration through which, and in the words of P. Vrancken (2018), the Ministers expressed concern at “the low level of cooperation among African administrations in the area of maritime safety [and the general governance of the African Maritime Domain]”.⁷⁵

Thus, understanding the role of strong policy endeavours in achieving the good governance of the maritime domain of Africa is likely, if not already, to be felt and seen at the sub-regional spheres of the continent.

3) Sub-regional Policy Efforts

The policy dimension of ocean governance in the Sub-region is still in a developing state, or almost non-existent. However, the current efforts are almost all centred around piracy and IUU fishing. Most of which are developed in the form of Project or Programmes.

Among these are the Gulf of Guinea Large Marine Ecosystem Project which was developed in two phases.⁷⁶ The very first phase (1995 – 1999), funded by GEF and executed by UNDP, UNEP, UNIDO and US-NOOA, was on “Water Pollution Control and Biodiversity Conservation” and was carried out in six countries (Benin, Cameroon, Côte d'Ivoire, Ghana, Nigeria and Togo). This permitted the establishment of countries' coastal and biological profiles and Transboundary Diagnostic Analysis and the identification of regional ecological issues and natural resources management concerns. From this phase came the adoption at ministerial level of the Accra Declaration in 1998 aimed at institutionalising a new ecosystem-wide paradigm for environmental assessment and management in the Sub-region. Phase 2 of the project (2005 – 2009) was geared toward ‘Combating Living Resource Depletion and Coastal Area Degradation

⁷⁵P. Vancken (2018), *supra* Note 40, and Emphasis from this author.

⁷⁶ ETOGA Galax Yves Landry, “The Governance of Coastal and Marine Biodiversity in the Gulf of Guinea”, The United Nations – The Nippon Foundation of Japan Fellowship Programme 2008-2009, PowerPoint Presentation, p22. Mahon R, Fanning L, McConney P. A governance perspective on the large marine ecosystem approach. *Marine Policy* 2009; 33: 317-321. See also Julien Rochette, *supra* note 60.

through Ecosystem-Based Regional Actions’; it was implemented in all the sixteen countries of the GCLME region in order to strengthen regional and national capacities as regards environmental protection, development and sustainable management of its resources.

Other policy efforts observed in the Sub-region, and that are an influence on the way of managing its marine and coastal environment, are those initiated by countries or group of countries outside the Sub-region. The richness of both living and non-living marine resources of the Southeast Atlantic Sub-region has drawn to itself the core interests of ‘geopolitical and geo-economic’ powers like the United States of America (US) and the European Union (EU). On the part of the US, there has been a clear declaration at one of the highest political levels of the American Government as to the importance of the good governance of this area. In the words of the Assistant Under-Secretary of the United States for African Affairs, the petroleum of countries of the Southeast Atlantic Sub-region had become a matter of strategic national interest to the United States of America (USA), which had declared the region as its “zone of vital interest”.⁷⁷

Still, it is in the light of occupying this strategic position of a “zone of vital interest” the Sub-region” to the US and certainly the entire world⁷⁸ the UNSC had to issue a Resolution inviting for bilateral relationship to be created between the Southeast Atlantic Sub-region and other non-State Parties of this geographical area, as well as between the Sub-region and other non-State Stakeholders like NGOs, International Organisations, or other regional organisations.⁷⁹ As a response to the UNSC Resolution, the EU, because of the vast interests that it has within the Sub-region in terms of oil and gas and fisheries, which are being threatened by the presence of different forms of crimes at sea, issued an Ocean Governance Strategy on the Gulf of Guinea.⁸⁰

From the understanding of the above Section, the legal and policy basis of ocean governance in the Southeast Atlantic Sub-region, even with all the existing lapses, are well in place. However, these letters would be ‘death before arrival’ if there are no adequate institutional frameworks as there is always a great challenge to move from paper to action.

⁷⁷ Global Security (online magazine), “Golf Gulf of Guinea Commission (GCC)”, <https://www.globalsecurity.org/military/world/int/ggc.htm>.

⁷⁸ Bem Ibrahim Garba (2020), *supra* Note 62.

⁷⁹ *Idem*.

⁸⁰ Bem Ibrahim Garba, *supra* Note 62. EU Maritime Security in The Gulf of Guinea: Strategy and Action Plan, https://www.eeas.europa.eu/sites/default/files/note_eu_gog_strategy.pdf and https://www.eeas.europa.eu/eeas/eu-maritime-security-factsheet-gulf-guinea_en (accessed on 09/09/2022 a 18:34).

Section B: Institutional Analysis of Ocean Governance in the Southeast Atlantic Sub-Region

Having the right institutions in order to enforce or carry out any legal or policy framework has always been a great challenge in the world.⁸¹ This is not pertaining solely to the Southeast Atlantic Sub-region when it comes to the governance of its marine and coastal environment.⁸²

However, the current institutional governance of the ocean in this Sub-region is distributed between those organs that will be regarded in the first paragraph of this section as Umbrella institutions and those ones that will be seen in the second paragraph as Specialised Sub-regional Institutions.

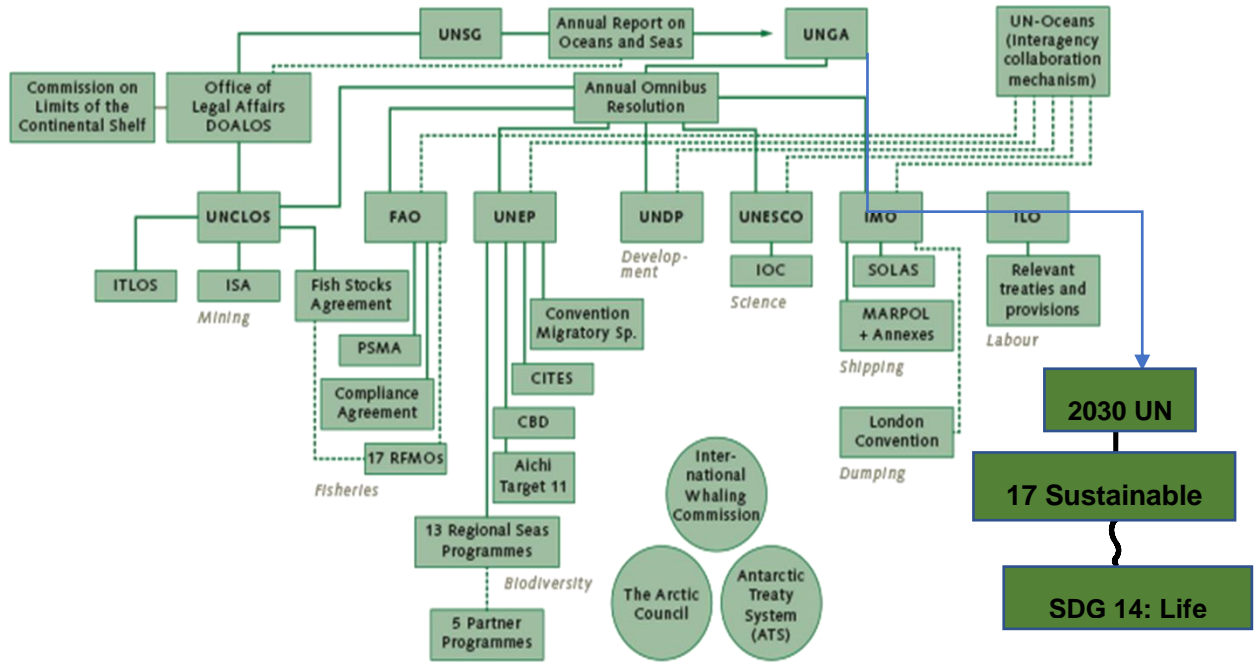
Paragraph 1: Umbrella Institutions

This Paragraph aims at revisiting the various institutional bodies that have a general framework role to play in the governance of the ocean in the Sub-region. These are either global (1), regional (2) or sub-regional (3) institutions.

⁸¹ M. Haward and J. Vince, *Oceans Governance in the Twenty-first Century: Managing the Blue Planet*, Edward Elgar Publishing, 2008, pp.52-59.

⁸² Even though the institutional challenges within the Southeast Atlantic Sub-region are many, they are not solely particular to the Sub-region. This has been a recurring global issue. Particularly with all the uncertainties that the International Community must have to brace itself for, in all domains and especially as ocean affairs are concerned.

Chart 1: Ocean Governance Architecture



Source: WOR 4, <https://worldoceanreview.com/en/wor-4/politics-and-the-oceans/on-the-difficulty-of-governing-the-sea/ocean-governance-in-a-wide-arena/>

1) Global Ocean Governance Bodies

Several International bodies or Organisations, directly or indirectly, play key and strategic roles in the general governance of the ocean at the global level, which directs the existing management at the level of the Sub-region. As seen in the Chart above, the UNGA is the main deliberative and representative organ of the UN tasked to discharge Secretariat functions under the Convention.⁸³ Hence, the United Nations Secretary-General (UNSG) through the Office of Legal Affairs of the UN, and its Division of Ocean Affairs and the Law of the Sea (DOALOS), as provided by Article 319 of the Convention, acts '*en lieu et place*' of the Secretariat of to the Convention. Paragraphs 2 and 3 of the same Article 319 state that the UNSG has diverse administrative competences ranging from reporting over issues of a general nature related to the Convention,⁸⁴ notifying on its accession and amendments,⁸⁵ circulating amendments adopted,⁸⁶

⁸³ This is contrary to the institutional management put in place by other global legal instruments like the UNFCCC Secretariat or the CBD Secretariat. See The UNCLOS, Preamble.

⁸⁴ UNCLOS, Article 319 (2) (a).

⁸⁵ UNCLOS, Article 319 (2) (b) and (c).

⁸⁶ UNCLOS, Article 319 (2) (d).

to convening of necessary meetings of States Parties to the Convention.⁸⁷ On their part, M. Marcus and J. Vince (2008) assert that⁸⁸ the UNGA has provided an important forum for the development of ocean governance and the law of the sea in many ways, among which is the organisation of the yearly UN Open-ended Informal Consultative Process on Ocean and the Law of the Sea.⁸⁹ In addition, in 1994 the GA decided to undertake an annual review and evaluation of the implementation of the Convention and other relevant developments; and requested the SG to report annually to the GA.⁹⁰

The United Nations Environment Programme (UNEP) is also that key global institution that intentionally centred, since 1974,⁹¹ part of its work on the regional management of the ocean through its Regional Seas Programme. The Sub-region has benefited from the catalytic effects of this programme not only because it saw, like in most regional seas in the world, the creation of its own regional sea instrument called the Abidjan Convention, but also because UNEP in order to ensure its effectiveness has been directly administering it.

The International Maritime Organisation (IMO), though adopted before the Convention, carries out activities that are in accordance with the regulatory framework of the UNCLOS. Both the legal and policy instruments of the IMO can easily be recognised in several articles of Part XII of the Convention, particularly those referring to “competent International Organisations” and on pollution from vessels. And they have contributed immensely in the development of both legal and policy instruments that have carved out the regional ocean governance system in the Southeast Atlantic Sub-region.⁹² The effects of IMO’s works in the Sub-region are centred essentially on maritime transport and maritime safety and security. Therefore, from IMO’s corpus of instruments, the Sub-region has developed its own regional/multilateral maritime

⁸⁷ UNCLOS, Article 319 (2) (e).

⁸⁸ M. Marcus and J. Vince (2008), *supra* Note 81.

⁸⁹ “Pursuant paragraph 356 of resolution 76/72 of 9 December 2021, the twenty-second meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea, in 2022, will, in its deliberations on the Report of the Secretary-General on oceans and the law of the sea, focus its discussions on the theme “Ocean observing”, meia.un.org/en?asset?k14/k14eeb71w6.

⁹⁰ This review and evaluation by the GA results in the annual GA resolution on ocean and the law of the sea.

Check A/RES/49/28. This same role of the UNGA can also be seen in the ongoing negotiations on the BBNJ Treaty.

⁹¹ This was done following the 1972 United Nation Conference on Human Development held in Stockholm.

⁹² An example of this IMO’s contribution is the MoU of Abuja on Ports States Control which covers the Sub-region of the Gulf of Guinea and maybe the entire Study Area.

agreements that ensure the security of its maritime domains and the different national ports against pollution of all sorts⁹³ and the different crimes at sea such as piracy and drugs.⁹⁴

Governing the ocean has to also do with the different activities related with fishing, deep seabed mining and even the rights of seafarers; and the Southeast Atlantic because of its rich marine biodiversity and vast marine and coastal environment open to all sort of activities, including deep seabed mining, the works of International Organisations such as the Food and Agriculture Organisation (FAO), the International Seabed Authority (ISA) and even the International Labour Organisation (ILO) are major actors in the development of ocean governance in the Sub-region. The work of FAO, as a UN specialised Agency, focuses on fishing activities within and beyond national, it is considered as a major custodian of 4 of the 10 indicators of SDG 14 dealing with fishery⁹⁵ It has developed both binding and non-binding instruments that are applicable within the Sub-region at country level or through its several existing RFMOs; these are the FAO Code of Conduct for Responsible Fisheries, the FAO Port State Measures Agreement, the Voluntary Guidelines on Catch Documentation Schemes, the Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries, and ecolabelling guidelines.⁹⁶ Bringing its stone to the global ocean governance architecture, the ISA has developed a Strategic Plan (ISBA/24/A/10) and a High Level Action Plan (HLAP) as adopted by its Assembly in 2018 and 2019 respectively. Through these instruments, ISA endeavours to focus on the following strategic directions in fulfilling its mandates and responsibilities for the protection of the marine environment.⁹⁷ Meanwhile, because ocean governance doesn't only have a conservation purpose, but also the wellbeing of all human particularly that of seafarer, the work of the ILO has developed instruments that protect the right of these people of the sea, through its standard-setting activities

⁹³ See Sections A and B of the next Chapter on IMO's legal regime on Port State Control Regime at both global and sub-regional levels.

⁹⁴ The Code of Conduct concerning the repression of piracy, armed robbery against ships, and illicit maritime activity in west and central Africa - June 2013. <https://www.imo.org/en/OurWork/Security/Pages/Code-of-Conduct-against-illicit-maritime-activity.aspx>.

⁹⁵ 10 (14.4.1, 14.6.1, 14.7.1 and 14.b.1) of the 10 SDG 14 indicators, of the 21 indicators are under the different activities related to ocean governance managed by the FAO.

⁹⁶ FAO, "FAO WORKING FOR SDG 14 Healthy oceans for food security, nutrition and resilient communities", 2017 <https://www.fao.org/3/i7298e/i7298e.pdf>.

⁹⁷ <https://www.isa.org.jm/our-work/protection-marine-environment> (accessed on 03 December 2022 at 21:43).

with respect to international protection of maritime labour as well as the Maritime Labour Convention of 2006.⁹⁸

Two other global bodies that are enabling the development of a strategic ocean governance workforce by helping in the shaping of the management of the marine and coastal environment therein are the United Nations Framework Convention on Climate Change (UNFCCC) Secretariat and the Intergovernmental Panel Climate Change (IPCC).⁹⁹ Indeed, the evolution of scientific research and the constant advocacy of International Personalities like His Royal Highness, Prince Albert II of Monaco¹⁰⁰ and Biliana Cicin-Sain¹⁰¹ of the nexus between the ocean and climate,¹⁰² brought the International Community to finally accept to stop excluding the interest or wellbeing of the ocean from the centre of climate discussions globally and within this Sub-region.

The Secretariat of the Convention on Biological Diversity (CBD) (1992) contributes directly and indirectly to the advancement of legal and policy frameworks enabling ocean governance in the Sub-region.¹⁰³ The Secretariat of this Convention which is also known as one of the Rio Conventions¹⁰⁴ has been at the centre of ocean governance. Scholarly works like that of P. Sands (1994),¹⁰⁵ Y. Tanaka (2001),¹⁰⁶ E.O. Wilson (2001)¹⁰⁷ or I.U. Jakobsen (2009)¹⁰⁸ have demonstrated that marine biological diversity is at the centre of human survival on earth as it

⁹⁸ George P Politakis, “Part II Commercial Aspects of the Marine Environment, 5 The International Labour Organization and Ocean Governance” in David Joseph Attard, Malgosia Fitzmaurice and Alexandros XM Ntovas (Eds.), *The IMLI Treatise on Global Ocean Governance: Volume II: UN Specialized Agencies and Global Ocean Governance*, Oxford Public International Law, 26 July 2018, <https://opil.ouplaw.com/view/10.1093/law/9780198823964.001.0001/law-9780198823964-chapter-5>

⁹⁹E. Johansen, “The Role of the Oceans in Regulating the Earth’s Climate: Legal Perspectives”, in Elise Johansen et al., *The Law of the Sea and Climate Change: Solutions and Constraints*, Cambridge Press, 2021, pp 1-21.

¹⁰⁰ Through the Fondation Prince Albert II de Monaco, His Royal Highness enabled the creation of several projects such as the “Because The Ocean”. He has also through his foundation partnered with organisations such as IOC-UNESCO and REV Ocean to champion the strengthening of Ocean Governance.

¹⁰¹ Dr. Biliana Cicin-Sain, “International Developments in Ocean Policies: National, Regional and Global”, Levels M. Vierros et al., “Draft Policy Brief on Marine Biodiversity and Networks of Marine Protected Areas”, *Global Forum on Oceans, Coasts, and Islands Global Oceans Conference 2010*, UNESCO, Paris, May 3-7, 2010, D. Freestone, “Draft Policy Brief on Improving Governance: Achieving Integrated Ecosystem-Based Ocean and Coastal Management”, April 2010.

¹⁰² D. Vidas et al., “Climate Change and the Anthropocene: Implications for the Development of the Law of the Sea” and RK. Craig, “Mitigation and Adaptation” in Elise Johansen (2021), *op. cit.* Note 81.

¹⁰³ See Vrancken, *supra* Note 40 and G. Etoga *supra* Note 76.

¹⁰⁴ Y. Tanaka, *A Dual Approach to Ocean Governance: The Cases of Zonal and Integrated Management in International Law of the Sea*, the Ashgate International Law Series, 2001, chapter 4, p. 125.

¹⁰⁵ P. Sands, ‘International Law in the Field of Sustainable Development’, 1994, BYIL.

¹⁰⁶ *Op. cit.* Note 104.

¹⁰⁷ E.O. Wilson, *The Diversity of Life*, new edition, London, Penguin Group, 2001.

¹⁰⁸ I.U. Jakobsen, *Marine Protected Areas in International Law: A Norwegian Perspective*, PhD thesis, Faculty of Law, University of Tromsø (UiT), (2009).

produces a third of the oxygen and moderates global climate. A situation that keeps the work of the Secretariat ongoing as it strives to ensure through the creation of new instruments such as its policy decision that gave birth to the Post-2020 Global Biodiversity Framework.¹⁰⁹ Supporting the works of States at all levels towards their sustainable governance and biodiversity loss are both the International Union for Conservation of Nature and Nature Resources (IUCN) and the Intergovernmental Science Policy Platform on Biodiversity and Ecosystem.

At this point of the paragraph, it is also important to make mention of International Judicial bodies as being those institutions whose work contribute directly or indirectly in the development and strengthening of a sub-regional ocean governance in the Sub-region. Indeed, the work of either the International Court of Justice (ICJ)¹¹⁰ at The Hague or that of the International Tribunal for the Law of the Sea (ITLOS) in Hamburg have immensely set the pace and given adequate direction to ocean governance in the Southeast Atlantic be it for cases related to maritime boundary delimitation¹¹¹ or to those dealing with the protection and preservation of the marine environment,¹¹² or again to the issue of governance of shared marine resources between two or more States.¹¹³ These two global judicial organs interpret the law within specific sets of facts regarding particularly in a case of uncertainties.¹¹⁴

From the UNGA to IPBES and to the global judiciaries, there is an existing global institutional collaboration that harnesses regional institutions.

¹⁰⁹CBD Secretariat, “REPORT OF THE OPEN-ENDED WORKING GROUP ON THE POST-2020 GLOBAL BIODIVERSITY FRAMEWORK ON ITS THIRD MEETING (PART II)”, Geneva, Switzerland, 14–29 March 2022; Table 1: IUCN views on the Zero draft Post-2020 Global Biodiversity Framework, <https://www.iucn.org/sites/default/files/2022-07/iucn-views-zero-draft-post-2020-global-biodiversity-framework-table-1-rev-240220.pdf> (visited 6 September 2022, at 9:00 am).

¹¹⁰ International Court of Justice, *Case Concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*, Year 2002, General List No. 94, 10 October 2002.

¹¹¹ *Idem*.

¹¹² ITLOS, Dispute concerning delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives), Case No. 28, ongoing case, <https://www.itlos.org/en/main/cases/list-of-cases/dispute-concerning-delimitation-of-the-maritime-boundary-between-mauritius-and-maldives-in-the-indian-ocean-mauritius/maldives/>.

¹¹³ See generally, INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA REPORTS OF JUDGMENTS, ADVISORY OPINIONS AND ORDERS REQUEST FOR AN ADVISORY OPINION SUBMITTED BY THE SUB-REGIONAL FISHERIES COMMISSION (SRFC) (REQUEST FOR ADVISORY OPINION SUBMITTED TO THE TRIBUNAL), List of cases: No. 21, ADVISORY OPINION OF 2 APRIL 2015.

¹¹⁴ See on this the Separate Opinion of Judge Ndiaye on the “THE SUB-REGIONAL FISHERIES COMMISSION (SRFC) (REQUEST FOR ADVISORY OPINION SUBMITTED TO THE TRIBUNAL), List of cases: No. 21, ADVISORY OPINION OF 2 APRIL 2015, https://www.itlos.org/fileadmin/itlos/documents/cases/case_no.21/advisory_opinion_published/2015_21-advop-E.pdf, https://www.itlos.org/fileadmin/itlos/documents/cases/case_no.21/advisory_opinion_published/2015_21_SO_Ndi-E.pdf, accessed 09/09/2022 at 10:54 - 58 am.

2) The African Union and the African Economic Community

Arguing on the importance of having a strong continental or regional institution ensuring the governance of the ocean in the Africa, P. Vancken (2015)¹¹⁵ explains the fact that because of the “constraints with which all African States are confronted to varying degrees, continental cooperation and regional cooperation, [coordinated by well-established institutional framework], are critical features of the African ocean governance framework”. This assertion has been verified and proven to be true over the decades, as African States, particularly coastal States, have come to the realisation of the vital role that their maritime domain plays in their development and the securing of peace within and outside of their boundaries.

Indeed, these regional efforts are centred under the African Union (AU)¹¹⁶ which has also created a good number of regional bodies under its umbrella. These specialised organs of the AU are helping to consolidate the need for institutional collaboration and cooperation in the strengthening of ocean governance in Africa and, particularly in the Southeast Atlantic Sub-region. Some of these specialised regional bodies are the stand-alone Department of Maritime Affairs within the AU Commission, an African Naval Architects and Maritime Engineers Forum, an African Safety of Navigation Forum, and a 2050 AIM Strategy High Level College of Champions.¹¹⁷

Besides the AU, the integrated institutional efforts towards the governance of the AMD are also regarded as falling within the activities of the Economic Community of Africa (ECA). This organ with all its pitfalls is considered to enhance maritime transport in Africa.¹¹⁸

From the above regional institutions, there is an underpinning of the key role of a sub-regional organ like the Abidjan Convention Secretariat in the governance of the ocean at the sub-regional level.

¹¹⁵ P. Vancken (2015), *Supra* Note 40.

¹¹⁶ <https://au.int/en/newsevents/20150724/1st-african-day-seas-and-oceans-au-commission-hqs-addis-ababa-kickoff-decade> (visited on 06 September 2022 at 18:35) (1st African Day of Seas and Oceans at the AU Commission HQs in Addis Ababa. & Kickoff of the Decade of African Seas and Oceans (2015-2025)).

¹¹⁷ P. Vancken (2015), *supra* Note 40.

¹¹⁸ *Idem*.

3) The Secretariat of the Abidjan Convention: UNEP?

The Abidjan Convention, as one of the Regional Sea Conventions of the UNEP,¹¹⁹ was signed on 1 October 1981 by twelve of the coastal States of the West and Central African Sub-region.¹²⁰ It has been regarded from its creation as a comprehensive umbrella agreement¹²¹ for the protection of the marine environment that would enable cooperation among States of the Sub-region in this peculiar domain.¹²²

Thus, in order to carry out the implementation¹²³ envisaged by its authors and Contracting Parties, UNEP was designated as the Secretariat of the Convention. UNEP, however, as a body does not directly carry out its responsibilities of Secretariat to the Convention. It created a full-fledged Sub-regional body, called the Abidjan Convention Secretariat situated in Abidjan, the Republic of Ivory Coast, and headed by an Executive Secretary.¹²⁴ It is the responsibility of this exceptional organ to:

- “(i) prepare and convene the meeting of Contracting Parties and conferences provided for in Articles 17 and 18;
- (ii) transmit to Parties notifications, reports and other information received in accordance with articles 3, 12 and 22;
- (iii) perform the functions assigned to it by the Protocols of the Convention;
- (iv) consider enquiries by, and information from, the Contracting Parties and consult with them on questions related to this Convention and its related Protocols and Annexes thereto;
- (v) coordinate the implementation of cooperative activities agreed upon by the Meeting of Contracting Parties and Conferences provided in article 17;
- (vi) enter into such administrative arrangements as may be required for the effective discharges of the Secretariat functions.”¹²⁵

¹¹⁹ *Supra* Note 47.

¹²⁰ The Abidjan Convention area is the exact representation of the Southeast Atlantic Sub-region under study in this work.

¹²¹ *Supra* Note 47.

¹²² Abidjan Convention, Preamble, Paragraph 4.

¹²³ Article 16, *idem*.

¹²⁴ *Idem*.

¹²⁵ Abidjan Convention, Article 16 (1).

For an effective and efficient carrying out of its umbrella institutional role in the governance of the ocean within the Sub-region, the Secretariat relies on the contributions of the designated appropriate national authority who coordinates national efforts for the implementation of the Convention and its Protocols.¹²⁶ In most cases, this national authority is the Ministry of Environment.¹²⁷

This sub-regional body has indeed participated in many international fora during which its Executive Secretary or one of his collaborators endeavoured not only to showcase the fact that the Sub-region is affected by global ocean stressors such as marine biodiversity loss or marine litter, but that their Office is engaged in implementing, with the contributions of States Parties to the Convention, both the provisions of this sub-regional instruments and its Protocols, but all other MEAs.¹²⁸ The Abidjan Convention Secretariat, therefore, in the carrying of its functions, not only relies on the effective cooperation of its Contracting States but depends immensely and in many ways on its institutional cooperation with other sub-regional bodies within the Sub-region.¹²⁹ A cross-sectoral institutional cooperation which is much needed for the achievement of the good governance of the marine and environment in the Sub-region.¹³⁰

Paragraph 2: Specialised Sub-Regional Institutions

Still in the studying of the integrative nature and intersectoral dependence that exist even at the level of sub-regional ocean governance, particularly within the geographical area of this study, this part is intended to focus on the role of specialised sub-regional institutions such as Regional

¹²⁶ *Idem*, Paragraph 2.

¹²⁷ In Cameroon, it is the Minister of the Environment, Nature Protection and Sustainable Development, and the Ministry of Forestry and Wildlife while it is Federal Ministry of Environment.

¹²⁸ Abidjan Convention Secretariat and UNEP, “Marine litter in West, Central and Southern Africa. Need for A Regional Approach: (Convention for Co-operation in the Protection and Development of the Marine and Coastal Environment of the West, Central and Southern African Region)” 16th Global Meeting of the Regional Seas Conventions and Action Plans Athens, Greece, 29 Sept – 1 Oct 2014,

https://wedocs.unep.org/bitstream/handle/20.500.11822/11008/abidjan_convention_marine_litter_in_west_central_and_southern_africa-need_for_a_regional_approach_-_about_bamba.pdf?sequence=1&isAllowed=1 (downloaded on 07 September 2022 at 16:54 pm); NASSERE KABA NASSERE KABA (Interim Coordinator of the Abidjan Convention RCU), “MAIN BIODIVERSITY RELATED MAIN BIODIVERSITY RELATED ACHIEVEMENTS AND CHALLENGES ACHIEVEMENTS AND CHALLENGES”.

¹²⁹ Example of the Convention Secretariat efforts towards building institutional cooperation is the Decision-/CP.10/15. Cooperation with Regional Fisheries Bodies (RFBs).

¹³⁰ UN Environment, “Realising Integrated Regional Oceans Governance – Summary of case studies on regional cross-sectoral institutional cooperation and policy coherence”, UN ENVIRONMENT REGIONAL SEAS REPORTS AND STUDIES NO. 199, (2017).

Fishery Bodies (1), Regional Economic Communities (2) and Sub-regional Non-governmental Platforms (3).

1) Regional Fishery bodies

In application to the Provisions of UNCLOS and relevant provisions of the UNFSA, States of the Southeast Atlantic Sub-region are mandated to cooperate at all levels, either through sub-regional or regional organisations for the conservation of straddling fish stock or associated species in their EEZs and Adjacent to the Zone,¹³¹ or via global international organisations with a view of ensuring the conservation and promotion of the optimum utilisation of Annex I species,¹³² and also for the purposes of conserving and joining in the management of High Seas living resources.¹³³

In this regard, therefore, the sub-region's ocean governance institutional mechanism is enshrined in a couple of regional fishery bodies, including regional fishery management organisations.¹³⁴ These sub-regional institutions which, are either Regional Fishery Advisory Bodies (RFBs) (CECAF,¹³⁵ COREP,¹³⁶ ACAP¹³⁷), Regional Fishery Management Organisations (RFMOs – non-species-specific) such as the SEAFO,¹³⁸ or FAO Advisory Bodies and FAO Management Bodies (CECAF¹³⁹ and CIPAA¹⁴⁰), and depending on their objectives, areas of competence,

¹³¹ UNCLOS, Article 63.

¹³² *Idem*, Article 64.

¹³³ *Idem*, Article 118.

¹³⁴ B. Kuemlangan (Chief – Development Law Service, FAO), “Fisheries”, Module 6.2: Regional Fisheries Management, Ocean Governance Capacity Building Training Program, Online Workshop for Africa Region, PROBLUE (the World Bank) – The University of Melbourne – United Nations Division for Ocean Affairs and the Law of the Sea – International Seabed Authority -

¹³⁵ CECAF is FAO's Fishery Committee for the Eastern Central Atlantic; <https://www.fao.org/cecaf/overview/ar/> (accessed 12/09/2022 at 7:49 am). Visit also

https://books.google.no/books?id=PIW4DwAAQBAJ&pg=PA43&lpg=PA43&dq=CECAF&source=bl&ots=GHq3kgvMvX&sig=ACfU3U3Wd_2PaVvI8_C9GQwwKp6hbPy__A&hl=no&sa=X&ved=2ahUKEwjukprQxo76AhVsSvEDHRLqBYEQ6AF6BAgJEAM#v=onepage&q=CECAF&f=false and https://www.researchgate.net/figure/Area-covered-and-Members-States-of-CECAF-Fishery-Committee-for-the-Eastern-Central_fig1_305405015 (accessed 12/02/2022 at 7:55 am).

¹³⁶ COREP is the Regional Commission of Fisheries of the Gulf of Guinea; T. Lobach et al., “Regional Fisheries Management Organisations and Advisory Bodies: Activities and Developments, 2000-2017”, FAO Fisheries and Aquaculture Technical Paper No. 651, Rome, FAO 2020;

<https://books.google.no/books?id=6sbaDwAAQBAJ&pg=PA85&dq=COREP&hl=no&sa=X&ved=2ahUKEwi400OMyY76AhUISPEDHbdjBXEQ6AF6BAgDEAI#v=onepage&q=COREP&f=false> (accessed 12/02/2022 at 8:01 am).

¹³⁷ ACAP is the Agreement on the Conservation of Albatrosses and Petrels.

https://books.google.no/books?id=UMt6DwAAQBAJ&pg=PA26&dq=regional++fishery+body,+ACAP&hl=no&sa=X&ved=2ahUKEwiayJyQzI76AhVkJfEDHSpuD_MQ6AF6BAgIEAI#v=onepage&q=regional%20%20fishery%20body%20%20ACAP&f=false (accessed 12/02/2022 at 8:15 am).

¹³⁸ See Section A, Paragraph 1 (3) of this Chapter.

¹³⁹ *Ibid* Note 142.

¹⁴⁰ *Ibid* Note 144.

species covered, the structure of their Commission (when there is one provided for in the agreement), are all contributing towards the good governance of the ocean in the Sub-region. Active arms of the implementation of legal and policy instruments designed by global bodies such as the FAO, they enable in their own way the fight against the negative impacts of human activities on all fish stocks.¹⁴¹

However, they are often faced with the challenge of overlapping their competences and the lack of communication among them. A situation that is also heightened by the lack of financial capacities, which would probably be lessened if there is a strong contribution from the Sub-region's Regional Economic Communities.

2) Regional Economic Communities

Identified by the AU as its pillars, African Regional Economic Communities are eight in all and were established under the Abuja Treaty (1991), which seeks since its entering in force in 1994 to create an African Common Market.¹⁴² They are specifically considered as the building block of this Common Market as they focus on wealth generations for their Member States.¹⁴³ It is, certainly, a purposeful act on the part of the authors of the 2050 AIMS to have based themselves on the continent's RECs while writing, and also why they made its paragraph 24 to present RCEs as key stakeholders towards the achievement of the 2050 AIM Strategy.¹⁴⁴

Thus, within the Southeast Atlantic Sub-region, from the North to the South, there are three main RECs.¹⁴⁵ Economic Community of West African States (ECOWAS),¹⁴⁶ Economic Community

¹⁴¹ FAO Compliance Agreement and FAO-sponsored Code of Conduct for Responsible Fisheries. See also Haward and Vince (2008), p. 9. Committee on Fisheries (34th Session), "Developments in Global and Regional Processes", FAO, 1–5 February 2021.

¹⁴² <https://au.int/en/recs> (accessed on 8/09/2022 at 2:42 pm).

¹⁴³ *Idem*.

¹⁴⁴ AU, 2050 AFRICA'S INTEGRATED MARITIME STRATEGY (2050 AIM STRATEGY®), AU, Version 1.0, 2012, Paragraph 24; UNEP, "The first meeting of the African Ocean Governance Strategy", Istanbul, 19 October 2015 UNEP/Ocean Governance/WG.1/INF5.

¹⁴⁵ For the purpose of this work, only those RCEs that have coastal States and Members are our focus.

¹⁴⁶ The Economic Community of West African States was established by the Treaty of Lagos on 28 May 1975; this treaty experienced a revision in 1993 as it saw its scope cooperation being expanded: to economic cooperation was added integration; <https://archive.uneca.org/oria/pages/ecowas-economic-community-west-african-states> (accessed 08/09-2002 at 15:45 pm). <https://ecowas.int/> (accessed 08/09-2022 at 15:51 pm.).

of Central African States (ECCAS)¹⁴⁷ and Southern African Development Community (SADC).¹⁴⁸

These sub-regional economic bodies have not specifically within their scope of competence acknowledged the key role of the maritime domains of their individual coastal States and that of their respective sub-regional area of competence. However, following the spirit of the AU's 2050 AIMS, and the urgent need for the Sub-region to ensure that the governance of its marine and coastal environment is not only geared towards conservation, but also toward guaranteeing sustainable economic benefits, it safe to say here that these RECs without any doubt have a crucial role to play in this regard.

Indeed, as some non-governmental stakeholders have demonstrated in their works, in the fight against current and future ocean stressors, it is also very important to associate to these efforts the economic dimension of ocean governance alongside its ecological dimension. This marriage between ecology and economy is calling the attention of new actors, which is settling-in more profoundly the integrative approach to ocean governance.

3) Sub-Regional Non-Governmental Platforms: The STRONG High Seas Project of PROG

In response to the integrative approach applicable today to ocean governance in general, and sub-regional ocean governance in particular, the management of the Southeast Atlantic Sub-region has experienced for a couple of decades now different kinds of contributions from a new set of stakeholders. These new actors are neither International Organisations, Non-Governmental International Organisations nor Non-Governmental Organisations. Rather, they are the coming together of multiple actors interplaying and for one goal or purpose, which in a way is enabling

¹⁴⁷ The membership of the Economic Community of Central African States was established in October 1983 by members of the Customs and Economic Union of Central African States (UDEAC). <https://archive.uneca.org/oria/pages/eccas-economic-community-central-african-states> (accessed 08/09-2022 at 15:27 pm.). <http://www.ceeac-eccas.org/> (accessed 08/09-2022 at 15:30 pm.).

¹⁴⁸ The Southern African Development Community was created in 1992 by the Heads of State and Government of this Sub-region with the optic to deepen their integration and cooperation in the form of a community. <https://archive.uneca.org/oria/pages/sadc-southern-african-development-community> (accessed (08/09-2002 at 15:38 pm.). <https://www.sadc.int/> (accessed 08/09-2022 at 15:40 pm.).

cross-fertilisation of ideas that would lead to actions enabling the sustainable development of this area.¹⁴⁹

One of these platforms is the STRONG High Seas Project (‘Strengthening Regional Ocean Governance for the High Seas’)¹⁵⁰ which was initiated by Ben Boteler and Carole Durussel¹⁵¹ of the Institute of Advanced Sustainability Studies (IASS), and that brought together, for the purpose of its implementation different categories and sectoral institutions among which is the IASS, Institute for Sustainable Development and International Relations (IDDRI),¹⁵² International Union for Conservation of Nature (IUCN), BirdLife International, International Ocean Institute – African Region,¹⁵³ UNEP through the Abidjan Convention.¹⁵⁴

¹⁴⁹ A perfect example of such a platform is the Marine Regions Forum administered by the Institute of Adaptability and Sustainable Studies (IASS), Potsdam, Germany.

¹⁵⁰ The STRONG High Seas project (5-year project: June 2017 – May 2022) is part of the International Climate Initiative (IKI; www.international-climate-initiative.com/en/). The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU) supports this initiative based on a decision adopted by the German Bundestag. <https://www.prog-ocean.org/our-work/strong-high-seas/> (accessed 12/09-2022 at 08:26 am.).

¹⁵¹ C. Durussel is presently the Deputy Executive Secretary of OSPAR.

¹⁵² <https://www.iddri.org/en/publications-and-events/presentation/strong-high-seas-project> (accessed 12/09-2022 at 08:34 am.).

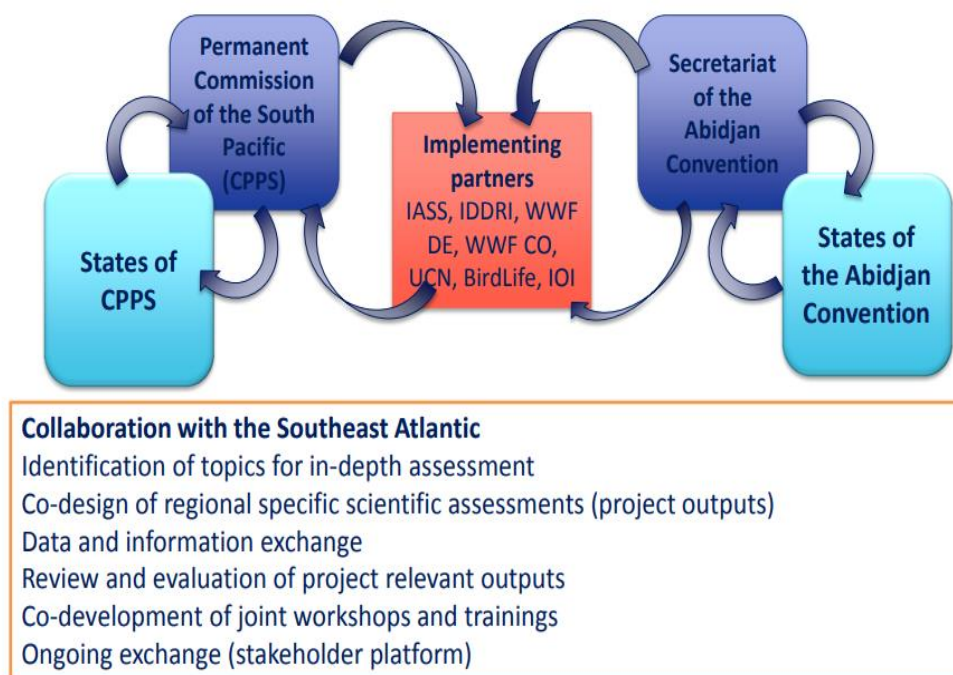
¹⁵³ <http://ioisa.org/projects/> (accessed 12/09-2022 at 08:37 am.).

¹⁵⁴ For the purpose of more insight on the project, listen to Dr. Shannon Hampton on Ocean Governance, Ocean Month Podcast, <https://afripods.africa/episode/dr-shannon-hampton-on-ocean-governance/0821db63-3696-4ff7-b2e2-7a063f40a445> (accessed 12/09-2022 at 08:42 am.), June 16th, 2021.

Image 2: Representation of the Institutional Collaboration and Cross-fertilisation in the Implementation of the STRONG High Seas Project in Southeast Atlantic Sub-region



Collaborative approach



SOURCE: Ben Boteler (IASS), STRONG High Seas Strengthening Regional Ocean Governance for the High Seas, August 2018.

This multisectoral and multidisciplinary Project, as its name indicates, focuses on the governance of marine biodiversity in the High Seas adjacent to the area of study, and in the light of the ongoing UN negotiations towards the development of the LBI.¹⁵⁵

Presenting the objectives of the Project and its core role in the Sub-region, which is to strengthen its regional ocean governance for the High seas adjacent to the EEZ of its coastal States, B. Boteler, Co-Lead of the Project, had said that it aimed at:¹⁵⁶

¹⁵⁵ <https://press.un.org/en/2022/sea2157.doc.htm>; also, for the background of the Intergovernmental Conference on Marine Biodiversity of Areas Beyond National Jurisdiction, visit https://www.un.org/bbnj/content/background?_gl=1*zmmoll*_ga*MTI1OTI4MzEwMy4xNjYyNTQyODY3*_ga_TK9BQL5X7Z*MTY2Mjk2NTIxMC40LjAuMTY2Mjk2NTIxMC4wLjAuMA.

¹⁵⁶ Ben Boteler (IASS), STRONG High Seas Strengthening Regional Ocean Governance for the High Seas, August 2018; this presentation was done in Abidjan, the Ivory Coast, at the very first of the five workshop that were to be held within the framework of the project.

- “Characterising the current status and challenges for ocean governance in the Southeast Atlantic;
- Identifying and defining key interests and challenges for ocean governance in the Southeast Atlantic;
- Prioritising current and future needs for strengthening ocean governance and identifying pathways for successfully linking regional needs and opportunities and with a global vision of ocean governance;
- Taking initial steps towards fostering exchange between relevant actors and stakeholders in the Southeast Atlantic;
- Identifying and assessing opportunities, challenges, overlaps and gaps in the current legal and institutional framework in the Southeast Atlantic.”

Today, the Project has come to an end without the ILBI being finally adopted by the nations of the World.

Even with that, this Project during the timeline created a platform of collaboration and cooperation for stakeholders within the Sub-region and those outside which have strategic interests in the good governance of its marine ecosystem and resources both within and beyond the national jurisdictions of its coastal States.

All in all, projects like the STRONG High Seas Project come to remind both the International Community and the Southeast Atlantic that a lot is still to be done if the marine ecosystem and its resources are to be sustainable enough to meet the needs of both the present and the future Generation. Thus, there is a need to keep looking for solutions if the current ones are not effective.

Hence the present advocacy of the International Community in the development and implementation of ecosystem-based management tools, among which is the development of marine protected areas within or beyond national jurisdictions, as a strategic means to strengthen ocean governance.

Chapter 2: Transboundary Marine Protected Areas in the Southeast Atlantic Sub-region

From the general takeaways of the previous chapter, it is understood that the future welfare of human populations in the Southeast Atlantic Sub-region depends to a large extent on its capacity to manage uses and impacts on its marine and coastal environment in order to undermine precisely its health, resilience, and its resources.¹⁵⁷ This situation has given birth to the redirection of the business as usual practices in ocean governance, to the focus of even stronger engagements, for the achievement of SDG 14 through innovative approaches such as the ecosystem-based management approach, precisely its tool called MPAs.¹⁵⁸

Generally, the use of this ecosystem-based management tool is often in the fisheries sector¹⁵⁹ as it seems to focus essentially on biodiversity, be it in areas within or beyond national jurisdictions. Emphasis on the key role of MPAs in the management of fisheries were made again during the last held Fifteenth Round of Informal Consultations of States Parties to the UN Fish Stocks Agreement (17 to 19 May 2022).¹⁶⁰ For the representatives of the RFBs who intervened during the meeting, ecosystem-based adaptation including MPAs hold a vital role in the management of fish stocks within their areas of competence.¹⁶¹ However, and for the purpose

¹⁵⁷ Report of the Abidjan Convention Sustainable Seas pilot workshop, Grand-Bassam (Côte d'Ivoire) 18–21 June 2012 (The Abidjan Convention Sustainable Seas pilot workshop was organised by the Abidjan Convention Secretariat and GRID-Arendal under the auspices of the Abidjan Convention and UNEP, with contributions from the Institute of Marine Research (Norway), the World Wildlife Fund and ODINAFRICA), p. 4.

¹⁵⁸ Peter Thomson - UN Secretary-General's Special Envoy for the Ocean, "Our Ocean, Our Future: global action to achieve SDG 14" June 8, 2018, in Environment, Impact, Uncategorized, United Nations <https://impakter.com/ocean-future-global-action-achieve-sdg-14/> (accessed on 22 September 2022 at 15:21 pm).

SDG KNOWLEDGE HUB, "UN Analyzes Ocean Conference Commitments", A project by IISD, 24 April, 2018, <https://sdg.iisd.org/news/un-analyzes-ocean-conference-commitments/>, (accessed on 22 September 2022 at 15:22 pm). UN Conference, "Dhaka reaffirms its commitment to achieving SDG-14", Bangladesh Sangbad Sangstha. Dhaka | Published: 18:41, Jul 01, 2022 | Updated: 18:42, Jul 01, 2022, <https://www.newagebd.net/article/174808/dhaka-reaffirms-its-commitment-to-achieving-sdg-14>. UN, "Voluntary Commitments for the implementation of Sustainable Development Goal 14", https://sdgs.un.org/topics/oceans-and-seas/vcs?gclid=Cj0KCQjwj7CZBhDHARIsAPPWv3f6kje_wZLOxAdLgFTNBDOzuqYmhnPudXoL5hQx7W7ti2QE7cKgoUYaAiAgEALw_wcB, (accessed on 16 September 2022 at 15:21 pm).

¹⁵⁹ B. Ngounou (2021), *infra* Note 286, indicated in his article on the creation of the first marine park ("Manyange na Elombo" park) located on Cameroon's maritime border with Equatorial Guinea, that its main objective is to prevent incursions by foreign industrial fishermen who are depleting the country's fisheries resources".

¹⁶⁰ UN, "Fifteenth round of Informal Consultations of States Parties to the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, (New York, 17 to 19 May 2022), ICSP15/UNFSA/ INF.3, 22 June 2022,

https://www.un.org/depts/los/convention_agreements/ICSP15/22/ICSP15final_for_website.pdf.

¹⁶¹ Some of these RFBs are those found in the Southeast Atlantic Sub-region.

https://www.un.org/depts/los/convention_agreements/icsp15doc/ICSP%2015%20Organization%20of%20work_to%20web.pdf.

of this study, the development of TBMPAs in the Southeast Atlantic should not only be driven by sustainable fishery conservation and management. There ought to be, for the purpose of integration and for the benefit of all stakeholders and the sustainability of all other activities taking place in the maritime domain of the Sub-region, this gear more interests if it is a community basket.

It is obvious, therefore, that in carrying out the protection and preservation of their marine and coastal environment, States along the Southeast Atlantic, are expected to develop national MPAs as is the case with South Africa.¹⁶² However, having only national MPAs is likely not going to solve the various challenges facing the marine ecosystem and its biodiversity within the Sub-region. In line with Article 197 of Part XII of the UNCLOS, there is a need for States of this Sub-region to cooperate either under a sub-regional body, or directly among themselves¹⁶³ in order to deal with these common challenges and to strengthen their shared regional ocean governance existing mechanisms. What other better way to do it, than developing TBMPAs or Networks of MPAs within the Sub-region? In other words, the scope of Part XII of UNCLOS is not limited to pollution, at it reflects the general need to protect and conserve the marine environment. By this, it clearly gives room for the establishment of TBPMAs.

Certainly, the development of TBMPAs or Networks of MPAs at the Sub-regional level and between two States, as this Chapter will be examining, should be the bedrock for the harmonisation of laws and policies at the Sub-regional level and at the bilateral level in States' cooperation. This tool is looked at in this work as a strong mechanism to strengthen cooperation for the sustainable governance of their shared marine ecosystems and their non-living and living – particularly – marine resources.¹⁶⁴ For more clarity as to the purpose of this work, the focus is not on the development of TBMPAs or Networks of MPAs towards the sole protection of marine

¹⁶² According to the South African database on MPA, 5 per cent of South Africa's oceans are protected by 41 marine protected areas. <https://www.marineprotectedareas.org.za/> (accessed on 16 September 2022 at 15:21 pm).

¹⁶³ WOR 7, Marine Management (Chapter 8), The Ocean, Guarantor of Life – Sustainable Use, Effective Protection | 2021, <https://worldoceanreview.com/en/wor-7/marine-management-aspiration-and-reality/new-approaches-to-marine-management/> (accessed on 23 September 2022 at 10:48).

¹⁶⁴ *Idem*.

biodiversity,¹⁶⁵ but it is laying emphasis on the need to develop this tool for the protection of the marine ecosystem as whole and the sustainable development of its service.¹⁶⁶

It is, therefore, obvious that though not present as they should, MPAs are not totally absent in the Sub-region. However, the development of more MPAs, and particularly within the context of this study, Transboundary Marine Protected Areas (TBMPAs or Networks of MPAs),¹⁶⁷ is of essence and urgency.¹⁶⁸ Thus, this chapter aims at looking at the norms and policies applicable to the creation and the management of TBMPAs in the Sub-region on one hand, and on the other hand the foundation of their political grounds in the light of existing institutional frameworks (Section A). On a more specific note, it is also going to examine the possibilities or needs of using bilateral cooperation in developing TBMPA within the Sub-region; the case study of this bilateral TBMPA is that of Cameroon and Nigeria (Section B).

Section A: A Sub-regional Network of MPAs

The purpose of this Section is to examine the legal and policy grounds of establishing TBMPAs or a Network of MPAs (for the purpose of this Section, these two terms will be used interchangeably to mean the same thing) within the geographical area of the Sub-region which, generally will be within the EEZs and, especially with the current international negotiations on the ILBI Treaty, with at the High Sea,¹⁶⁹ and between two States.¹⁷⁰

Indeed, it is true that most legal instruments do not specifically speak of TBMPAs or Networks of MPAs. However, those that address this ecosystem-based management tool only speak of

¹⁶⁵ J. Assis et al., “Potential Biodiversity Connectivity in the Network of Marine Protected Areas in Western Africa”, *Frontiers in Marine Science*, Sec. Marine Conservation and Sustainability, 30 November 2021, <https://doi.org/10.3389/fmars.2021.765053>.

¹⁶⁶ See generally the publication of G.R.I.D ARENDAL and UNEP on their joint story on “Marine Ecosystem Services and Sustainable Developments, 2016 <https://www.grida.no/publications/245> (accessed on 23 September 2022 at 11:00). Palacios E, van Beukering PPJH, van Zanten B, Lacle F, Schep S, Soellner I (2021) Linking ecosystem services and the Sustainable Development Goals in Small Island Developing States: the case of Aruba. *One Ecosystem* 6: e71033. <https://doi.org/10.3897/oneeco.6.e7103>. UNCTAD, “Oceans Economy and Ecosystem services: sustainable fisheries and coastal tourism”, Side event to the CBD COP 13, 05 December 2016, Youth Group Meeting Room, Sunrise building, Second Floor, Hotel Moon Palace, Cancun, Mexico, <https://unctad.org/meeting/oceans-economy-and-ecosystem-services-sustainable-fisheries-and-coastal-tourism-side-event> (accessed on 23 September 2022 at 11:08).

¹⁶⁷ A. Caveen et al., *The Controversy over Marine Protected Areas*, SpringerBriefs in Environmental Science, DOI 10. 1007/978-319-10957-2_1.

¹⁶⁸ See J. Assis et al., *supra* note 165.

¹⁶⁹ See generally, <https://www.un.org/bbnj/>.

¹⁷⁰ J. Guerreiro et al., “The role of international environmental instruments in enhancing transboundary marine protected areas: An approach in East Africa”, *Marine Policy* 35 (2011) 95–104.

MPAs being seen a greater protection of marine ecosystems and the needs for coastal States to each create them. J. Guerreiro et al. (2011) draws attention to the fact that this is not going to be enough since individual national MPAs will likely straddle maritime boundaries and, thus, necessitates cooperation between States.¹⁷¹

Building from the first Chapter and bearing in mind that there is going to be a further development in the second part of this work on the advantages of having this tool in the Sub-region, this Section shall dwell on the study of the legal framework (Paragraph 1) or/and policy framework (Paragraph 2) facilitating the strengthening of ocean governance cooperation through the establishment of TBMPAs in the Sub-regional.

Paragraph 1: Legal Frameworks and Instituting Organs

Like anywhere else in the world, the creation of MPAs is one of the new and effective solutions to the management of the ocean, even at the sub-regional level.¹⁷² A situation that warrants the Southeast Atlantic to also take advantage of this tool for the wellbeing of both its marine ecosystem and its population.

This part, therefore, is intended to examine the different legal regimes applicable to the development of TBMPAs in the Sub-region. In other words, understanding the need of having this tool in the Southeast Atlantic invites us to look at the global (1), regional (2) and sub-regional (3) normative obligations as they enhance cooperation in the creation of TBMPAs in the Sub-regional.

1) Global Legal Obligations

With the obligation to the protect and preserve of the marine and coastal environment through appropriate means¹⁷³ binding States of the Southeast Atlantic Sub-region, and in line with the general spirit of MEAs in terms of the necessity to cooperate, the LOSC constitutes the

¹⁷¹ *Idem.*

¹⁷² WOR 7, *infra*, Note 171.

¹⁷³ See generally UNCLOS, Articles 192 and 194(5).

primary legal regime that governs maritime activities such as the creation of TBMPAs.¹⁷⁴ The ‘Constitution of the Ocean’, clearly in its Part XII, Section 2 and Article 197, outlines the obligations of States within the geographical area of the Sub-region to “[...] cooperate [...], as appropriate, on a regional basis directly or through competent international organisations, in formulating and elaborating international rules, standards and recommended practices and procedures consistent with this Convention, for the protection and preservation of the marine environment, taking into account characteristic [sub-regional] features.” This global legal stage given by the LOSC for the development of TBMPAs in the Sub-region is very strategic and opportunistic for its States in their constant efforts to cooperate towards a better management of their common marine ecosystem and its resources.

Besides the LOSC, there other global legal instruments through which the States along the coastline of the Sub-region are obligated to develop a Network of MPAs to strengthen the regional governance of their marine and coastal environment. These global regimes applicable to TBMPAs in the Sub-region are all endeavouring not to allow their implementation to affect that of the LOSC.¹⁷⁵ Rather they do not provide the States of the Sub-region with express rights and obligations to the creation of TBMPAs under a sub-regional organisation. Nevertheless, like the CBD, they complement the LOSC by specifically instructing the States of this Sub-region that are their Contracting Parties, to develop MPAs, which in order to avoid the negative effects of their transboundary nature will then be constituted into Networks of MPAs.¹⁷⁶ In its Article 22(2), the CBD provides that “Contracting Parties shall implement this Convention with respect to the marine environment consistently with the rights and obligations of States under the law of the sea.” Therefore, for the purpose of developing MPAs in areas within and beyond national jurisdictions,¹⁷⁷ this global instrument invites its Member States to cooperate among them as possible as it may be under international organisations in areas beyond their jurisdictions and for the aim of conservation and sustainable development of biological diversity (used essentially in this work as marine biodiversity).¹⁷⁸ With this call, it should be clear that States of the Southeast

¹⁷⁴ See generally UNCLOS, Preamble, Para 4, where this global instrument is clearly presented as the establishment platform of the “legal order of the sea and the oceans”. See also, I.U. Jakkobsen, *supra* Note 108, at page 27 of her PhD Thesis.

¹⁷⁵ I.U. Jakkobsen, *supra* Note 108, p. 108.

¹⁷⁶ For more information on the existence of a Network of MPA in this Sub-region, see the work of the Regional Network of Marine Protected Areas in West Africa (RAMP AO), Secretariat@rampao.org, www.rampao.org.

¹⁷⁷ CBD, Article 4.

¹⁷⁸ CBD, Article 5.

Atlantic are under international obligation, which though might still be withheld under their sovereign rights or political wills, create Networks of MPAs under any of the existing sub-regional organisations.¹⁷⁹

The legal work under the IMO enabling the suggestion of MPAs – under this study TBMPA – in marine areas that can be assessed as vulnerable and valuable areas to the Sub-region and its people, is another global body of instruments that if adequately applied will not be estopped by provisions such as the ones allowing innocent passage to ships through Territorial Seas,¹⁸⁰ and freedom of navigation in the EEZs,¹⁸¹ or complete freedom in the High Sea¹⁸² adjacent to areas under the jurisdiction of its twenty-two States.¹⁸³ Unlike the other global regimes, the legal framework under IMO does not deal with biodiversity conservation and protection, though at the end of the day, it is biodiversity that is being protected. Rather, it protects the “substrate, waters or biota within the designated area, owing to physical damage, chemical pollution and/or unmanaged extraction”.¹⁸⁴ This, therefore, allows the Sub-region and its States to establish some areas of their maritime domains as “Particularly Sensitive Sea Area (PSSA)”¹⁸⁵ under its MAPROL Conventions¹⁸⁶

The future ILBI Treaty developing under the UNCLOS, is another global instrument establishing the need to guaranty long-term conservation and sustainable uses of marine biological diversity of areas beyond national jurisdiction,¹⁸⁷ and the fundamental requirement for

¹⁷⁹ This will be better explained in the next sub-paragraph.

¹⁸⁰ UNCLOS, Part II, Section 3 on Innocent Passage in the Territorial Sea.

¹⁸¹ UNCLOS, Part V, Article 58 on the “Rights and Duties of other States in the Exclusive Economic Zone”.

¹⁸² See generally UNCLOS, Part VII on High Sea, and particularly its Article 87 on “Freedom of the High Sea”.

¹⁸³ I.U. Jakkobsen, *supra* Note 108, pp. 327-426. Fadjo Spadi, “Navigation in Marine Protected Areas: National and International Law”, Pages 285-302, 29 Oct 2010, <https://doi.org/10.1080/009083200413172> (accessed 23 September 2022 at 16:04 pm).

¹⁸⁴ Caminos, H. & Cogliati-Bantz, V. (2014). Marine protected areas. In *The Legal Regime of Straits: Contemporary Challenges and Solutions* (pp. 410-442). Cambridge: Cambridge University Press. doi:10.1017/CBO9780511777189.021.

¹⁸⁵ A. B. Alexopoulos, “Particularly Sea-Sensitive Areas and Marine Protection Zones. A Controversial Issue that needs Interpretation”, *SPOUDAI Journal*, Vol.63 (2013), Issue 3, pp. xx-xx, https://www.researchgate.net/publication/259962312_Particularly_Sea-Sensitive_Areas_and_Marine_Protection_Zones_A_Controversial_Issue_that_needs_Interpretation (accessed 23 September 2022 at 16:14 pm).

¹⁸⁶ IMO, “Particularly Sensitive Sea Areas”, <https://www.imo.org/en/OurWork/Environment/Pages/PSSAs.aspx> (accessed on 23 September 2022 at 16:36 pm). See generally Resolution 982(24), Revised guidelines for the identification and designation of Particularly Sensitive Sea Areas (PSSAs). M. J. Kachel, *Particularly Sensitive Sea Areas, The IMO’s Role in Protecting Vulnerable Marine Areas*, Springer, Berlin, 2008, 39. According to the following Web Site, <https://imohq.exposure.co/protecting-vulnerable-seas-from-shipping-and-marine-pollution> (accessed on 23 September 2022 at 16:36 pm), the Southeast Atlantic does not have any PSSA.

¹⁸⁷ Draft Version of the BBNJ Treaty, Article 2 (February 2020).

cooperation at the sub-regional level in accordance with the LOSC¹⁸⁸ of marine biological diversity using Networks of MPAS.¹⁸⁹ In other words, establishing Networks of MPAs in ABNJ of the States of the Sub-region is a crucial necessity for maintaining cooperation within the Sub-region, while helping to strengthen its ocean governance efforts.¹⁹⁰ The Networks of MPAs in this Sub-region have a holistic importance because it will not only maintain the full range of biodiversity for the Sub-region, but it is also going to enable the safeguarding of key habitats for migratory species,¹⁹¹ linking of sources and sinks of food supply and larval flow;¹⁹² and encompassing other ecological, oceanographic and genetic connectivity¹⁹³ and specially guaranteeing the socioeconomic wellbeing of both its coastal and in-land populations.¹⁹⁴

The above global obligations set the stage for the regional obligations, which complements the efforts of rule-making in the establishment of TBMPAs within the Sub-region through regional agreements for conservation.

¹⁸⁸ *Idem*, Article 4.

¹⁸⁹ As a benchmarking experience of the importance of Network of MPAs in strengthening regional ocean governance, see generally the works of OSPAR Convention's Secretariat at <https://www.ospar.org/news/ospars-network-of-marine-protected-areas>. J. Roessger, "Turning the tide on protection illusions: The underprotected MPAs of the 'OSPAR Regional Sea Convention'", *Marine Policy*, Volume 142, May 2022, <https://maritime-spatial-planning.ec.europa.eu/practices/turning-tide-protection-illusions-underprotected-mpas-ospar-regional-sea-convention> (accessed on 23 September 2022 at 14:26 pm). Bas Klerk, "Lessons to be learned from OSPAR's network of marine protected areas in areas beyond national jurisdiction, in light of the BBNJ negotiations", 18/12/2020, <https://site.uit.no/nclos/2020/12/18/lessons-to-be-learned-from-ospars-network-of-marine-protected-areas-in-areas-beyond-national-jurisdiction-in-light-of-the-bbnj-negotiations/> (accessed on 23 September 2022 at 14:36 pm). N. Matz-Lück et J. Fuchs, "The impact of OSPAR on protected area management beyond national jurisdiction: Effective regional cooperation or a network of paper parks?" November 2014 *Marine Policy* 49:155–166, DOI:10.1016/j.marpol.2013.12.001.

¹⁹⁰ S. KONG MUKWELE, "THE USE OF SCIENCE IN STRENGTHENING OCEAN GOVERNANCE FOR THE HIGH SEAS: CASE STUDY OF THE STRONG HIGH SEAS PROJECT IN THE SOUTHEAST ATLANTIC REGION" (A forum for developing Cross-sectoral Strategies for Effective Ocean Governance), <https://iwlearn.net/resolveuid/566bceb8-694f-4e83-90a1-736c1c3ea049> (accessed on 23 September 2022 at 14:48 pm). A. Ebo'o, "The challenge of governance in the Gulf of Guinea", *ENACT Observer*, February 2019, <https://enactafrica.org/enact-observer/the-challenge-of-governance-in-the-gulf-of-guinea> (accessed on 23 September 2022 at 14:52 pm).

¹⁹¹ All species without any distinction whatsoever. See generally, and in the context of the Sub-region the "PURPOSE AND OBJECTIVE" of RAMP AO at <http://www.rampao.org/Finalite-et-objectif.html?lang=en> (accessed on 23 September 2022 at 14:59 pm).

¹⁹² M. Dubois et al., "Linking basin-scale connectivity, oceanography and population dynamics for the conservation and management of marine ecosystems", December 2015.

¹⁹³ Clara L. Mackenzie "Genetic Connectivity and Diversity of a Protected, Habitat-Forming Species: Evidence Demonstrating the Need for Wider Environmental Protection and Integration of the Marine Protected Area Network, Marine Conservation and Sustainability, in *Frontiers in Marine Science*, 03 March 2022, <https://doi.org/10.3389/fmars.2022.772259>, <https://www.frontiersin.org/articles/10.3389/fmars.2022.772259/full> (accessed on 23 September 2022 at 15:11 pm).

¹⁹⁴ The socioeconomic importance of TBMPAs will be developed more in Part 2 of this work.

2) Regional Legal Obligations

For the time being, there is no legal regime at the level of the Continent that outrightly obliges States to cooperate, directly or not, towards the development of Networks of MPAs. The AU has not been able to come-up with a regionally harmonised legal framework with the mandate to protect and preserve the African maritime domain, as it has done with questions related to human rights.¹⁹⁵

However, in the matter of interpretation of the law as to its relevance in a specific context,¹⁹⁶ and in line with the 2022 Geneva Declaration on Human Rights at Sea,¹⁹⁷ the AU legal framework on human rights could easily be explained as one that implements without any doubt the UNCLOS and every other global MEA. Indeed, with the realisation of the vital role of its maritime domain towards the achievement of the ‘Africa that We Want’ Agenda 2063, it is no surprise if the current regional legal obligations on the protection of Human rights (the African Charter on Human and Peoples’ Rights (also known as the Banjul Charter) and its Protocol on the Rights of Women in Africa (Maputo Protocol) and the African Charter on the Rights and Welfare of the Child (African Children’s Charter)) ought to be identified as instruments that strengthen ocean governance at the continental level, but particularly in the Southeast Atlantic Sub-region. More so, UNEP’s explanatory online paper on the link between a healthy ocean and human rights¹⁹⁸ and the African continent’s efforts through the AU to guarantee a secured, healthy, and safe maritime domain for its present and future generations, confirm the fact that current enforced regional human rights regimes in Africa are in line with the spirit of UNCLOS and any present or future MEA on ocean affairs.

¹⁹⁵ Human rights regimes such as the African Charter on Human and Peoples’ Rights (also known as the Banjul Charter), African Charter on the Rights and Welfare of the Child (African Children’s Charter) and the Protocols to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo Protocol), have been adopted by the African States under the coordinating role of the AU. <https://au.int/en/legal-organs> (accessed on 15 September 2022 at 8:48).

¹⁹⁶ Legal Theory Blog, “Legal Theory Lexicon: Context and Meaning”, January 27, 2019, <https://lsolum.typepad.com/legaltheory/2019/01/legal-theory-lexicon-context-and-meaning.html> (accessed on 23 September 2022 at 17:48 pm). HWL EBSWORTH, “Public Law in Brief: Statutory Interpretation”, 05 June 2020, <https://hwlebsworth.com.au/public-law-in-brief-statutory-interpretation/> (accessed on 23 September 2022 at 17:50 pm).

¹⁹⁷ Natalie Klein (2022), “Geneva Declaration on Human Rights at Sea: An Endeavour to Connect Law of the Sea and International Human Rights”, in *Ocean Development and International Law*, 12 September 2022.

¹⁹⁸ UNEP, “5 Reasons why a Healthy Ocean is linked to Human Rights”, Stories, Oceans and Seas, 09 Dec 2021, <https://www.unep.org/news-and-stories/story/5-reasons-why-healthy-ocean-linked-human-rights> (accessed on 14 September 2022 at 9:34 am).

In other words, these instruments can easily be considered directly by States Parties to the Charter of the AU, or under the governance of this regional institution, as the basis for the development of Networks of MPAs all over the continent for the conservation and sustainable use of marine biodiversity and marine ecosystem. Thus, under the rights to a safe and healthy ocean, considering its nexus to the existence of life on earth, the destruction of the African marine ecosystem can be identified as the deprivation of the right to life among many other human rights as prescribed under these regional instruments. These regional legal obligations, therefore, are bringing their States Parties, under the coordination of the AU to cooperate more in matters related to ocean affairs be it for the protection of the rights of women¹⁹⁹ or children,²⁰⁰ or even those of indigenous people²⁰¹ to a secured and healthy ocean.

3) Sub-regional Legal Obligations

Explaining why there should be sub-regionalisation of the legal regime of TBMPA in every sub-region, such as the Southeast Atlantic Sub-region, P. Mackelworth (2016)²⁰² said “even at an early-stage regional agreements have been a significant part of the global environmental governance architecture”. In other words, the current negotiations for the future ILBI Treaty on BBNJ at the level of the UN, with the purpose of building a revised governance architecture of the High Seas and the Biodiversity therein, are adequate grounds for the setting in of sub-regional obligations towards the development of TBMPAs or Networks of MPAs.

With respect to the provisions of the LOSC regarding the importance of cooperation²⁰³ even at the level of Sub-regions and for the purpose of protecting and preserving their shared marine environment, States of the Southeast Atlantic Sub-region have responded to their legal obligations in two ways:

(i)Through the UNEP Regional Sea Convention applicable to the Sub-region and which is the Convention on the Cooperation for the Protection, Management and Development of the Marine Environment and Coastal Areas of the Atlantic Coast of the West, Central and

¹⁹⁹ See the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo Protocol).

²⁰⁰ See the African Charter on the Rights and Welfare of the Child (African Children’s Charter).

²⁰¹ See the African Charter on Human and Peoples’ Rights (also known as the Banjul Charter).

²⁰² Balsiger, J. and Prys, M., “Regional agreements in international environmental politics”, *International Environmental Agreements: Politics, Law and Economics*, 2014, 1–22.

²⁰³ UNCLOS, Preamble, Paragraph 1 and Part XII, Article 197.

Southern Region (Abidjan Convention), its Actions Plan and its six Protocols.²⁰⁴ The general mandate of the Abidjan Convention, reflected also in the Provisions of its Protocols, is over issues such “pollution from hydrocarbon exploration, exploitation and transportation; overfishing and illegal and unreported fishing; deforestation caused by unregulated logging and its consequent destruction of biodiversity and livelihoods of communities that depend on forest resources; as well as community-based action to manage their resources and to provide income generating activities”.²⁰⁵ The Abidjan Convention is clearly ecocentric in essence, and will likely serve effectively in a role of coordinating instrument for a Network of MPAs within its area of competence.²⁰⁶ In implementing its Provisions as prescribed in its Article 5 on ‘Cooperation’, the Abidjan Convention has the power through the mandate given to it, to coordinate in a Network of MPAs any national MPAs owned by its States Parties. An action that will no doubt strengthen regional governance within this Sub-region.²⁰⁷ Article 7 of the Abidjan Convention clearly shows that its authors were aware of its different marine and coastal environmental stressors, among which are the loss in marine biological diversity and degradation of its marine ecosystem. In response to this evidence, Article 8 of the Abidjan Convention requests that Contracting Parties should establish a system of protected areas or zones where special measures ought to be taken towards the sustainable conservation of biological diversity.²⁰⁸ Indeed, the general provisions of the Abidjan Convention are holding a legal obligation over its Member States to ensure that it is not only the marine biological diversity that is being protected and sustainably conserved, but that it is also the entire marine ecosystem that is being taken care of through the creation of protected areas. The Abidjan Convention does not, however, say which kind of biological diversity that it covers and if it will also involve the High Seas adjacent to the EEZs and Territorial Waters of its Members.²⁰⁹

²⁰⁴ For details on these Protocols, see Chapter 1 of this Thesis.

²⁰⁵ UNEP, “Abidjan Convention COP Decisions (March 2015)”, The First Meeting of the African Ocean Governance Strategy, Istanbul, 19 October 2015, UNEP/Ocean Governance-WG.1/INF7, p.1.

²⁰⁶ Unlike with the OSPAR Convention, the Abidjan Convention for the time being does not have any MPA, TBMPAs or Network of MPAs that it coordinates. The only Networks of MPAs that exist in the Southeast Atlantic are those that are being coordinated under RAMPAO in the West part of the Sub-region.

²⁰⁷ Though its already existing long-term collaboration with the OSPAR Convention, the Abidjan Convention can learn from what this sister Convention is doing

²⁰⁸ Abidjan Convention, Article 8 (a).

²⁰⁹ Abidjan Convention, Articles 8, 9 and 10.

(ii) Through the regional legal regimes applicable to the management of fisheries in the Sub-region. Developing Networks of MPAs in the Sub-region with the aim of protecting and sustainably conserving the different fish stocks, and particularly the most endangered ones, has become a legal obligation enforcing itself through the legal frameworks of RFMAs existing in the Sub-region. In application to the UNCLOS instruction for States to cooperate for the protection and conservation of the marine environment,²¹⁰ and mindful particularly of the provisions of the UN Fish Stocks Agreement in its Articles 8 and 9, cooperation towards fisheries conservation and management within their shared maritime domain is a must. To this effect, the provisions of the International Convention for the Conservation of Atlantic Tunas (ICCAT)²¹¹ requiring its Contracting Parties to cooperate in order to maintain the population of tunas and tuna-like species at levels that will permit the maximum sustainable catch for food and other purposes, is a sufficient legal obligation vested on the RFMA/O to create marine parks in those zones within its area of competence that can be identified as habitats to this species and even any endangered one. The legal obligations binding Contracting Parties of RFMAs to cooperate through the tool Networks of MPAs is reinforced by the adoption of their internal resolutions requiring the application of ecosystem-based approach.²¹² To confirm this requirement, the Convention on the Conservation and Management of Fishery Resources in the South East Atlantic Ocean (SEAFO),²¹³ and in accordance with its objectives, has endeavours to ensure that there is cooperation among its Member States. Also, to ensure the effective carrying out of its mission, SEAFO, like another RFMB in the Sub-region, carries out sub-regional institutional cooperation²¹⁴ that is reflected also in the policy framework at different levels.

Paragraph 2: Policy Frameworks and Institutional Cooperation

The development of TBMPAs and/or Networks of MPAs in the Sub-region, as part of the ecosystem-based approach and with the contributions of adequate policy frameworks and strong

²¹⁰ UNCLOS, Part XII, Articles 193 and 197

²¹¹ signed 14 y 1966, entered into force 21 March 1969

²¹² Blaise Kuemlangu (2020). <https://www.worldbank.org/en/events/2022/05/26/managing-the-oceans-strengthening-capacity-for-ocean-governance> (accessed 23 september 2022 at 18:27).

²¹³ UN Environment (2017): Realising Integrated Regional Oceans Governance – Summary of case studies on regional cross-sectoral institutional cooperation and policy coherence, Regional Seas Reports and Studies No. 199; R. Billé et al. (2016), *supra* note 33.

²¹⁴ *Idem*.

institutional cooperation, should be able to strengthen sub-regional ocean governance through the application of the integrated principle. The purpose of this Paragraph is, therefore, to examine how policy development (1) and existing institutional cooperation (2) enhance the creation of more TBMPAs or Networks of MPAs in the Southeast Atlantic.

1) Policy Development

Policy development at all levels has been observed as a strategic mechanism of having the work done in many cases.²¹⁵ This is no exception in the present case study with the role of TBMPAs in the strengthening of regional ocean governance in the Southeast Atlantic Sub-region.

The most asserted policy development that obliging States to conform in order to secure a healthy ocean that would benefit both present and future generations is the development and adoption of the 2030 UN Agenda in which are enshrined the 17 Sustainable Development Goals. Among these Goals is the stand-alone Goal 14 on Life Below Water (Conserve and sustainably use the oceans, seas and marine resources for sustainable development) which was hoping that by 2020, countries would have cooperated at all levels, and particularly at the sub-regional level in order “to conserve at least 10 per cent of coastal and marine areas, consistent with national and international law and based on the best available scientific information”.²¹⁶

The 10 per cent policy obligation was already enshrined in the policy work of the CBD adopted Strategic Plan for Biodiversity 2011 – 2020 with its Aichi Biodiversity Targets, Target 11. The Mission of this global policy instrument was to halt the loss of marine biodiversity and that by 2020, marine ecosystems are resilient and continue to provide essential ecosystem services and therefore securing the variety of marine life. All of this was with the aim to contribute to the wellbeing of humans and to eradicate poverty. It is obvious that if this was applied successfully, the number of Networks MPAs within the Sub-region will not be at the almost 0 per cent level.²¹⁷ The lack of an effective implementation of the Aichi Biodiversity Target 11, has forced

²¹⁵ Singh, P.A., Ort, M. (2020), “Law and Policy Dimensions of Ocean Governance” in Jungblut, S., Liebich, V., Bode-Dalby, M. (eds) *YOUNARES 9 - The Oceans: Our Research, Our Future*. Springer, Cham. https://doi.org/10.1007/978-3-030-20389-4_3.
J.L. Bythe et al., “The Politics of Ocean Governance Transformations”, *Frontiers in Marine Science*, 02 July 2021, Sec. Marine Fisheries, Aquaculture and Living Resources, <https://doi.org/10.3389/fmars.2021.634718>.

²¹⁶ SDG 14.5.

²¹⁷ P. Failler et al., “Is Aichi Target 11 Progress correctly measured for developing Countries?”, *Trend in Ecology and Evolution*, Volume 34, Issue 10, October 2019, Pages 875-879.

the International Community to come up with a new global framework for managing nature through 2030. The Post-2020 Global Biodiversity Framework²¹⁸ has 21 targets and 10 ‘milestones’ proposed for 2030, en route to ‘living in harmony with nature’ by 2050. Among its Target is the one directing the world to “ensure that at least 30 per cent [of global] sea areas, especially areas of particular importance for biodiversity and its contributions to people, are conserved through effectively and equitably managed, ecologically representative and well-connected systems of protected areas and other effective area-based conservation measures and integrated into the wider [...] seascapes”.²¹⁹

The above development just shifted the policy obligation of the Sub-region to establish Networks of MPAs from a 10 percent²²⁰ worth pressure to a 30 per cent worth pressure. For the Sub-region and its countries that are barely able to meet with their obligations under either the Abidjan Convention or the RFMAs, this is likely going to be a ‘hard stick to shew’ if cooperation directly between them or under sub-regional institutions²²¹ working on marine biodiversity and marine ecosystem is not revisited or strengthened.

2) Institutional Cooperation

Creating TBMPAs in the Sub-region requires the strong application of the Area-based Management approach. This cannot be done by a single or stand-alone regional institution. The International Community, and the realities of the marine and coastal environment and its resources or that of the impacts of issues such as pollution, climate change and ocean acidification, have proven that if we want to have the ocean that we want, there is no longer room for silos actions.²²² We all must work together.²²³

²¹⁸ This global policy instrument, at the time that this research was carried out, was still in a draft format as it had yet been adopted. See IDDRI, “Post-2020 International Biodiversity Governance Initiative: For a more efficient framework”, 2018, <https://www.iddri.org/en/initiative/post-2020-international-biodiversity-governance-initiative> (accessed on 24 September 2022 at 01:07 am). R. Schumm et al., “Giving greater attention to the ocean in the development and implementation of the Post-2020 Global Biodiversity Framework”, IDDRI, April 2021, <https://www.iddri.org/en/publications-and-events/study/giving-greater-attention-ocean-development-and-implementation-post>, (accessed on 24 September 2022 at 01:10 am)

²¹⁹ The Post-2020 Global Biodiversity Framework, Goal/target: Target 3; <https://www.cbd.int/article/draft-1-global-biodiversity-framework> (accessed on 16 September 2022 at 13:44).

²²⁰ P. Failler et al., *supra* note 217.

²²¹ UNCLOS, Part II, Article 197.

²²² Tarmizi, Mohd Khairul Tazril., “Institutional framework for ocean governance: a way forward” (2010). World Maritime University Dissertations. 420, https://commons.wmu.se/all_dissertations/420

Realising the integrated approach in the development of Networks of MPAs in the Sub-region is an achievement plan. Having the Abidjan Convention and the Sub-regional Fisheries Commission work together²²⁴ in the development and management of the tool MPAs in the Sub-region²²⁵ will avoid overlapping in all ways possible and strengthen governance as both might want to develop such Networks mainly for ecological reasons.²²⁶ And a three-fold institutional cooperation between the Abidjan Convention and RFBs and RECs of the Sub-region might be looking directly at the socioeconomic dimension of developing and managing this tool.²²⁷

The multi-faceted nature of MPA in general and TBMPAs and/or Networks of MPAs require ‘all hands-on deck’ if the Sub-region must experience a strengthened regional ocean governance. That is why other than the abovementioned traditional institutional collaboration, the creation and development of TBMPAs in the Sub-region will benefit from the different layers of cooperation. Whether it is the cooperation reflecting the multi-stakeholder engagement and public-private partnerships, one between land-based organisations and sea-based organisations.²²⁸ What is needed is to put together efforts towards achieving well managed and developed TBMPAs.

Thus, a cooperation will likely be bottom-up or top-down (horizontal), or even vertical. For this purpose, and for better management of any Network of MPAs in the Sub-region, there should be room for strong inter-level, inter-regional, inter-sectoral institutional collaboration.

²²³ J.L. Bythe et al., *supra* note 224. Alf Håkon Hoel et al., “Ocean Governance and Institutional Change”, in A Sea Change: The Exclusive Economic Zone and Governance Institutions for Living Marine Resources, January 2005, ResearchGate, DOI: 10.1007/1-4020-3133-5_1.

²²⁴ R. Billé et al. (2016), *supra* note 33.

²²⁵ UN Environment (2017), *supra* note 213.

²²⁶ R. Billé et al. (2016), *supra* note 33.

²²⁷ *Idem*.

²²⁸ UN Environment (2017), *supra* note 213. See Euro Access Macro-Regions’ Call on “Coastal-rural interactions: Enhancing synergies between land and sea-based activities” for its Horizon 2020 Societal Challenges Project, https://www.euro-access.eu/calls/coastal-rural_interactions_enhancing_synergies_between_land_and_sea-based_activities (accessed on 24 September 2022 at 2:53). UN Environment, “Ocean Policies and Institutional Arrangements for Cross-sectoral Cooperation: Case studies for achieving Sustainable Development Goals”, 2017, UN Environment Regional Seas Reports and Studies No. 204, <https://wedocs.unep.org/bitstream/handle/20.500.11822/22330/Ocean%20Policies%20and%20Institutional%20Arrangements%20for%20Cross-sectoral%20Cooperation.pdf?sequence=1&isAllowed=y> (accessed on 24 September 2022 at 2:56).

Section B: Transboundary Marine Protected Areas: a Bilateral Endeavour (Case Study of Cameroon and Nigeria)

Sharing maritime boundaries always comes with the effects of sharing resources that are found within these common areas, and the sustainable governance of which requires joint endeavours from concerned countries. As seen in the previous parts of this work, TBMPAs stand to be the kind of joint management or development arrangements that countries sharing boundaries, and particularly maritime boundaries, can directly put in place between them.²²⁹ A joint, but integrated management of common marine ecosystems and the resources thereto harnesses benefits between the two States directly concerned.²³⁰ The national management of their individual marine ecosystem and resources has so far proven stagnant since each country is facing biodiversity loss from climate change and other related effects, and IUU fishing.

The objective of this section is to take Cameroon and Nigeria as the case study of a bilateral development of a TBMPA between two neighbouring coastal States and the role such an endeavour will likely play in the strengthening of regional ocean governance of the Southeast Atlantic. Therefore, to better understand why a TBMPA between these two States is necessary,²³¹ there is a need to examine the basis of developing this transnational tool for Cameroon and Nigeria (Paragraph 1) and how these fit in the development Agenda of these two nations (Paragraph 1).

Paragraph 1: Basis for a Transnational MPA between Cameroon and Nigeria

The goal of this Paragraph is to look at the different factors that should drive the development of a TBMPA between Cameroon and Nigeria. Many things bring these two neighbouring States together and advocate for a lasting governance of cooperation between them in the case of

²²⁹ UNCLOS, Part XII, Article 197; UN Fish Stocks Agreement, Article...; Abidjan Convention, Article.....; https://www.researchgate.net/profile/Georgios-Chrysochou/publication/299528685/figure/fig1/AS:345734433001473@1459440920207/The-2002-Cameroon-v-Nigeria-Case-of-ICJ_W640.jpg

²³⁰ See Part 2, Chapter 2 of this work for more development on opportunities that are tied with the development of TBMPA.

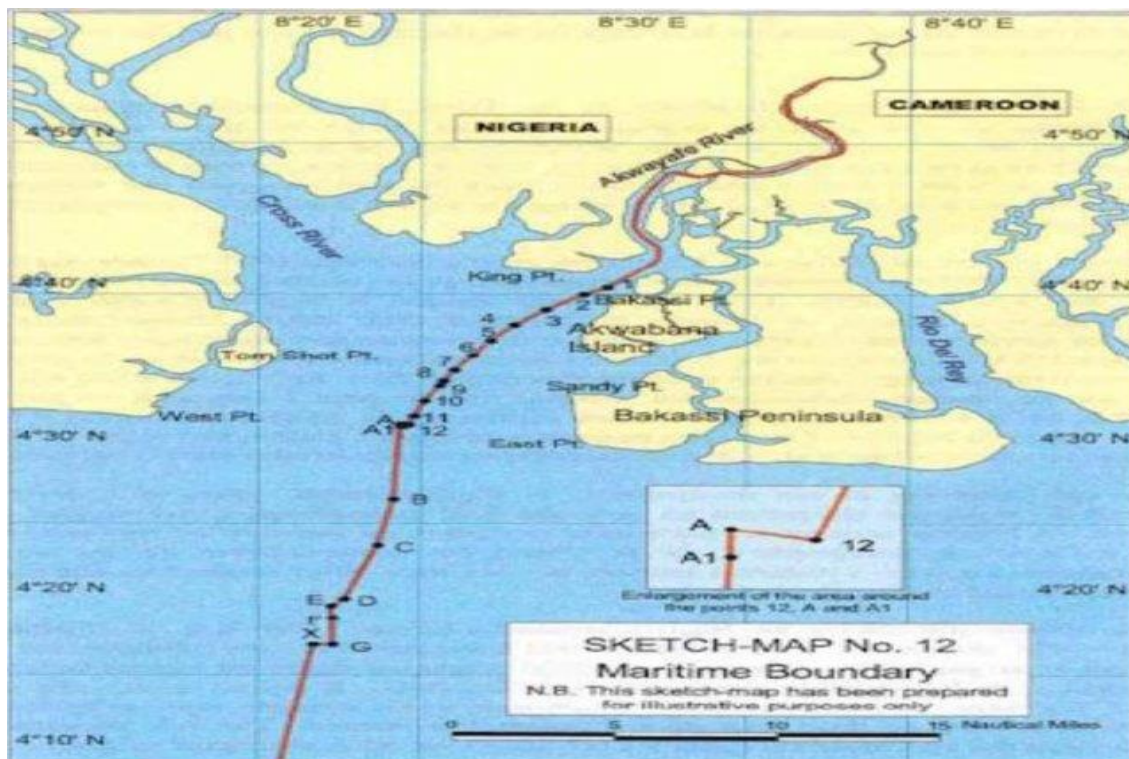
²³¹ I.J. Adewumi et al. (2022), *supra* note 34; Vivero, J. L. S., de Mateos, C. R., “Marine governance in the mediterranean sea,” in M. Gilek and K. Kern (Eds.), *Governing Europe’s Marine Environment: Europeanization of Regional Seas or Regionalization of EU Policies?* Milton Park: Routledge, 2015, 22. doi: 10.4324/9781315585543.

TBMPA. However, focus will be given not to all of them, but to a few. These are their geographical and historical connections (1), maritime jurisdictions and political framework (2) and maritime activities and associated pressures (3).

1) Geographical and Historical-diplomatic Connections

Strategically well situated in the Southeast Atlantic Sub-region²³² with a very rich marine and coastal environment, Cameroon and Nigeria share not only the territorial and maritime boundaries, but also historical connections.²³³

IMAGE 4: Maritime and Land Boundary between Cameroon and Nigeria, as delivered by the ICJ in the Cameroon v. Nigeria Case (2002)



Source:

https://www.researchgate.net/publication/299528685_DELIMITING_MARITIME_ECONOMIC_ZONES_IN_GREECE_IN_THE_CONTEXT_OF_INTERNATIONAL_JURISPRUDENCE/figures?lo=1

²³² Both countries are in the cross of the Gulf of Guinea (see Image 3 in the body of this work). Abe, J., Brown, B., Ajao, E. A., and Donkor, S., Local to regional polycentric levels of governance of the Guinea current large marine ecosystem. *Environ. Dev.* 17, 2016, 287–295. doi: 10.1016/j.envdev.2015.06.006

²³³ Familigba, J., and Ojo, O., “Nigeria – Cameroon border relations: an analysis of the conflict and cooperation (1970-2004)”, 2013, *Int. J. Humanit. Soc. Sci.* 3, 181–190.

These two countries are part of the 22 nations situated in a Sub-region that have and are still seeing their individual, but maritime domain being aggressively explored and exploited for its resources, for its uniqueness and strategic location in the global maritime domain.²³⁴ These two countries have shared geographic features which start all the way from their terrestrial to their maritime boundaries, which are 1,975 km (1,227 mi) in length and run from the tripoint with Chad in the north to the Atlantic Ocean in the south.²³⁵ They both have a rich geographical coastline that is composed of estuaries, lagoons, deltas, mud and sand flats, coastal shelves, rocky and sandy beaches and cliffs etc, which is none less covered mostly by mangrove.²³⁶

A disposition that creates a whole lot of allowances in the movement of their populations from the Western part of Cameroon that is the boundary to Nigeria, to the Eastern part of Nigeria that borders Cameroon.²³⁷ It also harnesses the similarities or sharing of their maritime activities among their local coastal communities. Another geographical component of their relationship that should be considered as ground as to the creation of TBMPA between these two countries, in the words of I.J. Adewumi et al. (2022), are their ethnographic affiliations²³⁸ the “developments in the oil and gas, maritime security, ports, coastal land concessions and reclamation sectors which have attracted the most significant attention from citizens, civil society groups and investors”²³⁹ that can be seen in the Sub-region and in the cross-national space of Cameroon and Nigeria. Finally, these two countries belong to other geographical

²³⁴ I.J. Adewumi et al. (2022), *supra* note 34.

²³⁵ https://en.wikipedia.org/wiki/Cameroon%E2%80%93Nigeria_border (accessed on 18 September 2022 at 16:08 pm); CIA *World Factbook – Cameroon*, retrieved 29 January 2020.

²³⁶ Dossou, K. M. R., and Gléhouenou-Dossou, B., “The vulnerability to climate change of Cotonou (Benin): the rise in sea level. *Environ*”, Urban. 19, 2007, 65–79. doi: 10.1177/0956247807077149; Amosu, A. O., Bashorun, O. W., Babalola, O. O., Olowu, R. A., and Togunde, K. A. (2012). Impact of climate change and anthropogenic activities on renewable coastal resources and biodiversity in Nigeria. *J. Ecol. Nat. Environ.* 4, 201–211. doi: 10.5897/JENE11.104; UNESCO/IOC (2020b). Technical Report on the Status of Coastal Vulnerability in Central African Countries. Paris: UNESCO; Fonteh, M., Esteves, L. S., and Gehrels, W. R. (2009). Mapping and valuation of ecosystems and economic activities along the coast of Cameroon: implications of future sea level rise. *Coastline Rep.* 13, 47–63; UNDP (2013). Towards Ecosystem-Based Management of the Guinea Current (Issue November). New York, NY: UNDP; Amosu, A. O., Bashorun, O. W., Babalola, O. O., Olowu, R. A., and Togunde, K. A. (2012). Impact of climate change and anthropogenic activities on renewable coastal resources and biodiversity in Nigeria. *J. Ecol. Nat. Environ.* 4, 201–211. doi: 10.5897/JENE11.104.

²³⁷ This is from the North down to the South of each country.

²³⁸ Edung, M. (2015). The culturo-linguistic factor as a facilitator of peace. *J. Lang. Commun.* 2, 50–64; Nwokolo, N. N. (2020). Peace-building or structural violence? Deconstructing the aftermath of Nigeria/Cameroon boundary demarcation. *Afr. Secur. Rev.* 29, 41–57. doi: 10.1080/10246029.2020.1734644.

²³⁹ *Op. Cit*, note 236.

spheres which are part of the Southeast Atlantic Sub-region: the Gulf of Guinea and the Guinea Current Large Marine Ecosystem.²⁴⁰

The geographical relations are deepened by historical and diplomatic relations nesting as far as the beginning of slavery, down to colonisation and through their respective independence and to the present days.²⁴¹ Cameroon and Nigeria have historically cooperated on several domains during pre-and post-independence. Be it during the Biafra war or in present days against the common prevalent problems of Boko Haram or Piracy within their shared maritime domain.²⁴² Even the different changes that have occurred over time on their both and respective boundaries²⁴³ and geographical features are part of their historical ties that harnesses the need of more or stronger collaboration in the face of today's ocean issues and their effects on them. As the below image indicates, both counties have had almost the same colonial masters and their independence was in 1960.²⁴⁴

²⁴⁰ I.J. Adewumi et al. (2022), *Supra* Note 34.

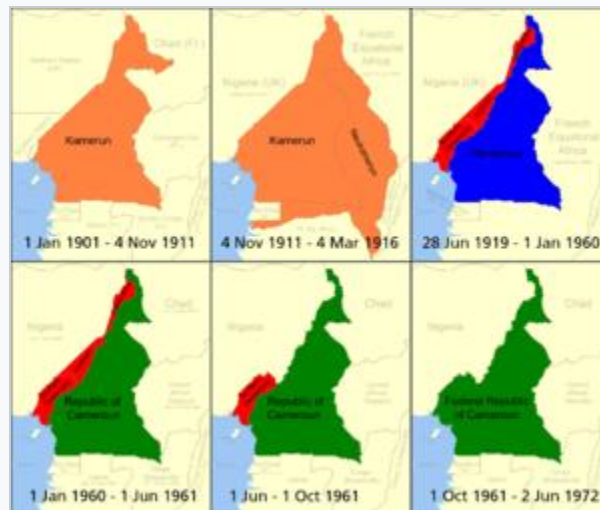
²⁴¹ Wikipedia, "Cameroon–Nigeria relations", https://en.wikipedia.org/wiki/Cameroon%E2%80%93Nigeria_relations (accessed on 18 September 2022 at 2:45 pm).

²⁴² idem.; https://en.wikipedia.org/wiki/Cameroon%E2%80%93Nigeria_border; "Boko Haram conflict: Nigerian allies launch offensive". *BBC*. 8 March 2015. Archived from the original on 22 August 2018.

²⁴³ *International Boundary Study No. 92 – Cameroon-Nigeria Boundary* (PDF), 21 November 1974, retrieved 30 January 2020; I. Brownlie, "African Boundaries: A Legal and Diplomatic Encyclopedia", Institute for International Affairs, Hurst and Co., 1979, pp. 553–87; *Cameroon-Nigeria Boundary*, International Boundary Study No. 92 (U.S. Department of State, Office of the Geographer, 1969) p. 5.

²⁴⁴ Shulika, Lukong Stella (2021). "Nigeria-Cameroon Relations: An Appraisal". In Tella, Oluwaseun (ed.). *Springer International*. Cham: Springer. pp. 101–112. ISBN 978-3-030-73374-2; Cornwell, Richard (2006). "Nigeria and Cameroon: Diplomacy in the Delta". *African Security Review*. **15** (4): 48–55. doi:10.1080/10246029.2006.9627621.

IMAGE 3: Maps of Cameroon 1901-1972 showing the changes to the border with Nigeria



Maps of Cameroon 1901-1972 showing the changes to the border with Nigeria

- German Cameroon (*Kamerun*)
- British Cameroons
- French Cameroon (*Cameroun*)
- independent Cameroon (*Cameroun*)

SOURCE: https://en.wikipedia.org/wiki/Cameroon%E2%80%93Nigeria_border (accessed on 18 September 2022 at 16:23 pm).

2) Maritime jurisdictions and political framework

Other two factors that are good grounds for both Cameroon and Nigeria to develop a TBMPA are their common maritime jurisdictions and political frameworks and other MEAs that bind them to declare and the respects of those maritime zones, even as articulated in other instruments such as the UN Fish Stocks Agreements, the CBD²⁴⁵ or the IMO's regimes²⁴⁶ and in regional Agreements such the Abidjan Convention or RFMAs. This is a way for them to protect their shared maritime domain. Thus, these common maritime jurisdictions give to both States rights

²⁴⁵ See generally CBD, Article 4 and others like Article 3, 7, 8 and 14.

²⁴⁶ See I.U. Jakobson, *supra* note. IMO's regimes: PSSA, The International Convention for the Protection of Pollution from Ships (MARPOL) Special Areas; the International Convention for Safety of Life at Sea (SOLAS), the 1972 Convention on International Regulations for Preventing Collisions at Sea (COLREG); the Ballast Water Convention.

and obligations towards their respective and shared marine and coastal environment such as cooperation.²⁴⁷

Thus, under the UNCLOS the ratification of its Provisions and those of other related MEAs is a good binding ground for these two sister-countries to possibly develop a TBMPA as an expression of their joint effort to not only protect and preserve their shared marine ecosystems and its resources, but also to strategically be strengthening regional ocean governance in the Southeast Atlantic. By doing so, they likely will put in place a needed governance of this area for the different maritime activities and to thus curb pressures.

3) Maritime Activities and Associated Pressures

The maritime domains of Cameroon and Nigeria are beds of key activities, which if well managed and coordinated between these two States will harness the protection and sustainable conservation of this domain and its resources.

In the area of leisure tourism, these two countries have a good number of coastal cities with beautiful beaches that are host to quite an encouraging number of tourists. Cameroon has been able to develop some beach-related accommodation while putting to use its cultural tourism and historical background to make its coastal cities, Douala, Kribi and Limbe prime destinations for tourists. While Nigeria has major coastal cities like Lagos and Port Harcourt where tourism is important but still developing. According to I.J. Adewumi et al., (2022), coastal tourism is expected to rise in the coming decades.

Maritime transportation, be it for military, for commercial or for leisure is one activity that has a dual component in terms of its economic and environmental impacts on the maritime domain of these two countries. Their respective coastal and marine environments are grounds for many military activities and passage of vessels and fleets flying the flags of other neighbouring States or those of countries outside of the Sub-region.²⁴⁸ Ports like Douala and Lagos with their unique features are a medium for the trade of raw materials like timber, cocoa, coffee, cotton and finished goods. Their significant importance in the GDPs of both countries is laudable because they not only serve as host for maritime transactions to the non-coastal neighbouring States like

²⁴⁷ UNCLOS, Part XII, Articles 194 and 197.

²⁴⁸ Ali, K. (2015). The anatomy of Gulf of Guinea piracy. *Naval Coll. Rev.* 68, 93–118.

the Central African Republic, Chad and Niger, they also are high value sources of earning through the exportation of hydrocarbons.²⁴⁹ Cameroon and Nigeria benefit from the opportunity of having vessels flying their flags since they became open registry nations, registering 10,882 and 448 ships respectively between 2011 and 2020.²⁵⁰ Nevertheless, this economic impact of maritime transport in these countries is having a downside on their marine and coastal environment, particularly in the fishery activities.

Indeed, fishing is another high value maritime activity that is of great socio-economic importance to these two countries be it at the national or local levels. However, I.J. Adewumi et al. (2022)²⁵¹ point out that activities related to fisheries in Cameroon and Nigeria vary from one country to the other. Indicating the number of families who depend on the livelihood of fisher folks, WorldFish (2017) says Nigeria directly employs an average of 8,6 million people and another 19,6 million indirectly.²⁵² As for Cameroon, the fishery sector is explained by Besong (2019) as representing 1.8 per cent of its socio-economic sustenance estimated at USD 35 billion GDP with an employment capacity of more than 200,000 persons.²⁵³

Despite all the above, there is also a gross number of common pressures that the coastal and marine environments of Cameroon and Nigeria are facing that have a transnational effect on them, but also on the entire Southeast Atlantic Sub-region. On one hand, there is the incapacity of each country at the individual national level to monitor fisheries efforts and catch due to the lack of data, scientific knowledge, and inadequate management,²⁵⁴ and on another hand, the never-ending problem of bycatch and IUU fishing and trans-shipment.

All these activities, no matter their economic importance to the development of these two States, if not sustainably managed generate serious negative impacts on their respective both common coastal and marine environment. Destroying, therefore, the very marine ecosystem and

²⁴⁹ UNCTAD (2020a). Annual Merchant Fleet by Flag of Registration and by Type of Ship. Geneva: UNCTAD; George, L. (2019). *Nigeria's Revenue Quest could Crush Offshore Oil Golden Egg -Industry Group*. Reuters: Canary Wharf.

²⁵⁰ UNCTAD (2020b). Review of Maritime Transport 2019. Geneva: UNCTAD.

²⁵¹ Belhabib, D., and Pauly, D. (2015). "Reconstructing fisheries catches for Cameroon between 1950–2010," in *Fisheries Catch Reconstructions: West Africa, Part II. Fisheries Centre Research Reports*, Vol. 23, eds D. Belhabib and D. Pauly (Vancouver, BC: Fisheries Centre, University of British Columbia), 77–84.

²⁵² WorldFish (2017). *WorldFish Nigeria Strategy 2018–2022*. Penang: WorldFish.

²⁵³ Besong, M., "Cameroon Can't Afford to Continue Ignoring Crime in Fisheries Sector. Cameroon's Fisheries Sector is of Huge Social and Accounts for About 9000 Tons of This", *The Conversation*, 2019, <https://theconversation.com/cameroon-cant-afford-to-continue-ignoring-crime-in-fisheries-sector-124519> (accessed 19 September 2022 at 11:34 am).

²⁵⁴ Chan, C. Y., Tran, N., Pethiyagoda, S., Crissman, C. C., Sulser, T. B., and Phillips, M. J. (2019). Prospects and challenges of fish for food security in Africa. *Glob. Food Secur.* 20, 17–25. doi: 10.1016/j.gfs.2018.12.002

biodiversity from which that growth in GDP comes from. The immediate consequences of these pressures, among many others, is that many fisher folks, particularly those depending on small-scale Fisheries, which are essentially women, in these two countries and in the entire Southeast Atlantic Sub-region.²⁵⁵ Marine and land-based pollution,²⁵⁶ and the ‘present-future’ deep seabed mining, climate change and its acidification and deoxygenation impacts on the ocean, are also negative pressures that are compounding in the transnational marine and coastal environment of Cameroon and Nigeria.

From the above, these two countries need to act urgently towards protecting and sustainably conserving their respective or better still, their shared maritime domain, with the pressures threatening to sink it. The destruction of this environment is not only having negative effects on the socio-economic and political wellbeing of these countries. Their effects are felt in the entire Southeast Atlantic Sub-region. Wherefore, the need to adopt the ecosystem-based management tool TBMPA.

Paragraph 2: Transboundary MPA in the Development Agendas of Cameroon and Nigeria

Like many developing countries, and particularly African nations, Cameroon and Nigeria have put in place National Development Plans. These instruments stand as Roadmaps to their respective vision of emergence or development, planned to be achieved between a certain period. For Cameroon, the National Strategy for Development of 2020-2030 is the implementation arm of its 2035 Vision of Emergence, which if achieved within the indicated time is going to transform her into an industrialised nation.²⁵⁷ Nigeria, on her part, has given herself a Mid-term Plan²⁵⁸ and a Long-term Plan.²⁵⁹ Both Plans expand on the country's development agenda and

²⁵⁵ Ifesinachi M. Okafor-Yarwood et.al, “Ocean Optimism” and Resilience: Learning From Women’s Response to Disruptive Caused by COVID-19 to Small-Scale Fisheries in the Gulf of Guinea”, in *Marine Conservation and Sustainability*, 22 June 2022, <https://doi.org/10.3389/fmars.2022.862780>.

²⁵⁶ These sources of pollution faced by Cameroon and Nigeria could be enumerated as being noise pollution, oil pollution and plastic pollution. All three are a great danger to marine lives such as turtles and shrimps or other sensitive species whose natural habitat is likely to be destroyed by deep seabed mining.

²⁵⁷ See generally the National Strategy for Development of 2020-2030.

²⁵⁸ Nigeria’s Medium Term National Development Plan (MTNDP) - 2021-2025 OVERVIEW OF THE 2021-2025 MTNDP DRAFT, 18 MARCH 2021, Nigeria-MTNP-2021-2025-Overview-of-Draft-Plan.1.pdf (nationalplanning.gov.ng) (accessed on 20 September 2022 at 12:53 pm).

explain her projects of making use of her different terrestrial and maritime resources, with the first one aiming at leading to the achievement of the second.²⁶⁰ Like Cameroon, and many all the countries of the Southeast Atlantic, Nigeria hopes to become a developed nation in the nearest future. Thus, for her Long-term Plan, she has put in place Agenda 2050 which aims at repositioning Nigeria as one of the leading countries of the 21st Century within the next three decades.²⁶¹

Consequently, this Paragraph aims at examining, on one hand, whether the current policy developments in Cameroon and Nigeria have allowed room for the creation of TBMPA in the areas within their respective national jurisdictions (1), and on the other hand, if in application to international legal and policy frameworks recognised by both States have in their National Development Agendas mirrored the UN SDG 14 and particularly Target 5 (2). It will also examine comparatively, the current existence of National Development Strategies in both nations and the absence or still to be implemented National Ocean/Maritime Governance Strategy in both countries (3).

1) The Creation of TBMPA in the Maritime Areas within their Respective National Jurisdictions

As an integrated approach to ocean governance, TBMPA requires that in order to secure better effects and to achieve purpose, it should be implemented at all levels, including bilaterally. And in the respect of their responsibilities²⁶² towards their respective maritime domains, their present and future populations and, in their application of the different international legal and policy frameworks, Cameroon and Nigeria are expected to develop a TBMPA in a joint determined area between their respective maritime boundaries. In other words, the proposed development of a TBMPA by AFEMSI, between Cameroon and Nigeria could²⁶³ either be in a designated area

²⁵⁹ Department of Climate Change, Federal Ministry of Environment, Nigeria, “2050 Long-Term Vision for Nigeria (LTV-2050) - Towards the Development of Nigeria’s Long-Term Low Emissions Development Strategy (LT-LEDS), NOVEMBER 2021, 2050 Long-Term Vision for Nigeria (LTV-2050) | UNFCCC (accessed on 20 September 2022 at 13:11 pm).

²⁶⁰ “Cyril Okonkwo, “NDP 2021-2025: REFOCUSING NIGERIA’S ECONOMY FOR AGENDA 2050”, Voice of Nigeria, 14 January 2022, NDP 2021-2025: REFOCUSING NIGERIA’S ECONOMY FOR AGENDA 2050 – Voice of Nigeria (von.gov.ng) (accessed on 20 September 2022 at 13:04).

²⁶¹ *idem*.

²⁶² See generally States Responsibilities in the Protection and Preservation of their marine environment, or generally the environment at large under the International Law of the Sea and the International Environmental Law.

²⁶³ See Introduction for more on the contributions of AFEMSI to this Research.

between their respective Territorial Seas or their EEZ in the spirit of cooperation in the governance of their marine environment. If these two countries decide eventually to create a TBMPA between them, it is likely going to be either a joint development tool or a marine reserve. In other words, the tool will likely not focus only on conservation, but will certainly have as agenda to enable both countries in their co-management to allow sustainable activities such eco-tourism or controlled fishing activities. To understand how either one of these two decisions could be attainable, this sub-paragraph is intended to examine the NDSs of both countries in the light of this possibility.

From Paragraph 1 of this Section, we were able to outline the import activities that are ongoing in the maritime domains of these two States, and the pressures that they face. These activities hold a vital role in the development plans of both countries as each one aims, among many other things, at taking the exploitation of their hydrocarbon and fishery productions to the next level of their expected economic growth. These Development Plans will, therefore, be more in line with the application of implementation of their international legal and policy engagements, if their NDSs have been clearly spelled out to consider the integrated management and development of their marine resources as sine qua non condition to this development agendas. In other words, because their maritime domains hold such a key value to the industrialisation plans, clearly stating the use of MPAs, and particularly TBMPA with other States, should have been the case in these national Instruments.

Unfortunately, these Instruments are not showing the domestication of the different international legal and policy regimes requiring from them development of MPA, and in the optic of maintaining cooperation between them for the protection and conservation.

A good number of literatures found online (Sunday Daniel Atakpa (2021);²⁶⁴ Cameroonian Association of Marine Biology (ACBM);²⁶⁵ Marine (2020)²⁶⁶; and many other authors from these two countries have stated the fact that none of them has created an MPA. For countries that have bound themselves under MEAs such as the LOSC and committed themselves to achieve

²⁶⁴Sunday Daniel Atakpa, "Marine protection and Nigeria's blue economy", 27 April 2021, <https://guardian.ng/opinion/marine-protection-and-nigerias-blue-economy/> (accessed on 20 September 2022 at 16:12 pm).

²⁶⁵ <https://undp.shorthandstories.com/gef-sgp-hail-the-whale/index.html>.

²⁶⁶ MARINE, "Ecologists seek new marine protected area spanning Nigeria, DRC, Cameroon", JUNE 12, 2020 <https://www.environewsnigeria.com/ecologists-seek-new-marine-protected-area-spanning-nigeria-drc-cameroon/> (accessed on 20 September 2022).

international policy framework like the 2030 UN Agenda and its 17 SDGs, it is hard to believe that this is the actual reality in both State.

2) Examining the Presence of the Regime of TBMPA in the National Development Agendas of Cameroon and Nigeria

In order to fulfil their individual but common international responsibilities, Cameroon and Nigeria are supposed to ensure that their National Development Agendas reflect their domestication of international marine legal and policy regimes that they have adhered to. Most of which, while requiring from them the protection and conservation of fragile and special ecosystems and resources, also emphasise on the obligation to cooperate in order to achieve this goal.²⁶⁷ Indicated in the previous parts of this work, there is no single country that can embark on the journey of the development of MPAs and their management that would succeed without seeking the cooperation of one or two neighbours.

However, while the possible development of MPAs, and especially TBMPA for a stronger governance of its marine ecosystem and resources is not clearly spelled out in the Nigeria's National Development Plan (NDP), 2021 – 2015, its interpretation should give some reassurance as to the fact that it was not entirely left out from Nigeria's 2050 Vision. For a coastal State of the class of Nigeria, endowed with so much wealth in its maritime domain, it is surprising that the document stating its sustainable, holistic, and inclusive development plans is void of any marine protection and conservation related project. Its Chapter 24 (Page 133 - 137) on “ENVIRONMENT AND DISASTER MANAGEMENT” speaks of the environment in general terms, though every here and there, it makes emphasis on green economy, biodiversity and oil production. There is complete absence of any possible plan towards building a holistic and integrated management of her maritime domain from which TBMPA could likely be coined out from.

The above situation is not peculiar to Nigeria alone. Cameroon, like her sister-nation, did an oversight of the need to clearly state the development plan that she has for her maritime domain. In fact, the Cameroon National Development Strategy (2020-2030) only cites in its paragraphs 227 to 238 key terms that factor the development of an MPA, and for the purpose of this work

²⁶⁷ UN SDG 14.

TBMPA.²⁶⁸ The document is completely oblivious of this ecosystem-based management as a whole and this specific tool.

From the above, there is a complete absence of the domestication of legal and policy regimes that could enable the development of TBMPA between Cameroon and Nigeria. Will the answer to this situation be residing in the absence in both States of a National Ocean / Maritime Governance Strategy?

3) National Development Strategies and the Absence/Still to be implemented National Ocean/Maritime Governance Strategy

In application to the different calls that the International Community keeps sending out to the world regarding the poor state of the ocean and particularly its endangered biodiversity, there is an urgent need for international sustainable and integrative solutions that are being advanced to be domesticated by individual countries, particularly in their industrialisation or modernisation agendas. This seems not to be the case for Cameroon and Nigeria whose National Development Strategies are likely not set out to plan for a sustainable and integrated management of marine ecosystems, marine environmental protection and marine biodiversity conservation.²⁶⁹ This part aims at understanding the reasons behind the absence of provisions in their respective NDSs, clearly stating their plans to adopt measures that will lead to the development of MPAs and/or TBMPA with any interested neighbouring State.

There is a wonder as to why this void. Is it a lack of understanding, or a lack of political will, the inability to see this tool called TBMPA as an important factor in their sustainable development agendas? It is true, however, that now that this research was being conducted, both countries did not have any adopted legal or policy instrument²⁷⁰ that strategically focused on the governance of their maritime domain and portrayed the holistic and integrative obligations of its managing, like it is the case in other coastal States like Canada²⁷¹ and South Africa.²⁷²

²⁶⁸ See generally in Chapter 3.6. on “ENVIRONMENT AND NATURE PROTECTION” of the NSD (2020 - 2030).

²⁶⁹ Umana Usen Asuquo, "Marine ecosystems and the role of marine protected areas as sustainable development strategies" (2002). World Maritime University Dissertations. 198, http://commons.wmu.se/all_dissertations/198, P.6.

²⁷⁰ *Idem*.

²⁷¹ Canada's Oceans Act (COA, 1996) and Australia's Ocean Policy (AOP).

²⁷² ASHLEY DESMOND NAIDOO, “OCEAN GOVERNANCE IN SOUTH AFRICA: POLICY AND IMPLEMENTATION”, A thesis submitted in partial fulfilment of the requirements for the degree of

Both countries have what can be identified as ‘dead upon arrival’ legal and policy frameworks that relate to the management of their marine and coastal environment. These instruments, in the words of the Chairman of the Committee on Judiciary, Human Rights and Legal Matters of the Nigerian Senate, Senator Opeyemi Bamidele which,²⁷³ are not consistent with the United Nations Convention on the Law of the Sea. These shortcomings are certainly justifying the complete absence of MPAs and the cooperative measures with other States, in order to ensure not only the effective management of not only their national coastal and marine environment, but that of the Southeast Atlantic. In the case of Nigeria, which has in place the 2011 National Environmental (Coastal and Marine Protected Areas) Regulation,²⁷⁴ there is still no single established MPA.²⁷⁵ For Cameroon, even though on the 9 November 2021 the Government through the Prime Minister passed a Decree creating its ever first marine park on its border between Equatorial Guinea,²⁷⁶ its Law No. 94/01 of 20 January 1994 to lay down forestry, wildlife, and fisheries regulations and Law No 96/12 of 5th August 1996 relating to Environmental management policy (a framework law)²⁷⁷ are of general environmental components, with little or no aspects on ocean management as should be the case if there was a full-fledged Ocean Act or Ocean Governance Policy. Their capacity in steering the inclusion of the MPA, and particularly TBMPA, as key platforms to achieving the development agenda seems to have been absent, or

Doctor Philosophiae in the Institute for Poverty, Land and Agrarian Studies; Faculty of Economic and Management Studies; University of the Western Cape; May 2020, http://etd.uwc.ac.za/xmlui/bitstream/handle/11394/7355/Naidoo_PhD_EMS_2020.pdf?sequence=1&isAllowed=y (accessed on 22 September 2022 at 11:43 am). Environmental Affairs Department of Republic of South Africa, The National Environmental Management of the Ocean Policy, The Government of the Republic of South Africa National Environmental Management of the Ocean White Paper; https://www.dffe.gov.za/sites/default/files/docs/publications/environmental_management_oceanpolicy.pdf (accessed on 22 September 2022 at 11:48 am). Act No. 16 of 2018: Marine Spatial Planning Act, 2018. <https://www.marineprotectedareas.org.za/protecting-the-ocean>.

²⁷³ Sahara Reporters, “Nigerian Senate Passes Law To Administer Country’s Territorial Sea”, November 16, 2021, New York, <https://saharareporters.com/2021/11/16/nigerian-senate-passes-law-administer-country%E2%80%99s-territorial-sea> (accessed on 22 September 2022 at 11:48 am).

²⁷⁴ “The 2011 National Environmental (Coastal and Marine Protected Areas) Regulation”, the Federal Republic of Nigeria Official Gazette, No.45, Vol. 98, Lagos 13 May 2011, pp. B561-590.

²⁷⁵ Sunday Daniel Atakpa. *supra* note 264. Elizabeth Uwandu, “Nigeria needs marine-protected areas, as our reserves are threatened – DG, NCF”, Vanguard, July 2, 2018, <https://www.vanguardngr.com/2018/07/nigeria-needs-marine-protected-areas-reserves-threatened-dg-ncf/> (accessed on 22 September 2022 at 13:53 pm).

²⁷⁶ Boris Ngounou “CAMEROON: A first marine park to limit the ravages of industrial fishing”, - Published on November 9, 2021 / Modified on November 9, 2021 [https://www.afrik21.africa/en/cameroon-a-first-marine-park-to-limit-the-ravages-of-industrial-fishing/#:~:text=Cameroon%20finally%20has%20its%20first,miles\)%20in%20Cameroonian%20territorial%20waters](https://www.afrik21.africa/en/cameroon-a-first-marine-park-to-limit-the-ravages-of-industrial-fishing/#:~:text=Cameroon%20finally%20has%20its%20first,miles)%20in%20Cameroonian%20territorial%20waters) (accessed on 22 September 2022 at 14:57 pm).

²⁷⁷ Etong Armand Brice “Environmental law and policy in Cameroon: legal compliance and challenges”, March 2021, DOI: 10.6084/m9.figshare.14179787, <https://www.researchgate.net/publication/349896229>.

not taken into consideration by the authors of the country's development agenda. These two countries need to develop mechanisms that will enable the establishment of MPAs²⁷⁸

²⁷⁸ Elizabeth Uwandu, "Nigeria needs marine-protected areas, as our reserves are threatened – DG, NCF", Vanguard, July 2, 2018, <https://www.vanguardngr.com/2018/07/nigeria-needs-marine-protected-areas-reserves-threatened-dg-ncf/> (accessed on 22 September 2022 at 13:53 pm).

Part two: Opportunities and Challenges of Creating and/or Managing Transboundary Marine Protected Areas between Cameroon and Nigeria

The implementation of the UNCLOS in its Part XII, together with other applicable MEAs, regarding the protection of the marine environment at the sub-regional level, like the one that is being studied in this work, does not come without challenges, even with all its arrays of opportunities.

The development and particularly the management of TBMPAs within the Southeast Atlantic Sub-region, which is studied in this work as a strategic way of strengthening its regional ocean governance mechanisms, come with changes that will affect all the different stakeholders either positively or negatively. These changes, which can be either environmental or socio-economic, can be felt either vertically or horizontally. In other words, they are expected to impact not only the different levels of management, all involved sectors. Thus, the behaviours of the concerned actors and the influence of certain external factors (as we will see in Chapter 1 of this Part) will either result in success for the TBMPAs or lead to their failure. This second part of the work, therefore, aims at examining the management of this ecosystem-based management tool concerning the challenges that are likely to arise therein (Chapter 1) and the opportunities that will be enhanced by its creation in the Southeast Atlantic Sub-region (Chapter 2).

Chapter 1: The Development and Management of Transboundary MPAs: The Challenges

It is important to remember here that the Southeast Atlantic is part of the Global South.²⁷⁹ Thus, the twenty-two countries composing this Sub-region are all developing States that are facing environmental, social, and economic crisis on a scale that are higher than that the ones faced by other sub-regions such as the Northeast Atlantic Sub-region. This crisis is coupled with the ones that are felt by the rest of the globe (heat waves, floods, and other natural disasters).²⁸⁰

Moreover, even though the previous chapter in this work has established that there are legal and policy obligations that have enabled the development of a certain number of Networks of MPAs²⁸¹ within the Sub-region, and are still compelling its Member States to do more in that direction, the reality on ground reveals a different situation.²⁸² The purpose of this chapter is to look at the challenges associated with the development and management of TBMPAs in the Sub-region. These challenges include issues deriving from the application of sovereign rights over areas within national jurisdiction under the UNCLOS (Section A) and those related to required expertise/capacities and funding (Section B).

Section A: Enforcing Transboundary Marine Protected Areas while applying States' Sovereign Rights

TBMPAs require States concerned to cooperate in order to secure their adequate development and management.²⁸³ There is a give-and-take situation that requires from these States a re-thinking of the way they exercise their sovereign rights over the designated area within their

²⁷⁹ Kaul, Inge, "The Rise of the Global South: Implications for the Provisioning of Global Public Goods", The Rise of the Global South | Human Development Reports (undp.org), 2013, New York, https://en.wikipedia.org/wiki/Global_North_and_Global_South; North And South, The (Global) | Encyclopedia.com (accessed on 31 October 2022).

²⁸⁰ IPCC, "Climate Change 2022: Impacts, Adaptation and Vulnerability", Climate Change 2022: Impacts, Adaptation and Vulnerability | Climate Change 2022: Impacts, Adaptation and Vulnerability (ipcc.ch) (accessed on 31 October 2022 at 15:56).

²⁸¹ The Regional Network of MPAs in West Africa (RAMPAN) work is a good example of this.

²⁸² Failler, P. (2019), *supra* note 2017.

²⁸³ UNCLOS, Article 197; I.U. Jakobsen, Marine Protected Areas in International Law: An Arctic Perspective, Brill Nijhoff, Leiden/Boston, 2016, P. 247.

national jurisdiction, for the development of a possible TBMPA or a large space of a Network of MPAs. This goes in the opposite direction to the jurisdictional rights given to them under the UNCLOS (Paragraph 1). Also, establishing a TBMPA between two or more States is supposed to enable them to apply at the same time the obligations imbedded in Part XII of the Constitution of the Ocean to for them to cooperate sub-regionally and even bilaterally in order to protect and preserve their marine environment. However, for this to be achieved effectively, there must be the removal of self-interests on one hand, and the overcoming of any lack of trust on the other hand (Paragraph 2).

Paragraph 1: UNCLOS and the Zonal Approach

The purpose of this Paragraph is to look at the several ways through which the Zonal Approach under the UNCLOS, is likely to hinder the effective development and management of TBMPAs within the Southeast Atlantic. Some of these ways are the application of the jurisdictional rights given to coastal States by the Convention (1), the implementation of the obligations of the coastal States (2) and the exercise of the rights of flag State in areas beyond national jurisdiction (3).

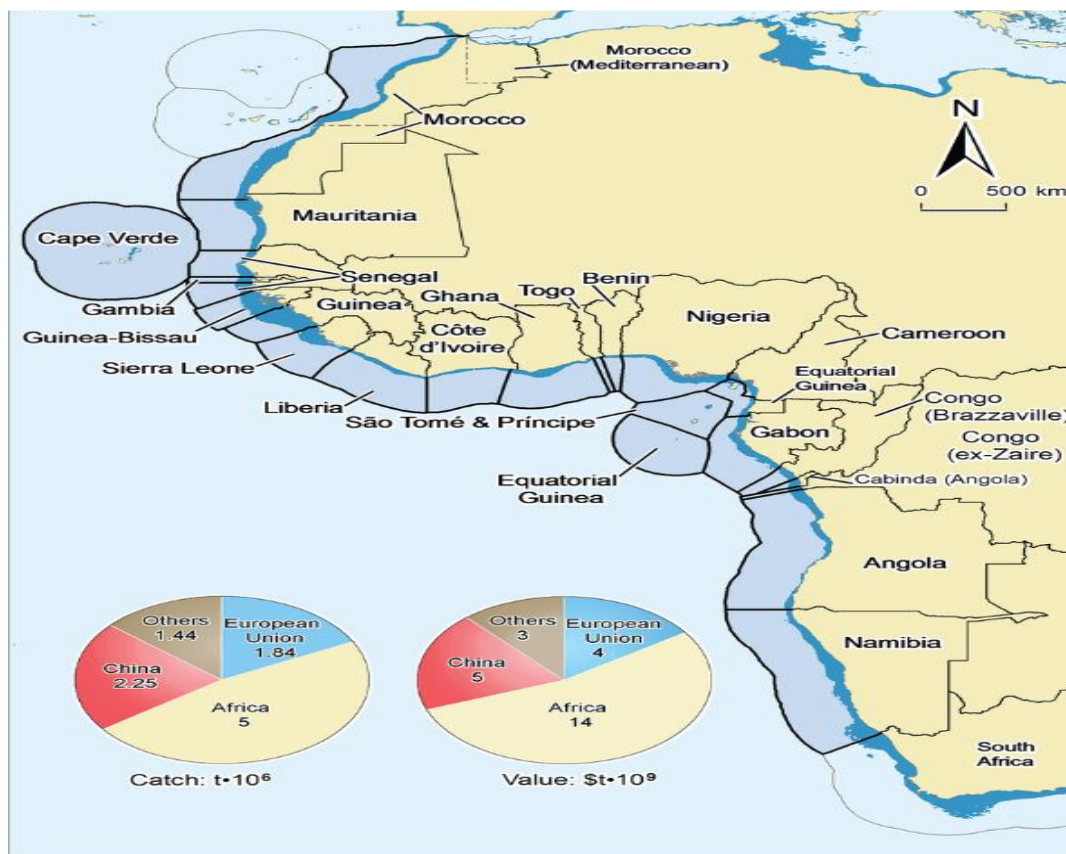
1) Coastal State Maritime Jurisdictional Rights

Under the Zonal Approach, coastal States like the twenty-two States of the Southeast Atlantic Sub-region which are all members of the UNCLOS, are entitled to the specific spatial ambit of their internal water (article 8), their territorial seas (articles 2 to 4) their EEZ (Part V) and their Continental Shelf (Part VI).²⁸⁴ In application to these provisions, most of them have thus delimited their national maritime space around these four distinctive categories of maritime spaces.²⁸⁵ Making, therefore, the exploration and exploitation of resources therein restrictive to other States, except through express request to, and authorisation from the coastal state.

²⁸⁴ Y. Tanaka (2008) *supra* note 28, pp. 5-8. I.J. Adewumi (2022) *supra* note 34.

²⁸⁵ I.J. Adewumi (2022) *op.cit.* These maritime spaces are five in all under the LOSC. The Archipelagic waters, the other maritime space that is not mentioned here, is seen as not found in the Southeast Atlantic Sub-region/

Image 3: Exclusive-Economic-Zone-waters-of-the-West-African-countries-considered-here-also



SOURCE: Dyhia Belhabib, “euros vs. yuan: comparing European and Chinese fishing access in west Africa”, march 2015, plos one 10(3), license: cc by 4.0, 10.1371/journal.pone.0118351, https://www.researchgate.net/figure/exclusive-economic-zone-waters-of-the-west-african-countries-considered-here-also_fig1_274385630

Consequently, any activity that is carried out in the maritime domains of individual States of the Sub-region, such as the exploration and exploitation²⁸⁶ of marine resources is strictly done under the implementation of their individual sovereign rights over those spaces without having to act collaboratively. Thus, even as Contracting Parties to the UNCLOS, they normally develop the legal, policy and institutional management of their maritime domains in silos, as reflected in their national laws. In this regard, they usually do not intervene in the internal matters of other neighbouring States unless they are being called to do, as they endeavour to respect the

²⁸⁶ I.J. Adewumi (2022), *supra* note 34.

boundaries that were negotiated prior to the time of their individual independence.²⁸⁷ An example of such a State in the Sub-region is the Republic of Cameroon, which per her Foreign Policy, does not intervene in the affairs of other countries nor does she allow them to interfere in her matters without prior invitation.²⁸⁸ These jurisdictional rights, as prescribed by the Convention, are being exercised exactly as requested by those States of the Sub-region that took part in the Third UNCLOS Conference as Members of the Group of 77;²⁸⁹ the latter had requested their greater influence on the ocean.²⁹⁰ Hence, their support achieved the extension of the Territorial Sea and the creation of the regime of the EEZ.²⁹¹ Thus, even with the duty to cooperate for the protection and preservation of the marine environment under UNCLOS and the CBD,²⁹² the creation of a TBMPA might be obstructed if it is seen as going against their individual interests in the exercise of that very much sought sovereign rights over their maritime domain and the resources therein.²⁹³

Indeed, even with the alarming situation (*biodiversity loss and ecosystem degradation*) that their individual but common maritime domain is under, some of these countries are still acting in favour of the respect of the maritime sovereign rights over the obligation to cooperate for the

²⁸⁷ This respect is in accordance with the International Law Principle of *Pacta Sunt Servanda*, under which agreed maritime boundaries are not only considered as final and binding, whether they are negotiated or judicially decided, they are the entitlement of the coastal States; Árnadóttir, S. (2016), “Termination of Maritime Boundaries Due to a Fundamental Change of Circumstances”, *Utrecht Journal of International and European Law*, 32(83), pp.94–111. DOI: <http://doi.org/10.5334/ujiel.335>, See also the Frontier Dispute (Burkina Faso v Repblc of Mali) (Judgment) (1986) ICJ Rep 554, 577, para 46.

²⁸⁸ Peter, A., Mbida, R.M. (2018). “International Organizations as Shields in Cameroonian Foreign Policy”. In: Warner, J., Shaw, T. (Eds.) *African Foreign Policies in International Institutions. Contemporary African Political Economy*. Palgrave Macmillan, New York. https://doi.org/10.1057/978-1-137-57574-6_22; https://www.researchgate.net/publication/325222207_International_Organizations_as_Shields_in_Cameroonian_Foreign_Policy (accessed on 15 October 2022 at 16:18). Narcisse Mouelle Kombi, *LA POLITIQUE ÉTRANGÈRE DU CAMEROUN*, l’Harmattan, 1996. J. Keutcha, “L’originalité de la politique extérieure du Cameroun”, *août 1976*, page 24, <https://www.monde-diplomatique.fr/1976/08/KEUTCHA/33872> (accessed on 15 October 2022 at 16:26). <https://www.prc.cm/fr/le-cameroun/89-diplomatie> (accessed on 15 October 2022 at 16:26).

²⁸⁹ <https://www.g77.org/doc/>; Carol Geldart and Peter Lyon, “The Group of 77: A Perspective View”, *International Affairs* (Royal Institute of International Affairs 1944-), Vol. 57, No. 1 (Winter, 1980-1981), pp. 79-101 (23 pages) Published By: Oxford University Press; A.G. Friedmann and Cynthia A. Williams, “The Group of 77 at the United Nations: An Emergent Force in the Law of the Sea”, *April 1979* Vol. 16 No. 3, <https://digital.sandiego.edu/cgi/viewcontent.cgi?article=2042&context=sdlr>.

²⁹⁰ Nasila S. Rembe, *Africa and the International Law of the Sea: A Study of the Contribution of the African States to The Third United Nations Conference on the Law of the Sea*, Review: [Untitled] on JSTOR (accessed 14 October 2022 at 9:16 am); C. Odidi Okidi, “The Role of the OAU Member States in the Evolution of the Concept of the Exclusive Economic Zone in the Law of the Sea: The First Phase” (1982-1983) 7:1 *DLJ* 39, <https://digitalcommons.schulichlaw.dal.ca/cgi/viewcontent.cgi?article=1322&context=dlj>; Oversea Development Institute (ODI), “THE THIRD WORLD AND THE LAW OF THE SEA”, Briefing Paper No 1 1981 May, <http://cdn-odi-production.s3-website-eu-west-1.amazonaws.com/media/documents/6648.pdf> (accessed on 02 November 2022 at 11:06).

²⁹¹ *Ibid.*

²⁹² CBD, Article 8.

²⁹³ Tullio Scovazzi and Ilaria Tani, “Problems posed by marine protected areas having a transboundary character” in P. Mackelworth, (2018), *supra* note 22, pp. 17-34.

protection and preservation of this domain, as these rights are often in line with their national economic development.²⁹⁴ The exercise of these sovereignty rights in delimitating and maintaining their maritime boundaries have been recognised in several scholarly works²⁹⁵ and international judicial works as stable and permanent.²⁹⁶

Consequently, even though the obligation to cooperate for the protection and preservation of their marine and coastal environment enshrined in the UNCLOS does not generally interfere with these sovereign rights over their respective maritime domain, the development of TBMPAs in the Sub-region might still not be considered a priority and in anyway enhancing their national development interests;²⁹⁷ particularly if it is regarded as a tool that is likely going to tamper with the political and economic benefits that are derived through the self-exercise of their sovereign rights over their maritime zones.

2) Coastal States Maritime Jurisdictional Obligations over their Maritime Domain

The traditional uses of the sea under the jurisdictional obligations of coastal States within their maritime spatially defined areas demand that they grant freedom of navigation to any vessel and fleet, and even overflight to aircraft going through those areas within their national jurisdictions.²⁹⁸ This will mean that the jurisdictional obligations upon the States of the Southeast Atlantic will generally apply in the freedom of navigation of foreign ships and overflight of foreign aircrafts²⁹⁹ over that of conserving their maritime domains within the established sub-regional or bilateral TBMPAs.³⁰⁰ Under the provisions of the LOSC, these obligations of coastal

²⁹⁴ Pierre Failler (2019), *supra* note 217, P. 5.

²⁹⁵ Jon M. van Dyke et al. (Eds.), *Governing Ocean Resources: New Challenges and Emerging Regimes* (Tribute to Judge Choon-Ho Park), Martinus Nijhoff Publishers, 2013, pp. 4-5 and 139-161 (Tafsir Malick Ndiaye, “Le Juge et la Delimitation Maritime: Mode d’Emploi”).

²⁹⁶ *Case between the Federal Republic of Germany v. Denmark and the Federal Republic of Germany v. The Netherlands*, 1969, ICJ, 3.

²⁹⁷ Pierre Failler (2019), *supra* note 217. The political will of these countries in their economic preference in the management of their marine and coastal environment is clearly reflected in the National Development of both Cameroon and Nigeria as seen in the second Chapter of Part One of this work.

²⁹⁸ The accords that the coastal States gives for the innocent passage of fleets and vessels and the overflight of aircraft within areas within its jurisdiction is generally a duty that it cannot override.

²⁹⁹ UNCLOS, Part V, Article; Kay Hailbronner, “Freedom of the Air and the Convention on the Law of the Sea”, *The American Journal of International Law*, Vol. 77, No. 3 (Jul. 1983), pp. 490-520 (31 pages), Cambridge University Press, <https://www.jstor.org/stable/2201075>.

³⁰⁰ Fabio Spadi (2010), *supra* note 183; I.U. Jakobsen, *supra* note 108, p. 288-370.

States towards flag States and States owning military or diplomatic aircrafts applicable to their territorial seas and EEZs could conflict with their individual but common obligations to take measure towards successfully establishing TBMPAs or Networks of MPAs in order “to protect and preserve rare and fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life”.³⁰¹

Consequently, the development and management of Networks of MPAs or TBMPAs in designated areas within shared boundaries of the Territorial Seas or EEZ of the States of the Southeast Atlantic can be challenged in the carrying out these jurisdictional obligations towards other States under UNCLOS.³⁰² In other words, the flag States can request for transit or passage of its vessels and fleets in TBMPAs or between a Network of MPAs that are established within one of the jurisdictional zones under the Convention.

Also, these States may want to close some of the areas in their territorial seas and/or in their EEZ from navigation, to protect their particularly sensitive marine environments and their biodiversity from possible pollution from vessels or even from IUU fishing, they may then apply the routeing measure in order not to be completely closed to shipping.³⁰³ However, in the case of the States of the Southeast Atlantic Sub-region, this measure will certainly not serve efficiently its purpose simply because most of these vessels and fleets have a technology that is higher than anyone at the disposal of any joint management and monitoring operation team regarding the enforcement of TBMPAs in the Sub-region.³⁰⁴ This simply means that regardless of all the conservations measures that might be put in place by countries of the Sub-region, the exercise of their obligations towards the flag States, limits the full implementation of these measures. Therefore, even though Article 19(2) of UNCLOS states that vessels that have been granted innocent passage are forbidden from carrying out a number of activities during their passage such as fishing or from causing pollution, there is still high risks of breaching the conservation measures from around the TBMPA, which will end up affecting the designated area simply because of the fluidity of the ocean.

³⁰¹ UNCLOS, Part XII, Article 194 (5); CBD, Article 8.

³⁰² See generally Parts II to VII as they apply to freedom of passage and overflights.

³⁰³ UNCLOS, Articles 21 and 22; Julian Roberts, “Protecting Sensitive Marine Environments: The Role and Application of Ships’ Routeing Measures”, *The International Journal of Marine and Coastal Law*, 201 (2005): 135-159.

³⁰⁴ See Section B of this Chapter regarding the issue of funding being a major challenge to the enforcement of TBMPAs of Networks of MPAs in the Southeast Atlantic Sub-region.

3) Rights of other States over the Maritime Domain of Coastal States

Under the regimes of the Territorial Sea and the EEZ, other States (whether coastal or landlocked) have rights within the maritime domains of coastal States, which allow them to carry out specific activities under the express authorisation of the latter, such as fishing and laying of submarine cables.³⁰⁵ This sub-paragraph argues that even though this might be found in other sub-regions of the globe,³⁰⁶ these rights represent a major challenge to the possible establishment and enforcement of any sub-regional or bilateral TBMPA measures within the Sub-region when it comes to their implementation and because of the limited means that its countries dispose of when it comes to control and surveillance.³⁰⁷ These rules of international law of the sea enshrined in Article 58 of the UNCLOS and any other provisions of this regime pose a great problem to the effective implementation or enforcement of TBMPAs in the Sub-region, even though the cooperation of its States.

Therefore, and as seen above, in the exercise of their rights under UNCLOS, all States can enjoy within the maritime domains of those of the Southeast Atlantic, the freedom to lay submarine cables and pipelines,³⁰⁸ the innocent passage of their vessels or fleets and even the overflight of their military or diplomatic aircrafts.³⁰⁹ The Convention also prescribed that nationals of other States have the right to fish in the EEZs of the States of the Sub-region, in accordance to their respective national law and the provisions of the licence awarded to them as per the allowable catch.³¹⁰

It is exactly in the enforcement of the rights of these other States to fish, to place under-water cables and to even carry out deep seabed mining in areas close to possible designated TBMPAs or Networks of MPAs within the Sub-region, like that of the Regional Network of Marine Protected Areas in West Africa (RAMPAO)'s,³¹¹ that difficulties regarding the enforcement of

³⁰⁵ UNCLOS Article 58 and 87.

³⁰⁶ Literature has demonstrated that unlawful acts of other States, be they coastal or landlocked within areas under coastal States jurisdiction is a global phenomenon. One of which is IUU fishing and the release of ballast waters.

³⁰⁷ See generally Article 58 of the UNCLOS on the "Rights and duties of the Flag States in the Exclusive Economic Zone". See the following Chapter on the challenges that the lack of adequate resources pose to any conservation measure in the Southeast Atlantic Sub-region.

³⁰⁸ UNCLOS, Article 87.

³⁰⁹ UNCLOS, Articles 58.

³¹⁰ UNCLOS, Articles 61 and 62.

³¹¹ Selkani, I, "Let's Talk about MPAs: Blue Spaces in Africa—Case of RAMPAO", *Environ. Sci. Proc.* 2022, 15, 32, <https://doi.org/10.3390/environsciproc2022015032>.

such conservation measures have been observed and might certainly be for any future one in the Sub-region.³¹² These difficulties can come in the forms of the effects of IUU fishing,³¹³ plastic or oil pollution and even climate change (ocean acidification, ocean deoxygenation, ocean warming) occurring within the non-protected areas of the maritime domain of this ecoregion.³¹⁴ The confluence of these risks will be an unavoidable challenge while flag States carry out their rights in areas around the designated transboundary protected areas.³¹⁵ This situation can be intensified by the lack of adequate means of monitoring and controlling of activities within and outside of the TBMPA, due to other linkages such as the unavailability of funding,³¹⁶ coupled to issues deriving from self-interest and absence of trust among stakeholders at all levels.

Paragraph 2: The Issue of Self-interest and Trust in the Management of Transboundary MPAs

Recalling the definition given by IUCN on TBMPAs³¹⁷, there is a clear understanding that even though there are several categories of this ecosystem-based management tool,³¹⁸ one fundamental factor connects them. This is the fact that there must be cooperation among stakeholders for their effective implementation and enforcement.³¹⁹ TBMPAs affect international maritime borders which are political constructs by nature and a jealously guarded domain of sovereignty of any State which for many States, including those of the Southeast Atlantic, ought

³¹² Weigel, J.Y.; Féral, F. & Cazalet, B., (eds.), Governance of marine protected areas in least-developed countries. Case studies from West Africa, FAO Fisheries and Aquaculture Technical Paper No. 548. Rome, FAO. 2011. 78 pp

³¹³ ADF, “Study: Chinese Fleets Decimate Fisheries In West And Central Africa”, Mars 2022, <https://adf-magazine.com/2022/03/study-chinese-fleets-decimate-fisheries-in-west-and-central-africa/> (accessed 03 November 2022 at 5:52 am); E. C. Merem et al., “Analyzing the Tragedy of Illegal Fishing on the West African Coastal Region”, International Journal of Food Science and Nutrition Engineering, p-ISSN: 2166-5168 e-ISSN: 2166-5192, 2019; 9(1): 1-15, doi:10.5923/j.food.20190901.01; Austin Joko Jones, “Combating IUU Fishing in West Africa - A Regional Approach”, BRUSSELS, BELGIUM, 02 JULY 2007;

³¹⁴ Selkani, I (2022), *supra* note 311; Weigel, J.Y.; Féral, F. & Cazalet, B., (eds.), Governance of marine protected areas in least-developed countries. Case studies from West Africa, FAO Fisheries and Aquaculture Technical Paper No. 548. Rome, FAO. 2011. 78 pp; P. Mackelworth (2016).

³¹⁵ Selkani, I (2022), *supra* note 311.

³¹⁶ See Section B of this Chapter for more developments on the issue of funding in the development and management of this tool.

³¹⁷ See the introduction of this work.

³¹⁸ For IUCN, TBMPAs are either “Transboundary Protected Area”, “Transboundary Conservation Landscape and/or Seascape”, “Transboundary Migration Conservation Areas” or “Park for Peace”. See also P. Mackelworth (2016), *supra* note 22, p. 17.

³¹⁹ Cooperation among stakeholders vertically or horizontally is to the understanding of this author both an obligation and a necessity for the purposes of effective conservation of marine biodiversity and their habitats.

not to be altered for any reason whatsoever.³²⁰ In the case of Southeast Atlantic, this is coupled with a colonial history that did not help with the effective demarcations of the boundaries of its States.³²¹ Because of these factors any proposal that has to do with their boundary, even though it will not entail a general modification of the latter, might be a ground for conflicts since it will affect it in one way or the other; depending on the type of agreed TBMPA.

This Paragraph aims to present self-interest (1) and the lack of trust (2) as two major reasons for the failure of TBMPAs in general, and in the Sub-region.

1) The Challenging Fact about Self-interest in the Development and Management of TBMPAs

This sub-paragraph is looking at the issue of self-interest that often governs international relations as an obstacle to the effective development and management of any TBMPAs in the Sub-region. In other words, it affirms the fact that because of the geopolitical nature of TBMPAs, their success requires the regime to be able to reflect the interests of all involved parties. Thus, even with the existence of common issues, such as loss of biodiversity and marine habitat degradation affecting two or more States of the Sub-region, if these States do not put aside their national individual priorities/interests to allow for the general interests for the greater good, a project such as the one brought by AFMESI for the development of a TBMPA between Cameroon and Nigeria can easily fail. In order for this not to happen ocean affairs should be

³²⁰ Y. Tanaka, *Predictability and Flexibility in the Law of Maritime Delimitation*, HART Publishing, Oxford and Portland, 2006, pp. 319-322; Catarina Grilo, "The Impact of Maritime Boundaries on Cooperation in the Creation of Transboundary Marine Protected Areas: Insights from Three Cases", *Ocean Yearbook Online*, April 2014, 24:115-150 DOI:10.1163/22116001-90000055; Andreas Østhagen, "Troubled seas? The changing politics of maritime boundary disputes", *Ocean and Coastal Management* 205 (2021) 105535, <https://fni.brago.unit.no/fni-xmlui/bitstream/handle/11250/2765440/2021-AO-OCM-Troubled-seas.pdf?sequence=1> (accessed on 03 November 2022 at 9:58 am); Signe Veierud Busch, "Sea Level Rise and Shifting Maritime Limits: Stable Baselines as a Response to Unstable Coastlines", <https://arcticreview.no/index.php/arctic/article/download/1162/2604?inline=1> (accessed on 03 November 2022 at 10:10); Kate Purcell, "The Permanent Limits of the Continental Shelf Get access Arrow", in Kate Purcell, *Geographical Change and the Law of the Sea*, Oxford, 2019, P. 75-C5.N166, <https://doi.org/10.1093/oso/9780198743644.003.0005>, *The Permanent Limits of the Continental Shelf | Geographical Change and the Law of the Sea | Oxford Academic (oup.com)* (accessed on 03 November 2022 at 10:13).

³²¹ I. Adewumi (2022), *supra* note 34; ELÍSIO BENEDITO JAMINE, "Maritime Boundaries Delimitation, Management and Dispute Resolution Delimitation of the Mozambique Maritime Boundaries with Neighboring States (Including The Extended Continental Shelf) And The Management Of Ocean Issues", *The United Nations and Nippon Fellowship Programme 2006-2007*, Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs United Nations, NY, USA.

brought more to the centre of the foreign policy frameworks of countries like Cameroon and Nigeria.³²²

Indeed, having a foreign policy instrument that already reflects the vital needs or interests of a State in the Sub-region to cooperate either at the sub-regional level or at the bilateral level with the closest of its coastal neighbouring States,³²³ will go a long way to enable the success of such a project. Most often, the problem lies with the carrying out of the maritime delimitation of the boundaries of these former colonial possessions, whereby little regard is given “for the many species and habitats that permeate these boundaries, and the local communities’ [across national boundaries] that are reliant upon them”.³²⁴ The focus has always been on the respect of boundaries in the exploitation and exploration of resources, which is sometimes more abstract than factually based with a consideration of the interests of the individual nation placed over that of the rest of the world or even neighbouring States. This approach of the traditional law of the sea has, thus, guided over time the development of national laws, and particularly foreign laws of these countries which are reflecting more of their developmental needs than that of their shared maritime domains requiring their joint efforts.

Consequently, if the States of the Sub-region, both at the high and local levels of their governments, do not consider the importance of cooperating through joint efforts such as the development and management of a TBMPA between them, any effort in this light will flop. Just like in the prospective TBMPA between Côte d’Ivoire and Ghana, self-interests ought not to have a place when it comes to fighting common marine stressors such as marine and land-based pollution, mineral extraction, climate change and fisheries.³²⁵ Indeed, with the help of the MAMI WATA Project, these two countries that are part of the twenty-two countries of the Southeast

³²² Daria Ivleva, Alexander Müller and Benjamin Pohl, “Beware the Politics: Leveraging Foreign Policy for SDG Implementation”, Adelphi, Berlin, 30th of April 2019; Oli Brown and Stella Schaller, “Leadership for the SDGs: Why Foreign Policy must recharge Multilateral Cooperation now”, Adelphi, Berlin, 30th of April 2019; Paola Adriázola et al., “CLIMATE DIPLOMACY: New approaches for foreign policy”, Adelphi, 2013; Peter Charles Mackelworth et al., “Geopolitics and Marine Conservation: Synergies and Conflicts”, POLICY AND PRACTICE REVIEWS article, Front. Mar. Sci., 10 December 2019, Sec. Marine Affairs and Policy, <https://doi.org/10.3389/fmars.2019.00759>.

³²³ Stella Schaller and Dorian Mongel, “Rethinking Foreign Policy to Drive Transformative Change (Side Event in New York)”, Climate Diplomacy, Sustainable Transformation, Global Issues, 17 July, 2019; Norwegian Ministry of Foreign Affairs, “The place of the oceans in Norway's foreign and development policy”, Meld. St. 22 (2016–2017) Report to the Storting (white paper).

³²⁴ P. Markelworth (2016), *supra* note 22.

³²⁵ MAMIWATA, “La Côte d’Ivoire et le Ghana se réunissent dans le but de créer la première aire marine protégée transfrontalière de la région», August 2020, <https://mamiwataproject.org/2020/08/06/transboundary-mpa/?lang=fr> (accessed on 03 November 2022 at 14:26 pm); International Climate Initiative (IKI), “Côte d’Ivoire and Ghana come together with transboundary Marine Protected Area”, October 01, 2020, https://www.international-climate-initiative.com/en/iki-media/news/cote_divoire_and_ghana_come_together_with_transboundary_marine_protected_area/

Atlantic Sub-region, committing themselves to create a TBMPA between Assinie (Côte d’Ivoire) and Assini (Ghana) have considered more of their common ocean-related problems (pollution, mangrove deforestation, overfishing, as well as uncontrolled urbanisation, often occurring within a context of land- and sea-use conflicts) than their interests in self-governing their individual national maritime domain.³²⁶

Also, the self-interests in the individual governance of their coastal and marine environment States come as an obstacle to the success of the possible development and management of a TBMPA either at the sub-regional or bilateral levels when such a project when it is not seen as beneficial to one of the parties through the eyes of its decision-makers. Unlike the AFMESI Project of a TBMPA between Cameroon and Nigeria,³²⁷ the MAMI WATA Project of the development and management of this tool between Côte d’Ivoire and Ghana seems to have to receive needed support from high-level officials of both countries.³²⁸ In other words, the self-interest of any nation of this Sub-region can either secure the success or failure of a TBMPA if those responsible to make the intended decisions towards its establishment are not considering the commonalities that exist in such a project and which might be a bigger projection of initiatives “already being undertaken at the national level to strengthen the conservation of marine and coastal biodiversity”.³²⁹

Self-interest will come as a challenge to the success of any TBMPAs in the Sub-region in cases where, instead of nurturing bilateral cooperation between them, there has rather been fractures in relations because of competition over marine resources. Whereas, self-interest could be a weapon of enforcing any TBMPA or Networks of MPAs between them if it can be considered beyond the short term profits from fishing, and rather used for the long term benefits that the conservation of their marine environment through this measure enable their achievement of their developmental goals. The catalysing force of self-interest was observed by the AFMESI team in the TBMPA project between Cameroon and Nigeria, as they submitted the project for approval and

³²⁶ *Ibid.*

³²⁷ Source unidentified.

³²⁸ https://www.international-climate-initiative.com/en/iki-media/news/cote_divoire_and_ghana_come_together_with_transboundary_marine_protected_area/

³²⁹ Statement made by Professor Joseph Seka Seka, Minister of the Environment and Sustainable Development of Côte d’Ivoire, in support of the Cote d’Ivoire and Ghana TBMPA’s project.

accreditation from decision-makers of each State.³³⁰ The said support is a fundamental requirement for funding that is often guided by the presence of trust from all concerned stakeholders.

2) Building Trust in the Development and Management of TBMPAs

The establishment of any foreign relations, even between two local transboundary communities, requires evidence of trust. The latter is most of the time a consequence of either a long-lasting collaboration or a platform of shared interests. There is no existing relationship that is not built and that does not rely on trust: be it an interstate relationship or not. Simply put, there cannot be effective cooperation in the absence of trust.³³¹ Thus, even the existence of cooperation in conserving biodiversity and its habitats requires the perennial presence of trust to be achieved. This sub-paragraph will help present ‘trust’ as a fundamental factor in the success of TBMPAs. The absence of this could lead to their failure. Therefore, to better illustrate the importance of trust in the development and management of this tool, the potential TBMPA between Cameroon and Nigeria will be examined here.

The Bible poses the following question: “Can two walk together except they agree?”³³² Most often the answer is no. The long-standing relationship between Cameroon and her sister country Nigeria has known different stages such that today, though both countries cooperate in other matters,³³³ there are several cracks on their trust wall towards one another. The bridge of trust between these two countries tampered from the onset of the Bakassi crisis, which according to literature came based on the richness of the area in both living and non-living resources.³³⁴ The interests of both countries in the Bakassi Peninsula and the resources buried in its marine environment, coupled with Nigeria's invasion of the area that led to an exchange between military men from either side, made Cameroon take the situation before the ICJ for its ruling of

³³⁰ Reference preferred to be unknown.

³³¹ Even though Benjamin Kuipers’ paper title “Trust and Cooperation” (Kuipers B (2022), “Trust and Cooperation”, Front. Robot. AI 9:676767, doi: 10.3389/frobt.2022.676767) doesn’t focus on conservation, his approach on the nexus between these two concepts says it all about the omnipresence of ‘trust’ in the implementation of the obligation to cooperate prescribed by international regime on conservation.

³³² Amos 3:3, King James Version of the Bible,

<https://www.biblegateway.com/passage/?search=Amos%203%3A3&version=KJV> (accessed on 03 November 2022 at 15:41).

³³³ Both countries cooperate in the domains of military and economic. I. J. Adewumi (2022), *supra* note 34.

³³⁴ ICJ, “Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)”, <https://www.icj-cij.org/en/case/94> (accessed on 03 November 2022 at 16:27).

what had become the land and maritime disputes between them.³³⁵ The application of Cameroon before the situation showed that it was regarded as an act of aggression on the part of the Federal Republic of Nigeria, which up to today is creating doubts in their relationship and maintaining tension in some vital issues like the resettlement of populations from either nation that were affected by the ruling of the ICJ.³³⁶

Still looking at the AFMESI's Cameroon and Nigeria TBMPA Project, and its failure, in the light of the element of trust building for any successful cooperation and conservation measures between States, the issue of IUU fishing within the Sub-region as a whole and in the waters of these countries is significant. In comparison to Nigeria's maritime domain, Cameroon's coastal and marine environment surface is very small.³³⁷ This means that even though her fisheries sector matters to her maritime security because of its significant contribution to the economy, food security and local livelihoods, the country does not have a high stock of marine biodiversity like Nigeria.³³⁸ Still, Cameroon is faced with the recurrent threat of IUU fishing and fisheries crime that not only come from vessels from countries outside of the Sub-region³³⁹ but also Nigerian vessels or fishermen. Disrupting, therefore, an already very weak fisheries governance. Besides, this great threat, the maritime domain of Cameroon is also under the pressure of pirates of Nigerian nationality; making it therefore difficult for the Cameroonian military men to easily carry out joint monitoring and surveillance against piracy and even IUU fishing within their shared marine environment.³⁴⁰ This poaching of Cameroonian waters by Nigeria fishers, coupled with that of pirates "can constitute, lead to, or go hand-in-hand with other crimes that are organised and transnational in scope"³⁴¹ such as drug trafficking.

³³⁵ *Ibid.*

³³⁶ I. J. Adewumi (2022), *supra* note 34; Eno-Abasi Sunday, "Ceding of Bakassi: 13 years on, Greentree agreement unratified, unimplemented", The Guardian, 20 October 2019, <https://guardian.ng/news/ceding-of-bakassi-13-years-on-greentree-agreement-unratified-unimplemented/> (accessed on 03 November 2022 at 17:35); Umeh Lucy Chinwe, "Politics Of Resettlement And Nationality Crisis Of Inhabitants Of Bakassi Peninsula", African Journal for Multidisciplinary Research, Vol. 1, No. 2, 2018, p. 23-29.

³³⁷ See Image 3 on the "Exclusive-Economic-Zone-waters-of-the-West-African-countries-considered-here-also".

³³⁸ I. J. Adewumi (2022), *supra* note 34.

³³⁹ IUU fishing within Cameroonian waters is generally the acts of Chinese, EU, Japanese and Russian vessels. Maurice Beseng, "The Nature and Scope of Illegal, Unreported, and Unregulated Fishing and Fisheries Crime in Cameroon: Implications for Maritime Security", AFRICAN SECURITY, 2021, VOL. 14, NO. 3, 262–285, <https://doi.org/10.1080/19392206.2021.1982241>. ADF, "Cameroon Struggles To Combat Illegal Fishing", October 2021, <https://adf-magazine.com/2021/10/cameroon-struggles-to-combat-illegal-fishing/> (accessed on 03 November 2022 at 18:29).

³⁴⁰ Source prefers to remain unknown. STOP ILLEGAL FISHING, "Cameroon Deploys Navy to Seize Illegal Fishing Vessels", Institutional and Human Capacity, 10TH OCT, 2016, <https://stopillegalfishing.com/press-links/cameroon-deploys-navy-seize-illegal-fishing-vessels/> (accessed on 03 November 2022 at 18:18).

³⁴¹ Maurice Beseng, (2021), p. 4; E. Witbooi et al., "Organized Crime in the Fisheries Sector Threatens a Sustainable

The abovementioned examples in the controversial relationship that has existed between Cameroon and Nigeria over the decades since their respective independence in 1960, justifies in many ways the obstacle that the AFMESI project faced as the INGO sought the required accreditation for securing funds for the development of the project. Many of the Cameroonian Officials who were approached did not show the same amount of trust that can be read in the short statements given by the Head of Delegations of Cote d'Ivoire and Ghana in the MAMI WATA Project of establishing a TBMPA between them.³⁴²

This continued demonstration of distrust in the development of a TBMPA between Cameroon and Nigeria is intensified because most often, not only do those involved lack the adequate capacity to bring in the positive contributions of the decision-makers, but they end up not being able to secure funding towards its development and management.

Section B: The Challenging Situation of the Lack of Adequate Capacity and Needed Finance in Managing a Transboundary Marine Protected Area

Capacity and finance are constantly on the tables of discussion in international fora: they are presented, even with the future BBNJ Treaty as the fundamentals for any successful efforts including the development and management of TBMPA in the Sub-region. This Section is going to analyse the different forms through which these two concepts come alive in this ecosystem-based management tools as a challenge for the implementation of a TBMPA. For that purpose, looking at the absence of adequate human and institutional resources (Paragraph 1) and the absence of finance are going to enable us to better understand how they challenge the existence of current and future TBMPAs in the Southeast Atlantic.

Ocean Economy," Nature 588 (2020): 48–56.

³⁴² The Ivorian Delegation was led by Professor Joseph Seka Seka, Minister of the Environment and Sustainable Development of Côte d'Ivoire; while the Ghanaian Delegation was led on its part by Professor Kwabena Frimpong Boateng, Minister of Environment, Science, Technology, and Innovation.

Paragraph 1: The Absence of Adequate Human and Institutional Resources

The pivotal role of capacity building and strong institutions, with a specific focus on developing countries, is recognised in all international legal and policy instruments. The availability of the required knowledge and skills to take a project forward is often a challenge. This Paragraph is on the fundamental roles of both human capacity and strong institutions in the successful governance of TBMPAs. Being able to develop and manage TBMPAs in the Sub-region requires thus the presence of adequate human (1) and institutional (2) resources.

1) The Human Resource Capacity in the Governance of TBMPAs

Even though TBMPAs are holistic and integrative, their effective development and management still require specific and technical knowledge and skills that are generally often absent in the world at large³⁴³ and particularly in the Southeast Atlantic Sub-region. This sub-paragraph is all about analysing the need for an adequate human capital in the creation and enforcement of TRBMPAs in the Southeast Atlantic Sub-region be it sub-regionally or bilaterally. The interests of developing countries like the ones of the Southeast Atlantic, in acquiring adequate capacities for specific issues like ocean governance,³⁴⁴ have always been strongly mentioned in international instruments dealing with the protection and preservation of the marine environment. About TBMPAs, Part XII of the UNCLOS indicates that developing States shall provide technical assistance as well as preferential treatment in some matters³⁴⁵ to developing countries among which are the twenty-two States of the Sub-region.³⁴⁶ According to Article 202 of this global instrument, the scientific and technical capacity-building opportunities are reserved, *inter alia*, to a category of persons, within the sub-region, who are the "scientific and technical personnel" of national or sub-regional institutions. In other words, this capacity building is generally offered to managers of TBMPAs.

³⁴³ Gill, D., Mascia, M., Ahmadi, G. et al., "Capacity shortfalls hinder the performance of marine protected areas globally", *Nature* 543, 665–669 (2017). <https://doi.org/10.1038/nature21708>.

³⁴⁴ The United Nations – Nippon Foundation Fellowship administered by DOALOS and the ITLOS – Nippon Foundation Fellowship administered by the Registrar of the ITLOS are among many capacity building programmes that are set out to enable nationals from countries such as the Southeast Atlantic Sub-region to be able to acquire adequate knowledge and skills in the domain of ocean affairs and the law of the sea, or dispute settlement of conflicts arising within the ambit of the UNCLOS.

³⁴⁵ UNCLOS, Article 203.

³⁴⁶ UNCLOS, Article 202.

Consequently, there is the need to enlarge the capacity building of all directly or indirectly concerned stakeholders. Otherwise, the effective development and management of TBMPAs in the Sub-region will face a challenge with the lack of adequate knowledge and skills among involved actors.³⁴⁷ However, the governance of TBMPAs in the Sub-region must not leave any one of the concerned stakeholders behind; be they scientists, managers, decision-makers or even judges/lawyers/diplomats and parliamentarians. The human capacity that is required for the effective development and management of TBMPAs in the Southeast Atlantic Sub-region is more than a collection of human technical skills.³⁴⁸ To achieve that effect, there is a need for the implementation process of the capacity-building provisions enshrined in the different international legal and policy regimes to integrate other stakeholders other than the managers.

Indeed, there is a capacity gap in the development and management of TBMPAs in the Sub-region, which is reflected in the form of a lack of knowledge and awareness of the meaning and importance of this ecosystem-based management tool.³⁴⁹ For this author, the understanding and knowledge of what are TBMPAs and how their impacts affect the ecological and socio-economic dimensions of the society should be carried out both vertically and horizontally. Initiating capacity building that would be centred on participatory governance will certainly guarantee the success of TBMPAs in the Sub-region.³⁵⁰ This will, therefore, require that not only the managers that receive the necessary capacity building but also, education towards acquiring knowledge on TBPMAs should be given to non-technical or non-expert government officials with whom reside the decision-making powers like local government stakeholders (Mayors or Chiefs) and the local

³⁴⁷ Gill, D., Mascia, M., Ahmadi, G. et al. (2017), *op. cit.* note 344.

³⁴⁸ Patrick McConney & Maria Pena (2012) Capacity for (Co)Management of Marine Protected Areas in the Caribbean, Coastal Management, 40:3, 268-278, DOI: 10.1080/08920753.2012.677632. Capacity for (Co)Management of Marine Protected Areas in the Caribbean: Coastal Management: Vol 40, No 3 (tandfonline.com) (accessed on 17 October 2022 at 11:40 am).

³⁴⁹ The declarations of the Heads of Delegations of both Cote d'Ivoire and Ghana regarding their satisfaction makes this author to think that there had been some fundamental awareness actions regarding the important role that this tool will play in the biodiversity and marine habitats protection and conservation between these two countries. This project is developed on the back of the ITLOS' ruling Dispute concerning delimitation of the maritime boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire), <https://www.itlos.org/en/main/cases/list-of-cases/case-no-23/> (accessed on 03 November 2022 at 19:42); https://www.international-climate-initiative.com/en/iki-media/news/cote_divoire_and_ghana_come_together_with_transboundary_marine_protected_area/

³⁵⁰ Marie Christine Cormier Salem, "Participatory governance of Marine Protected Areas: a political challenge, an ethical imperative, different trajectories. Senegal case studies", *Sapiens* 7(2):13, April 2014, at: <https://www.researchgate.net/publication/275886096>; Ella-Kari Muhl, Ana Carolina Esteves Dias and Derek, "Armitage Experiences with Governance in Three Marine Conservation Zoning Initiatives: Parameters for Assessment and Pathways Forward", *Sec. Marine Conservation and Sustainability*, 29 July 2020, <https://doi.org/10.3389/fmars.2020.00629>; Aissatou Niasse, "Participatory governance of marine protected areas in Senegal", <https://mamiwataproject.org/project/participatory-governance-mpas-senegal/> (accessed on 03 November 2022 at 19:42);

population including the fisher folks.³⁵¹ A good example of the need to apply the integrative and holistic approaches in carrying out capacity-building for the development and management is the fisheries sector in this Sub-region, which is considered to be a source of public revenue through fishing agreements.³⁵² In this case, it is vital to have the science that advocates for TBMPAs and that reflects both the ecological and socio-economic advantages of this tool in the developing agenda of the policymakers. In this regards, they ought to be given equal opportunities to receive understanding and mastery with respect to this tool.

Being able to overcome this challenge of lack of adequate capacity in the governance of TBMPAs also contributes to the implementation of the provision of Articles 194 and 197 of UNCLOS on the obligation to cooperate in applying conservation measures. Thus, to apply these obligations, there is a vital need to establish transnational capacity-building platforms that are either at the sub-regional or bilateral levels, while ensuring that there are strong institutional capacities to house this new breed of experts.

2) The Need for Strong Institutional Capacities

Transboundary marine conservation is already complex³⁵³ and having the right institutions and strong institutional cooperation is essential when it comes to the success or failure of creating sub-regional or bilateral TBMPAs in general and particularly in the Southeast Atlantic Sub-region. This sub-paragraph will analyse the quality of the institutionalisation of TBMPAs at both sub-regional and bilateral levels, whether they come as a TBMPA between Cameroon and Nigeria, or Networks of MPAs developed under the mandate of the Abidjan Convention. The strong institutional capacity that is referred to here has to do with overcoming the overlapping of institutional efforts due to the lack of communication or dialogue among existing bodies. This, indeed, can hinder the success of this ecosystem-based management tool. Be it at the sub-

³⁵¹ P. Mackelworth (2016), *supra* note 22; Robert Y. Fidler, Gabby N. Ahmadi, Amkieltiela et al., “Participation, not penalties: Community involvement and equitable governance contribute to more effective multiuse protected areas”, SCIENCE ADVANCES, Vol 8, Issue 18, 4 May 2022, DOI: 10.1126/sciadv.abl8929.

³⁵² IUCN COMMISSION GROUP, “IUCN WCPA Capacity Development Thematic Group”, <https://www.iucn.org/our-union/commissions/group/iucn-wcpa-capacity-development-thematic-group>; Juan Carlos Seijo, “The role of capacity building for improving governance of fisheries and conservation of marine ecosystems”, September 2014 DOI:10.1002/9781118392607.ch26.

³⁵³ Arthur Omondi Tuda, Salit Kark and Alice Newton, “Polycentricity and adaptive governance of transboundary marine socio-ecological systems”, Ocean & Coastal Management, Volume 200, 1 February 2021, 105412.

regional level or bilateral level, the successful governance of TBMPAs requires the implementation of the co-management approach.³⁵⁴

→ **The institutional governance of TBMPAs at the Sub-regional level:**

As seen in Part 1 of this work, there is a good number of sub-regional institutions that have competence in the management of both the marine ecosystem of the Sub-region and its marine biodiversity. While the Abidjan Convention aims at protecting and preserving the marine environment of the Southeast Atlantic against all forms of pollution including land-based pollution,³⁵⁵ the different RFMA/Os like SEAFOA have competence over the management of fisheries activities in their geographical areas of competency within the Sub-region.³⁵⁶ Besides these two, are the Regional Economic Communities (RECs) that have economic interests considering the economic valuation of marine ecosystem-based activities carried out within their respective geographical area of control.

Thus, even though the RECs might not on their own directly initiate the development and management of a Network of MPAs with focus of on the conservation of marine biodiversity in the Sub-region, they can however influence their success or failure depending on their level of involvement. In other words, for the problem of weak governance in the management of the ocean generally, and that of TBMPAs in particularly, there must be common involvement. All existing institutions must work together to avoid fragmentation and failure of the project, in order to avoid weakness in the governance in place.

Therefore, in order, to have strong ocean institutional governance in the Southeast Atlantic Sub-region through the development and management of TBMPA or Networks of MPAs there is a need to have in place collaborative governance of their marine ecosystem and its resources even at the bilateral level.

→ **The institutional governance of a TBMPA at the bilateral level:**

Developing a TBMPA between Cameroon and Nigeria will require that both States consent to put in place an organ that would reflect the holistic and integrative nature of this tool. This will enable the creation of the inherently complex nature of the joint governance of the designated

³⁵⁴ *Idem.*

³⁵⁵ This Regional Sea Convention is today showing interest in the fight against IUU fishing. It wants to make it one of its areas of competence.

³⁵⁶ For the time being, there is no RFMO that covers the entire Sub-region. Probably in the future that will be the competence of the Abidjan Convention now that it is also interested in managing IUU fishing.

marine area. The development and management of a single MPA already involves institutional stakeholders from different sectors, from the different governmental institutions or the local governments to the private sector and even the Civil Society. Each one of them is likely to come with its jurisdiction and differences in the historical, and functional aspects between them; creating, therefore, a major challenge to the success of the development and management of the MPA.

In the case of a TBMPA between two countries, such as Cameroon and Nigeria, this situation is elevated to the highest level as it would involve the sovereignty of two States over a shared domain. Establishing an organ to centralise the management of their respective and common interests, but which does have their consensus of all stakeholders, might result in a weakness in the governance of the TBMPA. Or an established joint development and management organ, which does not have their required co-participatory involvement from individual stakeholders from either involved State will also jeopardise the wellbeing of the TBMPA.

Finally, the lack of adequate human and institutional resources for the management of TBMPAs at the sub-regional and bilateral levels in the Southeast Atlantic, despite the existence of norms and policies will only lead to the exacerbation of problems such as IUU fishing in the Sub-region. The weakness in the institutional governance is also intensified by the unavailability of funding.

Paragraph 2: The Unavailability of Finance

Among the 17 UN SDGs, SDG 14 which is Life Below Water is described as the least funded SDG by both Official Development Assistance and philanthropic development funding financed goals.³⁵⁷ It is, therefore, no surprise that the financing of the implementation of its Target 14.5 is also facing the same funding difficulties globally, regionally, sub-regionally, nationally, and locally, however opportune its development is to a sustainable ocean.³⁵⁸ Now with the hope of

³⁵⁷ OECD, “Sustainable Ocean for All: Harnessing the Benefits of Sustainable Ocean Economies for Developing Countries”, <https://www.oecd.org/environment/sustainable-ocean-for-all-bede6513-en.htm>, <https://www.oecd-ilibrary.org/sites/bede6513-en/index.html?itemId=/content/publication/bede6513-en> (accessed on 17 October 2022 at 20:41 pm) ; <https://www.oneplanetnetwork.org/knowledge-centre/resources/sustainable-ocean-all-harnessing-benefits-sustainable-ocean-economies> (accessed on 17 October 2022 at 20:41 pm).

³⁵⁸ *Idem*.

seeing more TBMPAs or Networks of MPAs being created in the Sub-region, under the much-verified fact that they represent a unique opportunity to better protect and conserve both marine biodiversity and their environment through coordinated management across national borders,³⁵⁹ financing such projects is going to represent a challenge that might lead to their abortion from the initial stage or failure.³⁶⁰

The purpose of this Paragraph is not to bring arguments justifying the difficulty of having funds for a project such as Networks of MPAs and TBMPAs respectively at the sub-regional and bilateral levels of the Southeast Atlantic. The aim is to investigate some of the consequences that the lack of adequate funding, or simply no funding at all will have as impacts on relevant elements that make up a strong project leading to the development of this ecosystem-based management tool. Thus, for this work and in this Paragraph, we shall only look at its impacts on scientific research (1), and on the aspect of monitoring, control, and compliance (2).

1) Scientific Research

According to the Intergovernmental Oceanographic Commission of UNESCO, *the United Nations Decade of Ocean Science for Sustainable Development (2021-2030)* can also be interpreted as being the decade leading us to the “science we need for the ocean we want”. This is a platform that enables the nations of the world as a whole and those of the Southeast Atlantic Sub-region to make use of the “[...] ‘once-in-a-lifetime’ opportunity for [them] to work together to generate the global ocean science needed to support the sustainable development of our shared ocean”.³⁶¹

³⁵⁹ Jose’ Guerreiro et al., “Establishing a transboundary network of marine protected areas: Diplomatic and management options for the east African context”, *Marine Policy* 34 (2010) 896–910.

³⁶⁰ The issue of funding project related to the marine environment of the Sub-region is always a major challenge, with already its States not respecting their financial obligations in the different Sub-regional organisations in which they are Members like the Abidjan Convention. As a result, they are always turning to external sources of fundings. UNEP, Abidjan Convention COP decisions (March 2014), The first meeting of the African Ocean Governance Strategy Istanbul, 19 October 2015, UNEP/Ocean Governance/WG.1/INF7.

³⁶¹ Intergovernmental Oceanographic Commission [5919], “The Science we need for the ocean we want: the United Nations Decade of Ocean Science for Sustainable Development (2021-2030)”, IOC/BRO/2020/4, IOC/BRO/2018/7 REV (previous edition), The Science we need for the ocean we want: the United Nations Decade of Ocean Science for Sustainable Development (2021-2030) - UNESCO Digital Library (accessed on 18 October 2022, at 11:28 am).

Indeed, from the UNCLOS³⁶² to the Abidjan Convention,³⁶³ and even with some considerations to the future ILBI Treaty, the importance of having the right research carried out that will enable adequate decision-making for the general protection and preservation of the marine environment in general, and development and enforcement of TBMPAs in the Sub-region is urgent and critical. The science needed here ought to come through cooperation. This, therefore, means that the needed science must emanate from the collaboration of multidisciplinary networks of expert working groups, with members from all over the twenty-two Contracting Parties.³⁶⁴ Besides this, and because of the lack of adequate technology in the Sub-region, decisions to choose a particular area within their shared maritime domain to be established as a TBMPA can also be based on the results of “cooperation with competent international and regional organisations, a regional network of national research centres and institutions”³⁶⁵ to ensure that these get the needed consensus.

The cost of carrying out such scientific research towards the identification of the kind of TBMPAs or Networks of MPAs that is needed in the Sub-region, either sub-regionally or bilaterally, requires adequate funds to be achieved. Unfortunately, these financial requirements are very difficult to meet and have proven to be beyond the financial capabilities of the countries of the Southeast Atlantic even when acting together as a Sub-region.³⁶⁶ Being able to put in place collaborative research that will lead to the co-decision-making, as envisaged in the IOC-UNESCO Ocean Decade Project,³⁶⁷ of whether the proposed TBMPA between Cameroon and Nigeria is going to be more of a no-take zone rather than a joint development area is likely to obtain financial support from big international non-governmental organisations³⁶⁸ or other

³⁶² UNCLOS, PART XIII MARINE SCIENTIFIC RESEARCH, Article 240 General principles for the conduct of marine scientific research.

³⁶³ Abidjan Convention, Article 14, Scientific and Technological Cooperation.

³⁶⁴ Abidjan Convention, Article 14 (1).

³⁶⁵ UNCLOS, SECTION 2. INTERNATIONAL COOPERATION, Article 242 on Promotion of international cooperation; Abidjan Convention, Article 14 (2).

³⁶⁶ M. Vierros, “Draft Policy Brief on Marine Biodiversity and Networks of Marine Protected Areas”, Global Forum on Oceans, Coasts, and Islands Global Oceans Conference 2010 May 3-7, 2010, UNESCO, Paris, p. 6. see also, the SUMMARY OF THE FOURTH IMPAC AND HIGH-LEVEL MEETING: 5-10 SEPTEMBER 2017 published on Tuesday, 12 September 2017 Vol. 186 No. 9, <http://enb.iisd.org/oceans/impac/2017/>.

³⁶⁷ Mary S. Wisz, Erin V. Satterthwaite, Maree Fudge et al., “100 Opportunities for More Inclusive Ocean Research: Cross-Disciplinary Research Questions for Sustainable Ocean Governance and Management”, *Front. Mar. Sci.*, 06 August 2020 Sec. Marine Affairs and Policy, <https://doi.org/10.3389/fmars.2020.00576>.

³⁶⁸ José Guerreiro, Aldo Chircop, Catarina Grilo et al. (2010), *supra* note 360; EU Project “Transboundary networks of marine protected areas for integrated conservation and sustainable development: biophysical, socio-economic and governance assessment in East Africa” (TRANSMAP) (EU Contract no. INCO-CT2004-510862).

fundings such as banks.³⁶⁹ Another example of the needed science will certainly be the one where the funders can relate with the objectives of the TBMPA. In other words, the latter has been focusing, for example, on the positive relationship between biodiversity conservation and poverty alleviation.³⁷⁰ For “what is important is not the technocrat’s perception [or the researcher’s] perception, but the priorities of those who have the funds”.³⁷¹

Consequently, for the Southeast Atlantic Sub-region to understand what it has in terms of marine biodiversity and what it stands to lose, the needed funded scientific research leading to the creation of TBMPAs must be carried out. This scientific research will also contribute to the management of this tool.

2) Management of TBMPAs: Monitoring, Control, compliance, and Enforcement

Monitoring, control, compliance, and enforcement of TBMPAs represent the management or implementation phase whereby there is also a need for a sustainable amount of funding to carry the project to completion. If the established Networks of MPAs are marine reserves, the countries of the Sub-region will have to ensure the sustainable availability of funds to avoid the failure of the project.³⁷² The investigation of this sub-paragraph aims to factor in the need for a steady source of funding as a fundamental means of guaranteeing the success of this ecosystem-based management tool.

At the time when this research is being carried out, there is only one Network of MPAs that exist in the entire Sub-region;³⁷³ and there is no enforced TBMPA established between any two countries within the Sub-region.³⁷⁴ The RAMPAO Network of MPAs will, therefore, be used in

³⁶⁹ Greater momentum is being created around the role of Public Development Banks, such as the African Development Bank, to bring their own stone to the strengthening of global ocean governance and particularly regional ocean governance efforts. (103) Finance In Common 2022: Research Conference - YouTube, Home | Finance in common.

³⁷⁰ Dominique Duval-Diop, “The West African regional network of marine protected areas an effective tool for bridging the gap between two international environmental frameworks”, in P. Mackelworth (2016), *supra* note 22, pp. 181-197.

³⁷¹ UNEP/Ocean Governance/WG.1/INF7, Abidjan Convention COP decisions (March 2014), pp. 4-5.

³⁷² Likening the governance of TBMPAs to that of Large Marine Ecosystems (LMEs), this author agrees with IWLEARN Manuals and their Chapter 5 where “compliance and enforcement are key components of effective LME governance”, <https://iwlearn.net/manuals/governance-toolkit/chapter-5> (accessed on 01 November 2022 at 14:02).

³⁷³ RAMPAO, “Newsletter RAMPAO”, 09 2015; Dominique Duval-Diop, “The West African regional network of marine protected areas an effective tool for bridging the gap between two international environmental frameworks”, in P. Mackelworth (2016), *supra* note 22 pp. 181-197.

³⁷⁴ The established TBMPA between Cote d’Ivoire and Ghana, developed under the MAMIWATA Project is still to be enforced. Thus, now, there is no way to better appreciate the application of these components in its governance/management.

this sub-paragraph and in the next one as a case study of the negative impacts that the unavailability of finance will cause on implementation. RAMP AO is seven Member States (Cape Verde, Mauritania, Senegal, Guinea Bissau, Guinea, and Sierra Leone) association of national MPAs. It is the concrete expression of Member States of the Sub-regional Fisheries Commission (SRFC) and contributes to the fostering of common efforts for the preservation and enrichment of marine biodiversity resources, through marine protected areas. It has as its purpose to ensure the sustainability of the 50 per cent of the population living in the coastal area through the effective management of the Network of MPAs. But the unavailability of a constant stream of finance is slowing its activities within the Network. In 2015, the then President of the Network identified the unavailability of sustainable finance as a reflection of the lack of empowerment.³⁷⁵

Indeed, the cost borne for the establishment of a Network of MPAs or TBMPAs will certainly be disproportionate to the one that is required for its management. This is a long-term goal that is too costly for countries of the Sub-region.³⁷⁶ They are thus obliged to seek external funding to avoid the failure of any project concerning the management of this tool. An example of efforts made in sourcing for external funding is that of Mauritania and Guinea-Bissau which established sustainable financing for marine protected areas, via conservation trust funds, to help conserve and sustainably use these vital ecosystems.³⁷⁷ The trust was put in place with funds from the “European Union payments to Mauritania and Guinea-Bissau for the conservation of marine protected areas under the Fisheries Partnership Agreements”.³⁷⁸

3) Communication

The concept of communication should be associated with the elements that harness the benefits of TBMPAs. Unfortunately, effective communication requires the necessary financial means to be put in place or to be made available for the success of establishing TBMPAs in the Southeast Atlantic. The goal of this sub-paragraph is to help understand the strategic role of communicating this ecosystem-based management tool at the sub-regional level or bilateral

³⁷⁵ RAMP AO, “Newsletter RAMP AO”, 09 2015.

³⁷⁶ M. Vierros, “Draft Policy Brief on Marine Biodiversity and Networks of Marine Protected Areas”, Global Forum on Oceans, Coasts, and Islands Global Oceans Conference 2010 May 3-7, 2010, UNESCO, Paris, p. 6.

³⁷⁷ OECD, Sustainable financing for marine ecosystem services in Mauritania and Guinea-Bissau OECD ENVIRONMENT POLICY PAPER NO. 10, OECD 2018, ISSN 2309-7841, Authorised for publication by Anthony Cox, Acting Director, Environment Directorate.

³⁷⁸ *Idem*.

level. For this work, and particularly for this sub-paragraph, ‘communication’ is not only referred to here as a ‘language’ but also as the transmission/sharing/promotion of information related to the project among the stakeholders.³⁷⁹

From the conception right to the enforcement of any project on TBMPA, there is an array of stakeholders that come from different dimensions and sectors to enable its development and management. Without full awareness of the value of the tool to them, these stakeholders might rise against it at different stages in its development. In the Southeast Atlantic Sub-region, these actors are sub-regional bodies (the Abidjan Convention Secretariat, the RFMPOs, RECs and Sub-regional banking institutions),³⁸⁰ all the twenty-two States, civil society organisations, local governments, and local communities, etc. Adequate awareness creation for all stakeholders is vital for the purpose of leaving no one behind; or else, this might be risking its failure.³⁸¹ Communicating any Network of MPAs or bilateral TBMPA in the Sub-region must be done in such a way as to effectively manage all the numerous interest groups and to gain their full support, if not more from other non-parties.³⁸²

Consequently, communicating TBMPAs requires that a Network like RAMP AO carry out several educational and public awareness activities to get the needed support.³⁸³ Communicating TBMPAs in the Southeast Atlantic can be done following all the necessary means to either draw

³⁷⁹ See generally Point 5.1.2 on “Examples: Compliance through Communication” of Chapter 5, on “Effective Governance – Achieving Our Goals” of IW:LEARN MANUALS, <https://iwelearn.net/manuals/governance-toolkit/chapter-5>.

³⁸⁰ The Finance in Common Summit: 2022 Research Conference that took place from the 18 to 20 October in Abidjan, Ivory Coast brought to the front stage of the global efforts to fight against common problems, the vital role of Public Development Banks. The latter were presented by both practitioners, policymakers and researchers as having a major role to play that they must take.

³⁸¹ Usually, local communities might reject a project such as the development and management of a TBMPA in their community because the right communication was absent. Nathan James and Bennett Philip Dearden, “Why local people do not support conservation: Community perceptions of marine protected area livelihood impacts, governance”, *Marine Policy* 44 (2014) 107-116.

³⁸² Philip Dearden & Karen N. Topelko, “Ensuring compliance with marine protected area regulations: A review of soft and hard enforcement approaches with recommendations for application in Canada”, Fisheries and Oceans Canada, March 2006, https://www.researchgate.net/publication/259397527_Ensuring_compliance_with_marine_protected_area_regulations_A_review_of_soft_and_hard_enforcement_approaches_with_recommendations_for_application_in_Canada_Table_of_contents?enrichId=rgreq-cc9a4ba5cbea35a0f7414115c352e89d-XXX&enrichSource=Y292ZXJQYWdlOzI1OTM5NzUyNzBUzoxMDM3ODM5ODgyMDM1MjRAMTQwMTc1NTQzOTY0Nw%3D%3D&el=1_x_3&_esc=publicationCoverPdf.

³⁸³ Denise Hamú, Elisabeth Auchincloss and Wendy Goldstein, “Communicating Protected Areas”, IUCN Commission on Education and Communication (CEC) IUCN – The World Conservation Union, 2004.

investors, ensure that the local population can take ownership of the project or guarantee continuity because their development and management area is also transgenerational.³⁸⁴

However, the challenges to the development and management of TBMPAs in the Southeast Atlantic Sub-region as seen in this Chapter, hinder the fact that this tool is also very beneficial for marine biodiversity and ecosystems.

³⁸⁴ Marie-Christine Cormier Salem, “Participatory governance of Marine Protected Areas: a political challenge, an ethical imperative, different trajectories. Senegal case studies”, in *Sapiens* · April 2014, <https://www.researchgate.net/publication/275886096>.

Chapter 2: Transboundary Marine Protected Areas: The Opportunities (Robust and Successful Regional Ocean Governance)

Presenting TBMPAs as a strategic instrument to enhance the strengthening of regional ocean governance in the Southeast Atlantic Sub-region has been the core objective of this research. Thus, after establishing that there are global, regional and even sub-regional legal and political basis upon which this ecosystem-based management tool enables the conservation of marine biodiversity and ecosystems within the Southeast Atlantic, the challenges regarding their development and management have been outlined here. Also, because its importance has already been demonstrated extensively in most literature and the first part of the work, the ecological benefits³⁸⁵ of TBMPAs will not be the focus of discussion in this last Chapter.³⁸⁶ Rather, we are going to investigate the other non-ecological benefits of establishing this ecosystem-based management tool in the Sub-region, as we believe that they will harness the needed robust and successful regional ocean governance for the Southeast Atlantic Sub-region.³⁸⁷

TBMPAs are not only a tool where ecological and socio-economic wellbeing is being enhanced through conservation and cooperation at the sub-regional level, they also deal with the issue of fragmentation of both legal or policy instruments and institutional bodies. Indeed, successful enforcement of TBMPAs requires therefore a consensus and cohesion among all actors.³⁸⁸ Thus, the chapter focuses on examining how Transboundary MPAs stand out as instruments of cooperation in the fight against other common challenges within the Sub-Region of Southeast Atlantic and specifically between Cameroon and Nigeria. Therefore, it will be first examined as a sustainable instrument for the strengthening of regional ocean governance (Section A) and as a

³⁸⁵ Some of the very benefits of TBMPAs today, and specifically MPAs, is their spillover effects that they have, and which enables the replenishment of other non-protected areas through the straddling and highly migratory species of fish. Sarah Medoff, Ohn lynham and Jennifer Raynor, "Spillover benefits from the world's largest fully protected MPA", Vol 378, Issue 6617, 20 Oct 2022, pp. 313-316, <https://www.science.org/doi/10.1126/science.abn0098>; Suzanne Lalonde, "Marine Protected Areas and Other Effective Area-based Conservation Measures", Arctic Review on Law and Politics, Vol. 13, 2022, pp. 312-337, <https://arcticreview.no/index.php/arctic/article/view/3352/6579> (accessed on 07 November 2022 at 12:57);

³⁸⁶ Richard Kenchington, Trevor Ward and Eddie Hegerl, THE BENEFITS OF MARINE PROTECTED AREAS, 2018.

³⁸⁷ Francis Amiye and Zabbey Nenibarini, "Marine Protected Areas and the Benefits of their Establishment", Department of Animal Science and Fisheries, Faculty of Agriculture, University of Port Harcourt, P.M. B 5323, Port Harcourt, River State, Nigeria.

³⁸⁸ Jose´ Guerreiro et al. (2010), *supra* note 360; Henrik Osterblom and Orjan Bodin, "Global cooperation among diverse organizations to reduce illegal fishing in the Southern Ocean", *Conserv Biol.* 2012 Aug;26(4):638-48. doi: 10.1111/j.1523-1739.2012.01850.x.

strategic mechanism to enhance the socio-economic development and peace in the Southeast Atlantic Sub-region (Section B).

Section A: A Sustainable Instrument for the Strengthening of Regional Ocean Governance

In the development and management of TBMPAs, several regimes come into force. TBMPAs create, therefore, a suitable platform for the harmonisation of global, regional, sub-regional and even national laws, with the view of strengthening ocean governance.³⁸⁹ Besides, the establishment of a TBMPA either sub-regionally or bilaterally will also be a strategic incentive to strengthen the collaboration of all concerned stakeholders.

Consequently, this ecosystem-based management tool is a balance of these abovementioned regimes, enabling their interactions not only for the sole purpose of conserving marine resources and their ecosystem through its integrative nature (Paragraph 1) but also for the need that exists for cooperation among its stakeholders (Paragraph 2).

Paragraph 1: Sub-Regional Network of Marine Protected Areas: An Effective and Integrative Instrument for the Implementation of Legal and Policy Frameworks in the Southeast Atlantic Sub-Region

The assertion made by some scholars arguing that sub-regional efforts facilitating the implementation of global environmental agreements are more oriented towards meeting the exact needs of the said sub-region and that of its countries is true, particularly in the case of the Southeast Atlantic Sub-region.³⁹⁰ In other words, a sub-regional Network of MPAs in the Sub-

³⁸⁹ Seline Trevisanut, Nikolaos Giannopoulos and Rozemarijn Roland Holst (Eds.), *Regime interaction in ocean governance: problems, theories, and methods*, Brill Nijhoff, 2020; Robin Warner and Simon (Eds.), *Transboundary Environmental Governance: Inland, Coastal and Marine Perspective*, Ashgate, 2012; Tore Henriksen, Geir Hønneland and Sydnese, *Law and Politics in Ocean Governance: The UN Fish Stocks Agreement and Regional Fisheries management Regimes*, Martinus Nijhoff Publishers, 2006.

³⁹⁰ Wienrich, N., Weiland, L., Unger, S., “Stronger together: The role of regional instruments in strengthening global governance of marine plastic pollution”, 2021, 10.48440/iass.2021.008; Wright, G., Schmidt, S., Rochette, J., Shackeroff, J., Unger, S., Waweru, Y., Müller, A., ‘Partnering for a Sustainable Ocean: The Role of Regional Ocean Governance in Implementing SDG14’, PROG: IDDRI, IASS, TMG & UN Environment, 2017; UN Environment (2017), “Realizing Integrated Regional Oceans Governance – Summary of case studies on regional cross-sectoral institutional cooperation and policy coherence”,

region or a TBMPA between two of its countries, by their proximity and the understanding of both their national and local contexts and realities, will be suitable for their establishment under one single harmonised governing instrument (1) and a single managing body (2).

1) One Single Harmonising Governing Instrument

The Regional network of marine protected areas in West Africa (RAMPAO) and the scenario of a future TBMPA between Cameroon and Nigeria will be used in this sub-paragraph as perfect examples of the use of the TBMPA tool in the strengthening of ocean governance in the Sub-region. Indeed, it is all about examining how these two sets of MPAs are responses to the weak governance of the ocean in the Sub-region due to the fragmentation of regimes and institutions geared towards the conservation of marine biodiversity and marine ecosystem therein.

→ Networks of MPAs: Governing Instrument of RAMPAO

Even though RAMPAO at the time when this research is carried out has only seven Members and its geographical area of competence been the North part of the Southeast Atlantic Sub-region, known as West Africa,³⁹¹ it is still the example of a Network of MPAs that creates the needed balance between all MEAs and international policies, and national marine environmental laws which apply to the marine environment for conservation.³⁹²

According to its instrument of creation, the objective of this Network of MPAs is to:

“Assurer, à l’échelle de l’écorégion marine de l’Afrique de l’Ouest (ci-après « la région »), constituée de la République Islamique de Mauritanie, de la République du Sénégal, de la République de Guinée, de la République de Guinée-Bissau, de la République de Gambie, de la République du Cap-Vert et de la République de Sierra Léone, le maintien d’un ensemble cohérent d’habitats critiques nécessaires au fonctionnement dynamique des processus écologiques

Regional Seas Reports and Studies No. 199; Raphaël Billé, “Regional Oceans Governance”, UNEP (2016); Julien Rochette et al., “Regional Oceans Governance Mechanisms: a Review”; Robert W. Knecht, “A Commentary on the Institutional and Political Aspects of Regional Ocean Governance”, *Ocean & Coastal Management* 24 (1994) 39-50.

³⁹¹ The African continent is made of Sub-regions of different categories and objectives. Also, some of these sub-regions also have within them sub-regions. An example of this image is the Southeast Atlantic Sub-region which has at least three sub-regions that are part of its geographical space: West Africa, Central Africa and Southern Africa (in the case of this last sub-region, only South Africa is generally a member of the Southeast Atlantic).

³⁹² James Harrison, “Towards integrated management of regional marine protected area networks: A case study of regime interaction in the Southern Ocean”, *Korean Journal of International and Comparative Law*, December 2021; Rebecca L. Gruby, Noella J. Gray, Luke Fairbanks et al., “Policy interactions in large-scale marine protected areas”, in *Conservation Letters*, August 2020, 10.1111/conl.12753.

indispensables à la régénération des ressources naturelles et la conservation de la biodiversité au service des sociétés par la mise en place et le fonctionnement d'un réseau d'AMP.”³⁹³

The vision of RAMP AO replicates the need for coherence and consensus in the management of the different MPAs that are under the jurisdictions of its Member States through its Network. It goes beyond the traditional States diplomacy³⁹⁴ to ensure ocean diplomacy for the Sub-region as it aims at creating for West Africa a dynamic and functional ecological system whereby its natural resources are regenerated, and the biodiversity conserved for the wellbeing of the society. Though the Statutory document of RAMP AO does not clearly refers to the objectives of the network as having to do with conservation within its area of competence, it however emphasises its role in harmonising international legal and policy conservational frameworks together with national fishing legal and policy instruments in order to serve the same purpose of ensuring the sustainability of fishing resources for all.³⁹⁵ The Statute of RAMP AO can, therefore, serve as an example of a sub-regional instrument through which, “local actors have organised themselves and subsequently developed and maintained systems of rules and methods of self-regulation that have been informed and shaped by national policies that are connected to regional and international [legal and] policy frameworks”.³⁹⁶

→ A Possible TBMPA between Cameroon and Nigeria: Joint Development Agreement or Memorandum of Understanding?

The harmonisation of legal and policy frameworks that are asserted in the development and management of TBMPA can also be identified in a possible future bilateral project of this kind between Cameroon and Nigeria. These two countries, just like every single country in the Southeast Atlantic Sub-regional, have international commitments towards common protection and preservation³⁹⁷ of their shared marine environment. These Commitments, as observed in the first part of this work, are obliging them to cooperate in establishing the TBMPA, which could be independent on either side of the maritime boundary wall of each State;³⁹⁸ or a TBMPA that

³⁹³ Statute of RAMP AO, Article 2; *statuts_du_rampao_revises_ag2010.pdf*.

³⁹⁴ P. Mackelworth (2016), *supra* note 22.

³⁹⁵ Dominique Duval-Diop, “The West African regional network of marine protected areas: An effective tool for bridging the gap between two international environmental frameworks”, in P. Mackelworth (2016), *supra* note 22, p.180.

³⁹⁶ *Idem*.

³⁹⁷ UNCLOS, Part XII.

³⁹⁸ Jose´ Guerreiro et al. (2010), *supra* note 360, p. 903.

goes from one national jurisdiction into the other.³⁹⁹ The choice of joint efforts in establishing this tool is more beneficial to individually developing and managing any national MPA that has transboundary socio-ecological effects needing cooperation to guarantee the full suite of this tool in the Southeast Atlantic ecoregion.⁴⁰⁰

So, to avoid the above situations and many other uncertainties, it will be advantageous for these two countries to create a joint instrument such as a Memorandum of Understanding (MoU) that will lead to the creation of a TBMPA between them. Indeed, the interlinkages between the global, regional, subregional and national legal and policy frameworks that govern the marine environment in the quest for the conservation of marine biodiversity and their habitats will better form through a bilateral framework of this sort. The possibility of having such a framework between these two sister nations will be able to deal with sensitive issues such as the respect of their individual, yet common maritime borders by considering their realities.⁴⁰¹

Another salient single instrument that could be considered for the existence of such a tool between Cameroon and Nigeria is a Joint Development Agreement (JDA). The latter is somewhat different from the former because, while an MoU might be strictly conservation (no-take zone), the JDA will open the development and management of the designed TBMPA to reflect many goals such as conservation, ecotourism, regulated fishing, the practice of traditional activities from the part of the local communities.

Whatever the choice of instrument that will be made, it will have to offer the best prospects of providing a working legal and political basis for a TBMPA between Cameroon and Cameroon;⁴⁰² enabling, therefore, the cross-border governance of their shared marine resources be it the biodiversity or the habitat, while it is expected to dynamically strengthen cooperative ties between both States.⁴⁰³

³⁹⁹ *Ibid*, p. 904.

⁴⁰⁰ Priscila F. M. Lopes et al., “Transboundary Socio-Ecological Effects of a Marine Protected Area in the Southwest Atlantic”, *AMBIO: A Journal of the Human Environment*, ISSN 0044-7447, Volume 42, Number 8, *AMBIO* (2013) 42:963-974 DOI 10.1007/s13280-013-0452-0; Jose´ Guerreiro et al. (2010), *supra* note 360.

⁴⁰¹ *Idem*.

⁴⁰² *Idem*.

⁴⁰³ I.J. Adewumi et al. (2022), *supra* note 34; P. C. Mackelworth et al., “Geopolitics and Marine Conservation: Synergies and Conflicts”, *Policy Practice Reviews, Frontiers in Marine Science*, Volume 6, Article 759, 10 December 2019.

2) One Single Managing body

The other way through which TBMPAs reduce the different existing fragmentations within the International Community, particularly regarding the institutionalisation of environmental conservation, is by bringing together all the involved actors under the coordination of either one single sub-regional or bilateral institution.

→ The Example of RAMP AO

RAMP AO is an association that brings together the different actors involved in the development and management of MPAs within the seven States that make up its membership in West Africa.⁴⁰⁴ Through its coordinating role, the association has developed a network of MPAs in this part of the Southeast Atlantic Sub-region, which aims at ensuring the rehabilitation and restoration of critical habitats and the preservation of biodiversity.⁴⁰⁵

Indeed, RAMP AO can be considered as a sub-regional instrument that has the role and ability to construct the advancement of global MEAs into the sub-regional context of the Southeast Atlantic without missing the national and local contexts and realities.⁴⁰⁶ This association, even with the challenges that it faces, carries out a strategic job in its geographical area of competence. RAMP AO helps to harmonise efforts made towards the conservation of marine biodiversity and its ecosystems within the Southeast Atlantic by tackling the issue of overlapping actions.⁴⁰⁷ It, therefore, enables the potential for lower-cost monitoring and information systems, and manages the different actors, while enhancing the importance of the common future found in

⁴⁰⁴ Statute of RAMP AO, Article 5.

⁴⁰⁵ RAMP AO Statute, Article 6.

⁴⁰⁶ Dominique Duval-Diop (2016), *supra* note 396.

⁴⁰⁷ Dr. Ekaterina Antsygina & Cornell Overfield, “The Problems of Overlapping Governance on the Arctic Continental Shelves Pending Delineation and Delimitation”, <https://site.uit.no/nclos/2022/10/04/the-problems-of-overlapping-governance-on-the-arctic-continental-shelves-pending-delineation-and-delimitation/> (accessed on 8 November 2022 at 03:29 am); Md Mizanur Rahman, “Effectiveness of the coastal and marine conservation initiatives in Bangladesh: analyzing the drawbacks of the legal, policy, and institutional framework”, *Journal of Indian and Ocean Regions*, 18 Aug 2022, <https://www.tandfonline.com/doi/abs/10.1080/19480881.2022.2111050> (accessed on 8 November 2022 at 03:29 am); Alex Driedger, “Cumulative Analysis of Overlapping Marine Protections”, https://mediaspace.esri.com/media/t/1_09c8pvcx/244325692 (accessed on 8 November 2022 at 03:34 am); Jenna Sullivan-Stack et al., “A Scientific Synthesis of Marine Protected Areas in the United States: Status and Recommendations”, *POLICY AND PRACTICE REVIEWS*, *Front. Mar. Sci., Sec. Ocean Solutions*, 18 May 2022, <https://doi.org/10.3389/fmars.2022.849>;

a shared neighbourhood, and the usefulness of the traditional knowledge of the coastal communities of these countries, for their effective participation in its network.⁴⁰⁸

→ **A Mixed Commission**

Because the general purpose of the 2030 UN Agenda is to secure a healthy ocean for both present and future generations through the help of efforts such as the possible establishment of a TBMPA between both Cameroon and Nigeria, this part of the work is still on the building of scenarios. Therefore, establishing a TBMPA between Cameroon and Nigeria would benefit from the creation of an institution that represents the realities, needs and objectives of both countries in the designated area.

Based on the historical path between these nations, the suitable body that is likely to be created for the management of this future TBMPA will be a Mixed Commission. Probably the kind that was created to enforce the Decision of the International Court of Justice over the Bakassi dispute.⁴⁰⁹ And even though the usefulness of this Mixed Commission was challenged in literature,⁴¹⁰ the management of the TBMPA between these two countries can build on its shortcomings by making this future institution more functional with all that is required for it to ensure its success.

Indeed, in the carrying out of its mandate, the future Mixed Commission intended to develop and enforce the TBMPA between Cameroon and Nigeria will be expected to better take into consideration some key factors that might be overlooked by other levels of governance of the ocean in the Southeast Atlantic Sub-region. Some of those factors will be taking into consideration of the fundamental particularities of each State's maritime border and the socio-economic situation of their coastal populations.⁴¹¹

The functionality of this bilateral body will need to be staffed by experts from different sectors and domains coming from both countries for effective and efficient enforcement of the TBMPA.

⁴⁰⁸ Dominique Duval-Diop (2016), *supra* note 396; Conca, Ken (2012). The rise of the region in global environmental politics. *Global Environmental Politics*. 12(3): 127–33.

⁴⁰⁹ “These two countries under the auspices of the United Nations established the mechanism of the Cameroon-Nigeria Mixed Commission to honour and implement their obligations under the ICJ decision” (Edwin Egede and Mark Igiehon (Eds.), *The Bakassi Dispute and the International Court of Justice: Continuing Challenges* (1st Edition), Routledge Taylor and Francis Group, New York, 2019.

⁴¹⁰ *Idem*.

⁴¹¹ Jose´ Guerreiro et al. (2010), *supra* note 360.

Paragraph 2: A Network of Sub-Regional Marine Protected Areas to enable a Stronger Regional Cooperation

The current trend in the Southeast Atlantic Sub-region is to strengthen the different ocean governance efforts that are ongoing through the involvement of all Stakeholders.⁴¹² This paragraph, therefore, argues that the existing Network of MPAs, together with the future and ordinary TBMPAs between two States in the Sub-region, can be considered as vectors leading to the effective compliance of the obligation to cooperate imbedded in the UNCLOS and some other applicable MEAs.⁴¹³ Cooperation is not only an obligation provided by international instruments in the case of conservation of marine biodiversity and other marine resources but it can also be regarded as an absolute necessity for the guaranteeing of good governance of the ocean at all levels, particularly at the sub-regional and bilateral levels. It is clear, therefore, that these two types of MPAs have been valued as strategic instruments to enhance transboundary cooperation wherever they are established.⁴¹⁴

Thus, with IUCN estimating that approximately 30 per cent of biodiversity straddles between national borders,⁴¹⁵ the opportunity or obligation to cooperate requiring a network of MPAs or a TBMPA in the Sub-region is not to be undermined but encouraged by its States. In this regard, it is opportune to examine at least three of the different categories of cooperation that can be enhanced through the proposed TBMPA: the intergovernmental (1), Intersectoral (2) and local community levels (3).

1) Intergovernmental Cooperation

It is already established that through RAMPAO, the seven Member States of this Network can cooperate towards the achievement of the objectives of this association. But because the latter is one of the several Networks of MPAs that the Sub-region is expected to have, besides the

⁴¹² Marie Christine Cormier Salem, "Participatory governance of Marine Protected Areas: a political challenge, an ethical imperative, different trajectories. Senegal case studies, Sapiens, Volume 7 Issue 2, 2014.

⁴¹³ Aldo Chircop, "Establishing a transboundary network of marine protected areas: Diplomatic and management options for the east African context", Article in Marine Policy · September 2010 DOI: 10.1016/j.marpol.2010.01.01.

⁴¹⁴ José Guerreiro et al. (2010), *supra* note 360.

⁴¹⁵ Sandwith T, Shine C, Hamilton L, Sheppard D. Transboundary protected areas for peace and co-operation. Gland, Switzerland; Cambridge, UK: IUCN, 2001. xi+111 pp.

possible establishment of TBMPAs directly between its States, the aim here is to better understand the benefits of this tool in the strengthening of intergovernmental cooperation.

It is true that the Southeast Atlantic Sub-region already has a good number of mechanisms in place when it comes to the protection and preservation of its marine environment. The Abidjan Convention, the different RFMOs and the Gulf of Guinea Commission (GGC), through which the twenty-two countries are cooperating, are recognised platforms of the implementation of the obligation to cooperate at the sub-regional level as found in Part XII of the UNCLOS. There is even existing intergovernmental cooperation within the Sub-region on the issue of piracy that has been a cause of concern since 2008, and which gave birth to a series of Instruments⁴¹⁶ and a coordinating organisation by the name of the inter-regional Coordination Centre (ICC).⁴¹⁷

However, these different fora of intergovernmental cooperation have not yet considered the establishment of “representative networks covering the full suite of biological diversity (habitats, species and genetic resources)”⁴¹⁸ in their ecoregion. Within the Sub-region, marine ecosystems and their services, such as fishing and maritime transport, which are highly transboundary, are heavily relied upon by major States like Senegal, Ghana, Cameroon, Nigeria, Benin and even Togo.⁴¹⁹ Most of these activities are directly under the sovereignty of these States and will thus require their direct involvement through their governmental institutions.⁴²⁰

Indeed, the process of developing and managing TBMPA or a Network of MPAs helps to strengthen the intergovernmental cooperation between the States of the Sub-region through their common interest in having a safe and healthy marine environment. Under the Abidjan Convention, and in collaboration with the other sub-regional organisations, including the RECs, a special sub-regional body can be created with the consensus of their Contracting Parties. Such an institution will be representative of these States cooperating at the Sub-regional level in

⁴¹⁶ The Declaration of the Heads of State and Government of the States of Central Africa and West Africa on Safety and Security in their common maritime space; the Memorandum of Understanding between ECCAS, ECOWAS and the CGG on "Safety and Security in the Maritime Space of Central and West Africa"; and the Code of Conduct (known as the Yaoundé Code of Conduct). All three sub-regional instruments were adopted in Yaounde, on 25 June 2013.

⁴¹⁷Business Ghana, "Yaounde Architecture reinforces fight against piracy", July 25, 2022, Yaounde Architecture reinforces fight against piracy (dryadglobal.com) (accessed on 21 October 2022 at 14:54).

⁴¹⁸ J. Guerreiro et al. (2010), *supra* note 396.

⁴¹⁹ Adewuni et al. (2022), *supra* note 34.

⁴²⁰ Kriwoken, LK and Davidson, JL and Lockwood, M, Marine Protected Areas and Transboundary Governance, Transboundary Environmental Governance: Inland, Coastal and Marine Perspectives, Ashgate, Robin Warner & Simon Marsden (ed), Surrey, England, pp. 87-112. ISBN 9781409444930 (2012) [Research Book Chapter]; Olav Schram Stokke and Øystein B. Thommessen, YEARBOOK of International Cooperation on Environment and Development (2002/2003), Earthscan Publications Ltd, London, 2002, P. 14-16.

managing the conservation of their biodiversity and eliminating the key issue in managing TBMPAs, which is institutional fragmentation.⁴²¹

2) Intersectoral Cooperation

The development and management of Networks of MPAs within the Sub-region will also serve as a strategic forum of collaboration for the different sectors that are supposed to be involved.

Indeed, the development and management of TBMPAs tackle a divergence of issues that affect the conservation of biodiversity and its habitats in the Sub-region. These issues are, among many others, climate change, marine pollution from ships and aircraft or land-based pollution, maritime transportation, and IUU fishing.⁴²² The convergence of these issues and activities against which a TBMPA is likely to be created sub-regionally or bilaterally in the Southeast Atlantic also warrants the consensus of efforts from both scientists and policymakers with such knowledge and skills across borders for equitable representativeness and the success of its implementation.⁴²³

The existence of this tool in the Sub-region will enable cooperation from more than one sector of activity from all involved States. The establishment of this ecosystem-based management tool, if well developed, will be acting in the direction of the United Nations Decade of Ocean Science for Sustainable Development (2021-2030), which aims to “support efforts to reverse the cycle of decline in ocean health and gather ocean stakeholders worldwide behind a common framework.”⁴²⁴ However, contrary to the UN Decade of Ocean Science, TBMPAs in the Sub-region require the involvement of stakeholders from other fields (social scientists, national and local government representatives, educationists, etc.) besides national scientists to be able to have the application of the co-designing and co-managing approach.

⁴²¹ *Ibid.*

⁴²² Marjo Vierros et al., “Draft Policy Brief on Marine Biodiversity and Networks of Marine Protected Areas”, Global Forum on Oceans, Coasts, and Islands Global Oceans Conference 2010, May 3-7, 2010, UNESCO, Paris.

⁴²³ The implementation of the IOC-UNESCO Ocean Decade project by States of the Sub-region, at either sub-regional or bilateral level, with its co-designing and co-development objectives will be beneficial to them.

⁴²⁴ <https://en.unesco.org/ocean-decade>.

3) Cooperation among Local Communities of the Designated Area

By local communities, this sub-paragraph refers to coastal cities and villages that are directly going to be impacted by the presence of TBMPAs or the Networks of MPAs. Within these local communities, are different categories of local actors in maritime activities such as the artisanal fishermen and those involved in fish processing. Also, the transnational cooperation of local governments such as the village Chiefs and Quarter Heads is looked at here.

Indeed, the development and management of Networks of MPAs and TBMPAs in the Southeast Atlantic Sub-region apply the principle of participatory governance,⁴²⁵ which closely involves the local communities at every stage. This, therefore, creates a platform of very close collaboration between coastal communities across the national boundaries or concerned countries.⁴²⁶ By so doing, there is an upstream and downstream avoidance of failure in the enforcement of this tool.

Indeed, coastal communities in countries such as Benin, Cameroon and Nigeria have a long-lasting history of collaborating among themselves.⁴²⁷ Most of this transnational cooperation exists and has been oiled over time because of their ethnocentric and cultural similarities in their traditional knowledge of the uses of the ocean and its resources.⁴²⁸ Therefore, developing and managing this ecosystem-based management tool will reinforce these ties and enable their amplification as the traditional knowledge and practises, reinforced through their cooperation a key factor to the enforcement of TBMPAs in the Southeast Atlantic.

⁴²⁵ Marie-Christine Cormier-Salem and Gaëll Mainguy, “Participatory governance of Marine Protected Areas: a political challenge, an ethical imperative, different trajectories (Senegal case studies)”, SAPIEN, Vol.7 / n°2 - Large-Scale Restoration, 7.2 | 2014, Participatory governance of Marine Protected Areas: a political challenge, an ethical imperative, different trajectories (openedition.org).

⁴²⁶ Mackelworth, P. (2016), *supra* note 22, pp. 5-6; Duffy, R. (2007), “Peace parks and global politics: the paradoxes and challenges of global governance. In Ali, S. (Ed.) Peace parks: conservation and conflict resolution, pp. 55–68; Conca, K., Carius, A. and Dabelko, G. (2005) Building peace through environmental cooperation. In World Watch Institute (Ed.), State of the world 2005: redefining global security. New York: W.N. Norton, pp. 144–57.

⁴²⁷ I. Adewuni et al. (2022), *supra* note 34.

⁴²⁸ Crosman, K.M., “Social equity is key to sustainable ocean governance”, Ocean Sustainability, j Ocean Sustainability (2022) 1:4 ; <https://doi.org/10.1038/s44183-022-00001-7>.

Section B: The Strategic Role of a Transnational MPA in enhancing Socio-economic Development and Peace: The Case of Cameroon and Nigeria

The objectives of establishing MPAs, in general, have evolved over the years, as more and more research and the practical realities regarding their creation have shown that they should not be only about conserving biodiversity. Indeed, having “no-take” TBMPAs or Networks of MPAs that prohibit or restrict navigation, fishing activities, seabed exploration and even access to tourism can be identified as reflecting a certain amount of socio-economic injustice, which if care is not taken, will lead to conflict. In other words, there is a need to strike a balance between the purpose and the expected impacts of creating TBMPAs or Networks of MPAs in general and particularly in a sub-region like the Southeast Atlantic Sub-region whose populations are highly dependent on all the ecosystem services that their marine environment can provide.

For a better understanding of this work and bearing in mind the impacts of maritime activities of, as per the case study of this work, both Cameroon and Nigeria on the entire Sub-region, this Section is narrowing its focus from sub-regional level to the bilateral level. For this purpose, the section, therefore, will dwell on the examination of the strategic role of TBMPAs in enhancing the socio-economic development (Paragraph 1) and the peace (Paragraph 2) between Cameroon and Nigeria knowing that what affects either one of these two countries impacts directly on the Sub-region.

Paragraph 1: A Tool to enhance the Socio-economic Development and the Traditional and Historical Uses of the Sea by the coastal Communities of both States

In this Paragraph, the aim is not to provide statistical evidence of how the establishment of a TBMPA between Cameroon and Nigeria be profitable for both countries, socio-economically and more, rather the aim is to investigate how legal and policy integrations enable other key benefits other than conservation and even cooperation.

Because of the end purpose of this work,⁴²⁹ it is important to not only look at the policy and legal obligations of establishing TBMPAs or Networks of MPAS in the Southeast Atlantic Sub-region but also to investigate their socio-economic (1) and their value to the coastal communities (2) of Cameroon and Nigeria.

1) The Socio-economic Benefits of TBMPAs

Today's ecological considerations must be in synergy with the socio-economic interests and ambitions of nations like Cameroon and Nigeria. This sub-paragraph argues that without such an evident alliance between the ecological and the socio-economic benefits of a TBMPA between these two countries, any proposition towards this direction might likely not get the engagements of concerned stakeholders, and thus not succeed.⁴³⁰

Developing and managing an MPA nationally will certainly be beneficial for Cameroon which recently has created one for herself along the maritime border with Equatorial Guinea.⁴³¹ This MPA's main objective is to limit the incursion of industrial fishermen who deplete its waters of fish, "to protect spawning areas and to preserve certain fish species such as the marine turtle, the African Manatee and the humpback dolphin".⁴³² In creating this MPA, the Government of Cameroon has indicated the motive which is not ecological but rather economic when considering the value of fishing on its GDP.⁴³³ However, the socio-economic effects of this MPA, on Cameroon might be limited due to the simple fact that this tool covers only a small portion of a very vast maritime domain that is being plagued by issues like IUU fishing from transboundary offenders.⁴³⁴ Whereas, the socio-economic benefit of a project carries a lot of

⁴²⁹ This author hopes that from this work, and the development of a policy brief to the attention of Stakeholders of this Sub-region and particularly Cameroon and Nigeria, there will be more created Networks of MPAs other than the one of RAMPAS, and eventually also more TBMPAs like the one developed between Cote d'Ivoire and Ghana.

⁴³⁰ According to the 2030 UN Agenda, and particularly its SDG 14, non-one behind is exercising a mandatory force on the Sub-region and these two countries to ensure the active involvement of all those concerned, directly or indirectly to the project.

⁴³¹ Boris Ngounou, *supra* note 276.

⁴³² Ibid. Ardienne Surprenant, "Our Sons will know Seas with no Fish", Dawson College Professional Photography, Home Archive Alumni Blog, October 2019.

⁴³³ Beseng (2022), *supra* note 253; I. J. Adewumi (2022), *supra* note 34; Beseng, «How illegal fishing off Cameroon's coast worsens maritime security», THE CONVERSATION, September 29, 2021, <https://theconversation.com/how-illegal-fishing-off-cameroons-coast-worsens-maritime-security-168952> (accessed on 9 November 2022 at 13:22).

⁴³⁴ *Idem*.

weight in the developmental plans of both Nigeria and Cameroon, and so it is expected that the potential TBMPA between these two countries will have to strongly demonstrate this fact.⁴³⁵

Consequently, for Cameroon to have the full socio-economic effects of the benefits of this lone MPA, there is a need to create MPAs that cut-across national maritime boundaries in the Sub-region. A possible TBMPA between Cameroon and Nigeria is more than ever needed. These two countries including Equatorial Guinea share a much closed maritime domain whose economies and populations will benefit from stronger cooperation through the possible existence of this tool between them.

2) The Benefits of TBMPA for the Coastal Communities in Cameroon and Nigeria

This sub-paragraph argues that be it a simple MPA or a TBMPA, this ought to be a people-centred ecosystem-based management tool. The interest of the coastal communities should be clearly defined in the project in order to enable these key stakeholders to understand benefits of the development and good governance of this instrument to them.

Indeed, even though it is a transnational tool governed by two States, a TBMPA is beneficial to local communities:

- **When it is designed in such a way that their local and traditional knowledge and practices are being considered.**

The possible TBMPA between Cameroon and Nigeria finds its essence in the fact that it will be developed as a solution to all the challenges facing the marine environment on every side of both national boundaries, and the consequences that directly affect its uses by the coastal communities. This tool will undoubtedly be profitable to these communities in both States because it is expected that in every stage of its processes, the bottom-up approach is used, as the objectives of conservation and socio-economic returns will align with the enhancement and protection of their local and traditional knowledge and practise (LTK).⁴³⁶

⁴³⁵ Vasiljević, M., Zunckel, K., McKinney, M., Erg, B., Schoon, M., Rosen Michel, T. (2015). Transboundary Conservation: A systematic and integrated approach. Best Practice Protected Area Guidelines Series No. 23, Gland, Switzerland: IUCN. xii + 26-28 pp.

⁴³⁶ de Sousa, W.L.; Zacardi, D.M.; Vieira, T.A. Traditional Ecological Knowledge of Fishermen: People Contributing towards Environmental Preservation, Sustainability 2022, 14, 4899. <https://doi.org/10.3390/su14094899>.

Indeed, these communities, be they in Cameroon or Nigeria, are practising artisanal fishing that has been in existence since long before colonisation and their independence.⁴³⁷ The governance of the ocean returning increasingly to nature-based solutions is giving more room for the use of LTK.⁴³⁸ This opportunity gives high consideration to coastal local communities on both sides of the maritime boundaries who are essentially fishermen to collaborate directly with other stakeholders in the development and management of TBMPAs through the sharing of their LTK on different ocean affairs including fishing.⁴³⁹ LTK will then serve as a potential source of information about the ecosystem functioning of the designated area to be conserved between these two countries. Literature development on the importance of LTK, which can be applied to the carrying out of such practices within the coastal communities in the Southeast Atlantic, and specifically in Cameroon and Nigeria,⁴⁴⁰ has shown that they adequately complement scientific research by providing knowledge on the “habitats, locations of nurseries, reproductive cycles, fish diet, and tropic network of Sciaenid community, suggest stewardship techniques and improve conservation planning and practice”.⁴⁴¹

Consequently, the opportunity that these coastal communities from Cameroon and Nigeria will have, by taking part in the establishment of the envisaged TBMPA, will reinforce the need for more decentralised ocean governance throughout the Sub-region. Also, the sharing of their knowledge on conservation with other actors will contribute to building cooperation in the management of this tool.

⁴³⁷ I. Adewuni (2022), *supra* note 34.

⁴³⁸ CBD, “Composite Report on the Status and Trends Regarding the Knowledge, Innovations and Practices of Indigenous and Local Communities”, Regional Report: Africa, UNEP/CBD/WG8J/3/INF/3, 30 September 2003.

⁴³⁹ Jean Le Fur, Athanase Guilavogui, and Antoine Teitelbaum, “Contribution of local fishermen to improving knowledge of the marine ecosystem and resources in the Republic of Guinea, West Africa”, Canadian Journal of Fisheries and Aquatic Sciences, 19 August 2011, <https://doi.org/10.1139/f2011-061>, Contribution of local fishermen to improving knowledge of the marine ecosystem and resources in the Republic of Guinea, West Africa (cdnsiencepub.com) (accessed on 24 October 2022 at 16:14).

⁴⁴⁰ Jean Le Fur, Athanase Guilavogui, and Antoine Teitelbaum, *op.cit.*; Oliver O. O, Enuoh, «Buffer Zone Communities, Fishing Practices, and Biodiversity Conservation in Cross River National Park, Nigeria”, Journal of Biology, Agriculture and Healthcare, ISSN 2224-3208 (Paper), Vol. 4, No. 22, 2014; Moenieba Isaacs, Paul Onyango and Shehu Latunji Akintola (Eds.), Small-Scale Fisheries in Africa: A Regional Portrait, TBTI Global Publication Series, <https://tbt-global.net/>, St. John’s, NL, Canada, 132pp.

⁴⁴¹ Jean Le Fur et al. (2011) *supra* note 440; Thomas F. Thornton and Adela Maciejewski Scheer, “Collaborative Engagement of Local and Traditional Knowledge and Science in Marine Environments: A Review”, Ecology and Society, Vol. 17, No. 3 (Sep 2012) (25 pages), Resilience Alliance Inc, Collaborative Engagement of Local and Traditional Knowledge and Science in Marine Environments A Review on JSTOR (accessed 24 October 2022 at 16:37).

➤ **The co-management position of coastal communities.**

The development and management of TBMPA between Cameroon and Nigeria will come with another benefit for the coastal communities of either country residing or using the waters around this area through the mechanism of participatory governance or the system of co-management.⁴⁴²

The effective participation of these coastal communities is certainly going to buffer this project for a long-term period by enhancing the decentralisation of the governance of the marine ecosystem and the services it provides.⁴⁴³ Integrating their respective coastal communities in the development and management of the future designated area will not only ensure their full involvement in the project,⁴⁴⁴ but both countries will be applying the different international instruments under which they have committed themselves to respect the rights of these communities.⁴⁴⁵ Indeed, they will both be acting under Aichi Biodiversity Targets in its Targets 11⁴⁴⁶ and 14 whereby States are expected to not only protect the marine environment up to 10 per cent of its surface but to do so while taking into consideration the rights of concerned indigenous and local communities.⁴⁴⁷

In other words, if considered in the working document, MoU or protocol that will be developed with regards to the establishment of a future TBMPA between Cameroon and Nigeria, the Governments of these States and other major stakeholders involved in the project such as investors will be ensuring its success as this will require the full participation of those local communities. Consequently, there will be a need for a representation of these communities within any decision-making body that will be created for the management of this TBMPA.

⁴⁴² Lorne Kriwoken, Julie Davidson and Michael Lockwood, "Marine Protected Areas and Transboundary Governance", in Robin Warner and Simon Mardsden, *supra* note, pp. 87-112.

⁴⁴³ Cameroon, in the light of what is ongoing presently at the level of the International Community, is out to implement decentralisation at all levels and in all sectors, including that of ocean affairs. Thus, more authority is given to local governments such as Mayors and Chiefs to be able to manage the current situation facing their communities. Sten Hagberg, "Decentralisation and citizen participation in West Africa", *Bulletin de L'A.P.A.D.*, p. 3-34, <https://journals.openedition.org/apad/4056> (accessed on 9 November 2022 at 13:59).

⁴⁴⁴ Donald R. Rothwell and David L. VanderZwaag (Eds.), *Towards Principled Ocean Governance: Australian and Canadian Approaches and Challenges*, Routledge Advances in Maritime Research, Routledge, 2006, pp. 249-346.

⁴⁴⁵ Jon M. Van Dyke, *Governing Ocean Resources: New Challenges and Emerging Regimes – A Tribute to Judge Choon-Ho Park*, Martinus Nijhoff Publishers, Leiden-Boston, 2013, Part Seven on Fishery Management, Marine Protected Areas and the Rights of Indigenous Peoples, pp. 395-457.

⁴⁴⁶ CBD, "Aichi Biodiversity Target 11 country Dossier: Cameroon", <https://www.cbd.int/pa/doc/dossiers/cameroon-abt11-country-dossier2021.pdf>.

⁴⁴⁷ P. Mackhelworth (2016), *supra* note 22, P. 181. Marcus Haward and Joanna Vince, *Oceans Governance in the Twenty-first Century: Managing the Blue Planet*, Edward Elgar Publishing Limited, 2008, p. 21.

Paragraph 2: An Instrument of Soft Power for Sustainably Maintaining Peace between Cameroon and Nigeria

As indicated in the introduction of this work, TBMPAs are considered generally and in this work as an instrument of peace; and they have been given the name of peace parks.⁴⁴⁸ Establishing a TBMPA around a zone of conflict has been described as a motor for sustainable peace between the concerned States, or populations.⁴⁴⁹ In the case of the Cameroon and Nigeria Land and Maritime dispute, whereby the ICJ gave a judgment in favour of Cameroon in 2002, this Paragraph argues that its implementation can create sustainable impacts for all concerned stakeholders with the development and management of a TBMPA. This tool can become a harbinger of peace (1) and the expression of soft power (2) in the bilateral cooperation of these two countries and their influence on ocean governance in the Southeast Atlantic Sub-region.

1) A TBMPA between Cameroon and Nigeria: The peace offering

This sub-paragraph aims to demonstrate how a TBMPA established between their shared marine environment of the former maritime disputed area will be a further way of implementing the 2002 ruling of the ICJ transferring the Bakassi Peninsula from Nigeria to Cameroon.⁴⁵⁰ Thus, having this tool developed across the maritime boundaries of these two nations is going to be an offering that will continually be promoting, celebrating and/or commemorating the peace and cooperation ties between them.⁴⁵¹

⁴⁴⁸ P. Mackhelworth (2016), *supra* note...; Vasiljević, M., Zunckel, K., McKinney, M., Erg, B., Schoon, M., Rosen Michel, T. (2015). *Transboundary Conservation: A systematic and integrated approach*. Best Practice Protected Area Guidelines Series No. 23, Gland, Switzerland: IUCN. xii + 107 pp.

⁴⁴⁹ Michelle Portman and Yael Teff-Seker, “Remembering the Red Sea Marine Peace Park” and Peter Mackelworth, Matic Jančič, Bojan Lazar and Draško Holcer, “A transboundary marine protected area to help resolve the Piran Bay border dispute” in P. Mackelworth (2016).

⁴⁵⁰ M. O. Bonchuk, “The International Court of Justice (I.C.J.) Judgment Over the Bakassi Peninsula: A Model in the Resolution of African Boundary Disputes”, *LWATI: A Journal of Contemporary Research*, 11(4), 131-142, 2014 ISSN: 1813-2227, The International Court of Justice (I.C.J.) Judgment Over the Bakassi Peninsula: A Model in the Resolution of African Boundary Disputes | *Lwati: A Journal of Contemporary Research* (ajol.info) (accessed on 26 October 2022); I. Adewumi (2022), *supra* note 34.

⁴⁵¹ P. Mackhelworth (2016), *supra* note 22, p. 4; Vasiljević, M., Zunckel, K., McKinney, M., Erg, B., Schoon, M. and Rosen Michel, T. (2015). *Transboundary conservation: a systematic and integrated approach*. Best Practice Protected Area Guidelines Series No. 23, Gland: IUCN. Available at: https://iucn.org/knowledge/publications_doc/publications/?uPubsID=5171 (accessed 26 October 2022).

A TBMPA between Cameroon and Nigeria resonates more like a Park for Peace.⁴⁵² Based on the historical pattern between them, and specifically because of the Bakassi Case, the establishment of this tool on a jointly designated area around/within the former zone of conflict is likely going to be a continued offering for peace for the Sub-region and between the two concerned States.

Cameroon and Nigeria have been able, somehow, to enforce the ICJ's ruling through the implementation of the Green Tree Agreement⁴⁵³ and the establishment of the Mixed Commission. Both have served as tools enabling the functionality of the Court's decisions.⁴⁵⁴ These two sister countries whose peace had been maintained over time through the geographical, historical, ethnocultural and maritime jurisdictional ties and even cooperation,⁴⁵⁵ saw all of these being threatened after Nigerian troops occupied the Bakassi Peninsula in 1993, leading to the serious incidents of border incursions that provoked shooting and caused many casualties and deaths of soldiers in 1994. Following these events, Cameroon then submitted the Bakassi case that was brought by Cameroon before the ICJ in 1994.⁴⁵⁶ This case is regarded by literature because of the richness of the Bakassi Peninsula and its surrounding maritime environment with both living and non-living marine resources. These facts can be asserted as the driving force that led to the greatly felt involvement of the International Community⁴⁵⁷ to facilitate the enforcement of the Court's ruling through the creation of the Green Tree Agreement and a Mixed Commission.⁴⁵⁸

⁴⁵² Jungho Nam and Daeseok Kang, "Marine peace park initiative in the western transboundary coastal area of the Korean Peninsula", in P. Mackelworth, 2016, *supra* note 22; Jones, B.T., 2008. Legislation and Policies relating to Protected Areas, Wildlife Conservation, and Community Rights to Natural Resources in countries being partner in the Kavango Zambezi Transfrontier Conservation Area. A Review commissioned by Conservation International, in collaboration with African Wildlife Foundation, supported by the Swiss Agency for Development & Cooperation, International Union for Conservation of Nature. 2001. Transboundary protected areas for peace and co-operation. Best Practice Protected Area Guidelines Series No. 7. Gland, Switzerland; <https://www.cbd.int/peace/information/resources/readings.shtml>

⁴⁵³ This Agreement was born following intensive diplomatic activities in the 12 June 2006. United Nations. Bakassi peninsula: Recourse to the law to prevent conflict. Available from: <<http://www.un.org/events/tenstories/story.asp?storyID=900>>.

⁴⁵⁴ M. O. Bonchuk, "The International Court of Justice (I.C.J.) Judgment Over the Bakassi Peninsula: A Model in the Resolution of African Boundary Disputes", LWATI: A Journal of Contemporary Research, 11(4), 131-142, 2014 ISSN: 1813-2227, The International Court of Justice (I.C.J.) Judgment Over the Bakassi Peninsula: A Model in the Resolution of African Boundary Disputes | Lwati: A Journal of Contemporary Research (ajol.info) (accessed on 26 October 2022).

⁴⁵⁵ I. Adewumi (2022), *supra* note 34; Dr. Chidi Julius Lloyd, "Critical Analysis of the Greentree Agreement Between Nigeria And Cameroon", Dept. of Public Law, University of Nigeria, Enugu Campus, Ebut I, Nigeria., Chidi.lloyd@unn.edu.ng, +2348033402667.

⁴⁵⁶ ICJ, "Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)", Latest developments | Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening) | International Court of Justice (icj-cij.org) United Nations, Bakassi peninsula: Recourse to the law to prevent conflict. Available from: <<http://www.un.org/events/tenstories/story.asp?storyID=900>> (accessed 26 October 2022, at 15:25).

⁴⁵⁷ This movement was brokered by the United Nations with witnesses/guarantors such as four of the world powers – Britain, France, Germany, and the United States.

⁴⁵⁸ Dr. Chidi Julius Lloyd, *supra* note 456.

However, some events that occurred sometime around 17 July 2017 with an alleged attack and killing of 97 Nigerians over failure to pay a discriminatory boat levy of N100, 000, led the National Assembly of Nigeria to request the investigation of the killings and to direct the Ministry of Foreign Affairs to urgently submit the 2006 agreement for ratification. And besides these events, some positions formed in literature and official statements from Nigerian State officials indicating the failure of the Greentree Agreement.⁴⁵⁹ Being able to establish a TBMPA between them as it has been done elsewhere successfully will softly, but also firmly allow both States to ratify and implement the Agreement.

2) A TBMPA between Cameroon and Nigeria: An Instrument of Soft Power

The lasting of peace between the parties concerned has always required a neutral and external force,⁴⁶⁰ which enables them to relate neutrally but with the purpose to sustain peace. This last sub-paragraph, though it doesn't downplay the importance of all other different spheres and sectors of cooperation including the military and economy, which enhance peace between these two States, aims to show that a TBMPA between them will act as an instrument of soft power that will strengthen this relationship between generations.

Indeed, peace is a continuous process⁴⁶¹ that needs to be nourished by the constant outpouring of the essence called "cooperation", not forgetting the fact that the conservation of their shared marine biodiversity is at stake,⁴⁶² a TBMPA for Cameroon and Nigeria will act as a transgenerational instrument which will normalise relations between them at both governmental

⁴⁵⁹ Ikechukwu Nnochiri, "Green Tree Agreement: Bakassi indigenes head to Appeal Court", 25 October 2012, <https://www.vanguardngr.com/2012/10/green-tree-agreement-bakassi-indigenes-head-to-appeal-court/> (accessed on 10 November 2022 at 14:09); Eno-Abasi Sunday, "Ceding of Bakassi: 13 years on, Greentree agreement unratified, unimplemented", the Guardian, 20 October 2019, <https://guardian.ng/news/ceding-of-bakassi-13-years-on-greentree-agreement-unratified-unimplemented/> (accessed on 10 November 2022 at 14:11).

⁴⁶⁰ Michelle Portman and Yael Teff-Seker, "Remembering the Red Sea Marine Peace Park" and Peter Mackelworth, Matic Jančič, Bojan Lazar and Draško Holcer, "A transboundary marine protected area to help resolve the Piran Bay border dispute" in P. Mackelworth (2016), *supra* note 22.

⁴⁶¹ The achievement of peace is generally regarded as a long process that takes its time in time. Olajumoke Yacob-Haliso, Ngozi Nwogwugwu and Gift Ntiwunka, *African Indigenous Knowledges in a Postcolonial World: Essays in Honour of Toyin Falola*, Routledge, 29 Nov. 2020 - 306 pp.; Tim Muriithi, *Handbook of Africa's International Relations*, Routledge, 5 Sept. 2013 - 512 pp.; H. Saunders, *A Public Peace Process: Sustained Dialogue to Transform Racial and Ethnic Conflicts*, Springer, 14 Apr. 1999 - 328 pp.

⁴⁶² Michelle Portman and Yael Teff-Seker, "Remembering the Red Sea Marine Peace Park" and Peter Mackelworth, Matic Jančič, Bojan Lazar and Draško Holcer, "A transboundary marine protected area to help resolve the Piran Bay border dispute" in P. Mackelworth (2016), *supra* note 22

levels and that of their respective local communities.⁴⁶³ Even with their long-standing history, there are different dimensions and forms of power that come into play in the relationship between these two countries.⁴⁶⁴ One of these power-influencing grounds is their rich marine ecosystem and its required management, which was one of the major causes of the Bakassi Peninsula Case.⁴⁶⁵ Also, with the quest for the exploration and exploitation of marine resources on the increase, establishing a TBMPA, will certainly be that transnational, transgenerational and multisectoral integrative ground where both countries can consolidate their powers and influence between them and in the entire Southeast Atlantic Sub-region through joint development and management of a TBMPA straddling their respective maritime boundaries. This joint management endeavour will concentrate these powers into a platform of common interests.

This future TBMPA is an instrument of soft power because it will not only enable the conservation of the marine ecosystem across maritime boundaries, but it will harness peace by bringing actors from different sectors and levels of influence of each State to collaborate.⁴⁶⁶ This tool is a geopolitical and geostrategic platform for a dialogue to conserve their marine ecosystem and sustain the socio-economic well-being of their populations. Its co-management will serve as a joint force for the conservation efforts of their straddling ecosystem or migratory marine species,⁴⁶⁷ and while enabling stronger cooperation in the fight against ocean stressors such as IUU fishing.⁴⁶⁸

⁴⁶³ Michelle Portman and Yael Teff-Seker, “Remembering the Red Sea Marine Peace Park” and Peter Mackelworth, Matic Jančič, Bojan Lazar and Draško Holcer, “A transboundary marine protected area to help resolve the Piran Bay border dispute” P. Mackelworth (2016), *supra* note 22; United Nations, United Nations Environment Programme, United Nations Dept, African Ministerial Conference on the Environment, Africa Environment Outlook 2: Our Environment, Our Wealth, UNEP/Earthprint, 2006 - 542 pp.

⁴⁶⁴ I. Adewunu (2022), *supra* note 34.

⁴⁶⁵ Etanislav Ngodi, Pétrole et géopolitique en Afrique centrale, Harmattan, 2008 - 255 pp.; Isaac Tamba, Jean Claude Tchatchouang and Raymond Dou’a, L’Afrique Centrale, le paradoxe de la richesse: industries extractives, gouvernance et développement social dans les pays de la CEMAC, Presses universitaires d’Afr.

⁴⁶⁶ Michelle Portman and Yael Teff-Seker, “Remembering the Red Sea Marine Peace Park” and Peter Mackelworth, Matic Jančič, Bojan Lazar and Draško Holcer, “A transboundary marine protected area to help resolve the Piran Bay border dispute” in P. Mackelworth (2016); United Nations, United Nations Environment Programme, United Nations Dept, African Ministerial Conference on the Environment, Africa Environment Outlook 2: Our Environment, Our Wealth, UNEP/Earthprint, 2006 - 542 pp.

⁴⁶⁷ John W. McManus, Kwang-Tsao Shao and Lin Szu Yin, “Toward Establishing a Spratly Islands International Marine Peace Park: Ecological Importance and Supportive Collaborative Activities with an Emphasis on the Role of Taiwan”, *Ocean Development & International Law*, 41:270–280, 2010, Taylor & Francis Group, LLC, ISSN: 0090-8320 print / 1521-0642 online, DOI: 10.1080/00908320.2010.499303.

⁴⁶⁸ Stop Illegal Fishing, “West Africa Task Force holds eleventh regional monitoring, control and surveillance meeting, West Africa Task Force, 6th Dec, 2021, <https://stopillegalfishing.com/news-articles/west-africa-task-force-holds-eleventh-regional-monitoring-control-and-surveillance-meeting/> (accessed on 10 November 2022 at 16: 35); Shem Oirere, “New monitoring centre boosts war against IUU in Gulf of Guinea”, May 25, 202, SeafoodSource, <https://www.seafoodsource.com/news/environment-sustainability/new-monitoring-center-boosts-war-against-iuu-in-gulf-of-guinea> (accessed on 10 November 2022 at 16: 35).

Also, as a dynamic tool,⁴⁶⁹ the TBMPA between Cameroon and Nigeria, if designed accordingly, will not be only influenced by the political wills of these two States, but rather their cooperation towards its governance will need to be directed⁴⁷⁰ by the impacts of its surrounding environments and other external factors such as climate change and plastic pollution⁴⁷¹ In other words, this tool will dynamize the decision-making process of both countries as it will be influenced by issues like pollution and climate change,⁴⁷² while its existence generates a spill-over effect that will likely benefit their other maritime domains in replenishing them with migratory species from the set protected area.⁴⁷³

More specifically, a possible TBMPA between these two countries will be beneficial not only for them directly, but also to the entire ocean governance architecture in the Sub-region.⁴⁷⁴ This is because of the power of the near contentment that it is likely going to give either to the local communities of either States living across their respective maritime domains within that designated area and whose activities go into the maritime waters of the other country.⁴⁷⁵ This tool will contribute to enabling, therefore, the strengthening of trust between them as much as the exploration and exploitation of their shared marine ecosystem and resources are concerned.

⁴⁶⁹ Kristoffer Joel Høe, “Dynamic marine protected areas”, Master’s thesis in Law of The Sea LL.M, JUR-3910, Faculty of Law, UiT, September 2021; Tim Cashion et al., “Shifting seas, shifting boundaries: Dynamic marine protected area designs for a changing climate”, PLOS ONE, November 10, 2020, <https://doi.org/10.1371/journal.pone.0241771>, <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0241771> (accessed on 10 November 2022 at 16: 42).

⁴⁷⁰ Odegaard, C. (1990), *2Peace Parks*”, in *Parks on the Borderline: Experience in Transfrontier Conservation*, edited by Jim Thorsell, 89-94, Cambidge, IK, Piggot Printers, 1990.

⁴⁷¹ Andrea M. Fisher, “Can the BBNJ Treaty Support Dynamic Management for Arctic MPAs?” 30/05/2022, *Can the BBNJ Treaty Support Dynamic Management for Arctic MPAs? | The NCLOS Blog (uit.no)* (accessed on 31 october 2022); Nengye Liu, Alexander Proelss & Valentin Schatz (2022): *Regulating Exceptions for Research and Exploratory Fishing in Southern Ocean Marine Protected Areas: A Comparative Analysis on Balancing Conservation and Commercial Use*, *Ocean Development & International Law*, DOI: 10.1080/00908320.2022.2035287.

⁴⁷² Ibid.; World Bank (2019), UNEP, “Climate Change and Marine Fisheries in Africa: Assessing Vulnerability and Strengthening Adaptation, Capacity”, World Bank; *Climate Change Impacts on Biodiversity and Protected Areas in West Africa*, United Nations Environment Programme, 2016.

⁴⁷³ Todd Woody, “Marine Protected Areas’ Powerful “Spillover Effect” Helps Fish and Fishers”, *Green Weather & Science*, Bloomberg, October 20, 2022, <https://www.bloomberg.com/news/articles/2022-10-20/marine-protected-areas-powerful-spillover-effect-helps-fish-and-fishers?leadSource=verify%20wall> (accessed on 10 November 2022 at 17: 14); Manfredi Di Lorenzo, Joachim Claudet and Paolo Guidetti, “Spillover from marine protected areas to adjacent fisheries has an ecological and a fishery component”, *Journal for Nature Conservation* 32, May 2016, DOI:10.1016/j.jnc.2016.04.004; Isabel a Silva IM, Hill N, Shimadzu H, Soares AMVM and Dornelas M (2015) “Spillover Effects of a Community-Managed Marine Reserve”, *PLoS ONE*, 10(4): e0111774. doi:10.1371/journal.pone.0111774; Russ, G., & Alcala, A. (2010). Enhanced biodiversity beyond marine reserve boundaries: the cup spillover Ecological Applications DOI: 10.1890/09-1197; Matthew Flinders, “The spillover effect”, <https://conservationbytes.com/2010/04/18/the-spillover-effect/> (accessed on 10 November 2022 at 17: 14).

⁴⁷⁴ Ibukun Jacob Adewumi, “Exploring the Nexus and Utilities Between Regional and Global Ocean Governance Architecture”, *Sec. Marine Affairs and Policy*, *Front. Mar. Sci.*, 12 July 2021, <https://doi.org/10.3389/fmars.2021.645557>.

⁴⁷⁵ Kaplan, D. (2000), “Conflict and Compromise among Borderland Identities in Aorthem, Italy, *Tijdschilt voor Economische en so.*

Finally, the development and management of a TBMPA straddling the maritime boundaries of Cameroon and Nigeria and Networks of MPAs within the Southeast Atlantic Sub-region will act as an instrument of soft power through the harmonisation of States' political wills and environmental needs. This will also consolidate their obligations towards their populations and the International Community for the maintenance of peace through the adequate protection and preservation of their marine environment through cooperation.⁴⁷⁶ The harmonisation procedure will enable the balance of powers that is often lacking in areas such as military, political influence, maritime and terrestrial boundary delimitations.

⁴⁷⁶ UNCLOS, Part XII.

Conclusion

1) Restatement of the work

Concluding on what has been said in the previous parts of this work, it is very clear now that the regional ocean governance of the Southeast Atlantic is an obligation that derives from Part XII of the UNCLOS, specifically its Article 197.⁴⁷⁷ Indeed, in its sixty-third session, the General Assembly of the UN submitted a comprehensive report on developments and issues relating to ocean affairs and the law of the sea.⁴⁷⁸ In this report, the obligation to cooperate regionally to address global challenges facing the marine environment was mentioned as essential.⁴⁷⁹ From the different literature that was used, the conclusion was drawn that the regionalisation of ocean governance in the Southeast Atlantic Sub-region contextualised the actions to be taken more than any global initiative, as it will demonstrate a better understanding of the sub-regional “marine environment while taking into account specific local ecological, environmental, economic and socio-economic conditions”.⁴⁸⁰ However, this mechanism of managing the maritime domain of the Sub-region is weak despite all existing legal and policy and institutional frameworks. In this regard, the study, therefore, examined the place of TBMPA in the ongoing need to strengthen ocean governance in the Sub-region.⁴⁸¹

Being already aware of the fact that the International Community, through both legal and policy frameworks, has encouraged and instructed States to cooperate in the protection and preservation of the marine environment, the main question of the work was to examine the basis of the obligations of establishing TBMPAs or Networks of MPAs in the Sub-region. Particularly, this ecosystem-based management instrument was argued in this work as a fundamental pillar for the

⁴⁷⁷ UNCLOS, Part XII, Article 197.

⁴⁷⁸ UN, “Report of the Secretary-General on the Oceans and the law of the sea, A/63/63, 10 March 2008.

⁴⁷⁹ *Ibid.* para. 318.

⁴⁸⁰ *Ibid.*

⁴⁸¹ <https://www.blue-pangolin.net/projects/formulation-mission-for-marine-and-coastal-regions-of-west-africa/> (accessed 11 November 2022 at 8:29 am); STRONG High Seas Project Dialogue Workshop I – Opportunities for Strengthening Ocean Governance in the Southeast Atlantic, Abidjan, September 2018; Durussel, C., Wright, G., Wienrich, N., Boteler, B., Unger, S., Rochette, J., “Strengthening Regional Ocean Governance for the High Seas: Opportunities and Challenges to Improve the Legal and Institutional Framework of the Southeast Atlantic and Southeast Pacific”, STRONG High Seas Project, 2018.

strengthening of the existential weakness that is facing the governance of the marine and coastal environment of the Southeast Atlantic.⁴⁸²

Consequently, Part One of the work which was an answer to the first research question that was centred on the obligations of establishing TBMPAs in the Sub-region had two Chapters. Because there was a need to understand the foundations and the functionality of regional ocean governance in the Sub-region,⁴⁸³ examining the foundation upon which the obligations are built for its nations to cooperate in managing their geographically shared marine environment was the first thing to do before examining their responsibility to establish TBMPAs. This first Chapter on regional ocean governance gave an overview understanding of the need for these countries to cooperate under the Southeast Atlantic which is their geographical sub-region. Considering the UNCLOS, which is the fundamental instrument where these States are required to cooperate sub-regionally in the protection and preservation of their individual but the common environment, was the possibility to also look at other legal and policy global instruments. The latter, such as Chapter 7 of Agenda 21 clearly emphasises the importance of cooperating at the sub-regional level for the protection of the marine environment. Global institutions such as UNGA, UNSC, COPs or Meetings of Parties were seen as those bodies through which sub-regional ocean governance has been advocated as fundamentally necessary for the achievement of the 2030 Agenda with its 17 SDGs, specifically the ocean Goal (UN SDG 14).⁴⁸⁴ In the second section of this Chapter, the regional basis of the sub-regionalisation of ocean governance was argued through the spectrum of regional and sub-regional legal and policy framework on one hand and institutional instruments in both levels of governance as strategically necessary on the other

⁴⁸²Fanning L, Mahon R and Unger S (2022), “Editorial: Challenges and opportunities in regional governance of ocean ecosystems”, *Front. Mar. Sci.* 9:999911.doi: 10.3389/fmars.2022.999911, 2022, https://www.researchgate.net/publication/362553739_Editorial_Challenges_and_opportunities_in_regional_governance_of_ocean_ecosystems [accessed Nov 11 2022]; Lucas de Oliveira Paes, “The challenge of IUU fishing in West Africa and The Potential Technology Solutions: An analysis of international cooperation projects in Ghana and Guinea-Bissau”, Norwegian Institute of International Affairs 2022; I.J. Adewumi (2022), *supra* note 34.

⁴⁸³ Julien Rochette, “West Africa is mobilising to protect the marine environment”, IDDRI, 2019, <https://www.iddri.org/en/publications-and-events/blog-post/west-africa-mobilising-protect-marine-environment>; Wright, G., Schmidt, S., Rochette, J., Shackeroff, J., Unger, S., Waweru, Y., Müller, A., ‘Partnering for a Sustainable Ocean: The Role of Regional Ocean Governance in Implementing SDG14’, PROG: IDDRI, IASS, TMG & UN Environment, 2017.

⁴⁸⁴<https://foroalc2030.cepal.org/2022/en/programme/sdg14-strengthening-regional-governance-mechanisms-ocean-based-sustainable-development-and> (accessed on 11 November 2022 at 8:46 am); UNCTAD, “Achieving the targets of Sustainable Development Goal 14: Sustainable fish and seafood value chains and trade”, BACKGROUND NOTE for the Second Oceans Forum, 16–17 July, 2018, United Nations Conference on Trade and Development, Geneva, Switzerland, UNCTAD/DITC/TED/MISC/2018/2; Wright, G., Schmidt, S., Rochette, J., Shackeroff, J., Unger, S., Waweru, Y., Müller, A., ‘Partnering for a Sustainable Ocean: The Role of Regional Ocean Governance in Implementing SDG14’, PROG: IDDRI, IASS, TMG & UN Environment, 2017.

hand. In a nutshell, the sub-regional governance of the marine and coastal environment of the Southeast Atlantic is a bridge between the global and national efforts in governing our ocean.⁴⁸⁵ It helps to contextualise and better mirror global solutions to reflect the sub-regional state of the ocean for a much stronger acceptance and visualisation by Governments and local communities upon whom these global decisions are directly enforced. Even with all the different instruments and institutional frameworks justifying the necessity and existence of a sub-regional architecture of ocean governance⁴⁸⁶ in the Southeast Atlantic, the conclusion of this Chapter showed that there is very weak governance that needs a new phase to contribute to the achievement of SDG 14.⁴⁸⁷ The second Chapter of Part One was all about creating TBMPAs in the Sub-region as a way of strengthening sub-regional governance of the ocean. Here, it was very clear from the first to the second section that within both global and sub-regional instruments, States of the Southeast Atlantic have the obligation enforced upon them, through their Membership in the UNCLOS or CBD, to cooperate sub-regionally to conserve biodiversity and fragile ecosystems.⁴⁸⁸ Although these instruments, in their vocabulary, do not always specifically use the term TBMPA, under the dynamic evolution of research, the literature used in this work demonstrated that because of their fluid nature and the impacts of their surrounding environment on them, it is important to have MPAs that connect themselves across national borders for more efficiency. In this light, the obligation to cooperate for conserving biodiversity by establishing a TBMPA between two nations of the Sub-region, Cameroon and Nigeria, was seen as another key factor other than the sub-regional TBMPA or a Network of MPAS in the strengthening of ocean governance in the Sub-region.

Being able to examine the obligations to cooperate for the achievement of regional ocean governance on one hand, and for the establishment of TBMPAs in the Southeast Atlantic Sub-region on the other hand, set the stage for the second Part of this work that had to do with looking at the challenges and benefits of creating this tool. In this regard, Chapter One of this second Part had to do with the challenges that hinder the effective development and management of TBMPAs or a Network of MPAs, particularly in the context of the Sub-region. Indeed,

⁴⁸⁵ Wright, G., Schmidt, S., Rochette, J., Shackeroff, J., Unger, S., Waweru, Y., Müller, A., 'Partnering for a Sustainable Ocean: The Role of Regional Ocean Governance in Implementing SDG14', PROG: IDDRI, IASS, TMG & UN Environment, 2017.

⁴⁸⁶ I.J. Adewumi (2022), *supra* note 34.

⁴⁸⁷ Wright, G., Schmidt, S., Rochette, J., Shackeroff, J., Unger, S., Waweru, Y., Müller, A., 'Partnering for a Sustainable Ocean: The Role of Regional Ocean Governance in Implementing SDG14', PROG: IDDRI, IASS, TMG & UN Environment, 2017.

⁴⁸⁸ UNCLOS, Part XII, Article 194.

because the establishment of this tool will likely affect so many aspects of life and considering some key challenges such as funding the UN SDG 14 is facing, the Chapter was able to argue the fact that issues such as lack of adequate human and institutional capacities and secured financial means are possible pitfalls of the development and establishment of this tool in the Sub-region. This same Chapter examined the aspects of the zonal approach under the UNCLOS as laying down both rights and duties of either the coastal States or other States, which depending on the circumstances and context could become obstacles to the effective enforcement of this tool in the Sub-region. The maritime delimitation regime has given coastal States sovereign rights that they are not always willing to abandon, particularly when the obligations to cooperate in order to conserve are not in line with their national development plans. This is not different with States of the Southeast Atlantic who fought through their active participation during UNCLOS III to ensure that they also benefit from the opportunities and riches that the ocean offers to them.⁴⁸⁹

2) Recommendations

For the sake of prudence and because the decision of the kind of TBMPA or Networks of MPAs to be established either sub-regionally or bilaterally is the final responsibility and the sovereign rights of States this work doesn't finalise which category of this tool has to be created.⁴⁹⁰ Even if, for the sake of better decision-making, States request expert advice from non-State actors, the final decision will still have to come from them.

Thus, in the specific case of the possibility of a TBMPA between Cameroon and Nigeria, the decision to create this tool between these two countries can be made by a high-level political meeting. This very meeting, which should have around the table non-only state officials but also stakeholders from the private sector and the local communities, who will be the ones to decide if this tool will be under the regime of joint management or a no-take zone. Like in the case of Cote d'Ivoire and Ghana,⁴⁹¹ this could be a project carried by an INGO like AFMESI, as it was the

⁴⁸⁹ Penelope Simoes Ferreira, "The role of African states in the development of the law of the sea at the third United Nations conference", in *Ocean Development and International Law*, 16 November 2009, <https://www.tandfonline.com/doi/abs/10.1080/00908327909545635>; Centre for Maritime Law and Security (Pioneering Maritime Governance in Africa), "REFLECTIONS ON AFRICA AND THE LAW OF THE SEA REGIME PART I", <https://www.cemlawsafrica.com/reflections-on-africa-and-the-law-of-the-sea-regime/> (accessed on 12 November 2022 at 14:24).

⁴⁹⁰ Dominique Duval-Diop, "The West African regional network of marine protected areas An effective tool for bridging the gap between two international environmental frameworks", in P. Mackelworth (2016), *supra* note...

⁴⁹¹ <https://mamiwataproject.org/2020/08/06/transboundary-mpa/>

case for the first submitted project for a TBMPA to be created between Cameroon and Nigeria. Just like Cameroon and Nigeria, these two other countries within the Sub-region had a maritime delimitation case that was submitted for ruling before the International Tribunal for the Law of the Sea (ITLOS).⁴⁹²

Therefore, as indicated in the above paragraph, this work does not take away the authority or the rights of these States to decide on which category of TBMPA should exist between them. That is why in all its previous parts, the focus was to examine those obligations upon them, either sub-regionally or bilaterally, to cooperate in the establishment of this tool either as a TBMPA or Networks MPAs.

Consequently, based on what was said previously in this work, the following recommendations will apply either for the use of this tool in the form of networks in the entire Sub-region or through bilateral cooperation:

→ **Developing more Networks of MPAs**

The Sub-region needs more Networks of MPAs to cover its large maritime domain. The efforts made by RAMPAO are encouraging, even with all the challenges that it faces, but there are not enough. Moreover, the Association only covers part of the West African part of the Sub-region.⁴⁹³ The entire maritime domains of the rest of the fifteen Member countries need to be covered by more Networks of MPAs.

For this to be achieved, there is a need for there to be strong institutional cooperation among the Southeast Atlantic's sub-regional institutions. From the Abidjan Convention to the RFMOs, the RECs and every other institution such as the development banks like the African Development Bank, all contributions must be sought and encouraged.

Just like in the Northeast Atlantic Sub-region, where the OSPAR Commission is acting as the coordinating institution of the Networks of MPAs, encouraging the support and contributions of both Member States and other concerned stakeholders,⁴⁹⁴ in the Southeast Atlantic Sub-region,

⁴⁹² Dispute concerning delimitation of the maritime boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire), 23 September 2017.

⁴⁹³ It administers only MPAs from seven of the

⁴⁹⁴ Bas Klerk, "Lessons to be learned from OSPAR's network of marine protected areas in areas beyond national jurisdiction, in light of the BBNJ negotiations", NCLOS Blog, 18/12/2020, <https://site.uit.no/nclos/2020/12/18/lessons-to-be-learned-from-ospars-network-of-marine-protected-areas-in-areas-beyond-national-jurisdiction-in-light-of-the-bbnj-negotiations/>; OSPAR, "Strategy of the OSPAR Commission for the Protection of the Marine Environment of the North-East Atlantic 20301

the Abidjan Convention Secretariat should also take the lead. Based on the role it played in the realisation of the MAMI WATA lead Project for a TBMPA between Cote d'Ivoire and Ghana,⁴⁹⁵ this managing organ of the Abidjan Convention can play a very strategic function in this regard.⁴⁹⁶ The Secretariat of the Abidjan Convention, under its mandate⁴⁹⁷ and that of the Convention itself,⁴⁹⁸ together with the collaborative efforts of the other sub-regional organisations, and through appropriate measures such as communication, can gain the needed joint efforts and willpower of national and sub-regional stakeholders⁴⁹⁹

Consequently, for there to be a success story of Networks of MPAs in this Sub-region, there is an absolute need for no one to be left behind, and for there to be adequate sharing of information. Thus, to ascertain its success, all actors must be involved from the very inception of the project.

→ What kind of TBMPA is for Cameroon and Nigeria?

Cameroon and Nigeria will have to work on the different obstacles that are likely going to hinder the success of establishing a TBMPA between them. More is to be gained with the possible establishment of this ecosystem-based management tool than either having national individual MPAs or no MPA at all along the two national maritime boundaries.⁵⁰⁰ Lots of activities, both legal (e.g. innocent passage of vessels) and illegal (IUU fishing), are going on in their maritime domains which warrant their compulsory cooperation for the conservation of their protection and preservation of the biodiversity therein.

However, after analysing their legal and policy duties towards their marine and coastal environment, it was obvious from the body of this work that both States' current interests are more in line with their developmental ambitions than the environmental ones. In light of their national development strategies, Cameroon and Nigeria have the vision to become industrialised nations. As coastal States, their obligations to develop conservation measures are often limited in the face of the developmental agendas that they have regarding their maritime domains; or when

(Agreement 2021-01: North-East Atlantic Environment Strategy (replacing Agreement 2010-03)), OSPAR 21/13/1, Annex 22.

⁴⁹⁵ <https://mamiwataproject.org/2020/08/06/transboundary-mpa/>.

⁴⁹⁶ The role played by the Secretariat of the Abidjan Convention in the establishment of the TBMPA between Cote d'Ivoire and Ghana is valued as very strategic in the MAMIWATA Project; <https://mamiwataproject.org/2020/08/06/transboundary-mpa/>.

⁴⁹⁷ Abidjan Convention, Article 11.

⁴⁹⁸ Ibid. Article 16 (1).

⁴⁹⁹ The example of RAMPOA can be very much beneficial for this project.

⁵⁰⁰ Y. Tanaka (2008), p.41, *supra* note...

there are existing instruments, there is no implementation measures and/or actions to show forth. Nigeria for instance has a well-outlined legal instrument that indicated the country's plans on establishing an MPA. But this paper-like legal implementation of the global engagements of this country has remained at the 'letter level', with Nigeria not still having any MPA. On the side of Cameroon, even though there is a lone MPA that was created in September 2003,⁵⁰¹ evidence of gaps in the governance of its marine and coastal environment is obvious with the constant biodiversity depletion and marine habitats desolation.

Consequently, lessons learned from the abortive AFMESI's TBMPA Project for Cameroon and Nigeria⁵⁰² could be used to either revisit the project itself for more effectiveness, or it could serve as an example for revisiting future TBMPAs or Networks of MPAs in the Sub-region. One of the major lessons is to ensure that national interests are considered from the very onset of such a project. In other words, knowing that these two countries and every other nation of the Southeast Atlantic Sub-region are developing countries, their major national interest is to develop/industrialise in order to come out of poverty; cooperating for conservation purposes will never be a stronger argument before their reality.⁵⁰³

Coastal States' developmental practices have never really been reduced before their global environmental obligations, and this is not about to change even for those of the Southeast Atlantic who are fighting to overcome poverty. Taking ownership of their marine environment, together with all the benefits that are embedded in it (essentially economic) is important for these countries who see it as the place of wealth creation.⁵⁰⁴

Thus, any future TBMPA between Cameroon and Nigeria or any other two countries within the Sub-region will require more than just demonstrating their obligations to cooperate for the conservation purpose. This means that this ecosystem-based management tool has to effectively contribute to the strengthening of regional ocean governance in the Sub-region if its conservational approach doesn't cohabit with the economic valuation of their maritime domain.

⁵⁰¹ [https://www.afrik21.africa/en/cameroon-a-first-marine-park-to-limit-the-ravages-of-industrial-fishing/#:~:text=Cameroon%20finally%20has%20its%20first,miles\)%20in%20Cameroonian%20territorial%20waters.](https://www.afrik21.africa/en/cameroon-a-first-marine-park-to-limit-the-ravages-of-industrial-fishing/#:~:text=Cameroon%20finally%20has%20its%20first,miles)%20in%20Cameroonian%20territorial%20waters.)

⁵⁰² See the Introduction of this work.

⁵⁰³ 2050 AFRICA'S INTEGRATED MARITIME STRATEGY, Para 2, p. 8.

⁵⁰⁴ Ibid., Para 3, p.8.

3) Final Remarks

The fact that the States of the Southeast Atlantic Sub-region in general, and Cameroon and Nigeria in particular, share common resources and maritime boundaries is something that will always require a certain degree of collaboration to be established between them for the sustainable conservation of their marine environment and biodiversity. Even if this work was arguing the fact that TBMPAs or Networks of MPAs are essential for the strengthening of the ocean governance measures in the Sub-region, there are just too many challenges that are likely to lead to their failure. Nevertheless, despite these obstacles, the development and management of this area-based management tool also carry opportunities that help to overcome the aforesaid challenges through adequate advocacy, development, and implementation measures.

With the considerations of all that which has been abovementioned in this work, it is possible to conclude here that protecting the marine environment and biodiversity of this Sub-region on one hand, and those of Cameroon and Nigeria, on the other hand, through TBMPAs will enable the strengthening of regional ocean governance. However, this cannot be developed and managed as strict TBMPAs. They will be established to respond to the socio-economic needs of these countries. Thus, they will be required to be more of a hybrid area-based management tool that allows both conservation and sustainable uses objectives. Also, despite the challenges, these countries can work together to develop TBMPAs that will represent their common benefits which are to develop their individual but common maritime domain, while conserving it and its resources, for their present and future generations.

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