

# The Challenges for the Global Ocean Governance

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## Abstract

The Global Ocean is the cornerstone of our planet's life support system. It encompasses one of four Global Commons, the High Seas, and represents the sum of all seas and oceans that are interconnected at a global scale. Although considered as a unique piece of the planet system, it consists on multiple and complex components, regulated autonomously but interacting with each other.

Ocean Governance is a topic that, while not new, is still far from consensual in the way it is conceptualized and implemented. Although the United Nations Convention on the Law of the Sea (UNCLOS), recognized by a large number of States as "the Constitution for the Oceans", determines its spatial configuration and regulates the components of the Ocean, this is not achieved globally, resulting in gaps in terms of spatial coverage of this single element - the Global Ocean.

Considering the theme's complexity and the interdependence of the maritime areas' regimes pursuant the Convention, this paper highlights some of the major constraints and challenges regarding to Global Ocean Governance to be faced in the years to come. Among others, issues as the legitimacy of the governance process in the global scene, the tragedy of the global commons and the evolution of the oceans' regime, will be considered to set the major emerging challenges in this proposed topic.

**KEY WORDS:** Governance, Regime of the Oceans, UNCLOS, Sovereign Rights, Common Heritage of Humankind, Sustainability of the Marine Environment.

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## Introduction

*Life began in the ocean around 3.5 billion years ago and as evolution progressed, many species went extinct -- and some left behind fossils -- as others appeared. And even now, the ocean hasn't stopped changing as evolution continues and humans leave their mark.*

*Ocean Portal*

The Global Ocean is the interconnected system of Earth's oceanic waters, comprising the largest part of the hydrosphere, and covering around 70% of Earth's surface. It is much more than just salty water. It is the major life support system of the planet acting as a natural massive capacitor. Its capacitive characteristics allow to absorb the drastic changes in the planet's temperature, regulating the overall climate and granting our subsistence.

Humankind has changed its own view over this Ocean through the times. This change has resulted in a constant evolution of the regime of the oceans, currently established by the United Nations Convention on the Law of the Sea – UNCLOS (United Nations, 1982). This Convention can be considered, in the light of the theory of International Relations (IR), from multiple perspectives, since it was made up in a particular period of our recent history where the world was progressing in several distinct areas such as the social, the economical and the scientific and technological.

One key element that can be easily depict from the UNCLOS is the establishment of limits... limits in a single and continuous water body, as seen by an alien. These limits, sometimes named as boundaries, are agreed by those who ratified the UNCLOS, and they are the reflection of nearly one decade of negotiations and agreements. These limits regulate, in a practical sense, the extent of sovereignty and jurisdiction by coastal States over several and distinct matters. Being quite far from the regime coined by Hugo

Grotius (Keohane & Nye, 1977) in the XVII century, based on a borderless global ocean known as MARE LIBERUM, today we live with fragmented ocean legally bonded to the UNCLOS.

Although we accept and agree with these maritime limits, there are natural causes, such as fish stocks migration, and manmade threats, such as pollution (presently specially centered in plastic's pollution) that do not recognized such limits. For example, fish stocks move around in their natural area, somewhere in the global ocean, disregarding any type of boarder control action. The same is applied to pollution.

When applying the concepts of the Global Commons, one can easily depict that the once Oceans' greatness has been diminished through the times, and reduced to what is known by the High Seas. To avoid the fate illustrated by Garrett Hardin (Hardin, 1968), in his well-known work "The tragedy of the commons", it is necessary to agree and implement a good Ocean Governance, in this non regulated spatial domain, even considering the limitations associated to this type of practice. To better understand this, one must question: What is Ocean Governance and what are its levels and ranges of action?

## What is Ocean Governance?

Ocean Governance is not a new issue. In this concept we can easily identify two distinct components; the object – **Ocean**, and the process – **Governance**. To fully understand the depth of our quest one must consider the full range of each component to derive its final impact.

## The Ocean

Starting with the object of study, one can consider the Ocean at multiple scale ranges (local, national, regional and global), yet always incorporating the principles set by the UNCLOS. The multiple maritime regions set by the UNCLOS reflect the principles agreed during the III UN Conference on the Law of the Sea. Bridging the UNCLOS contents, regarding to the maritime regions, with the conceptual framework upon which international relations can be analyzed, it is relatively straightforward to identify the

three most prominent theories of IR, the Realism, Liberalism and Constructivism. This analysis leads us to a multiple conceptual and theoretical framework geographically distributed based on the application of the UNCLOS, involving the theoretical dimensions of Realism (in the Individual Affirmation by Coastal States over their adjacent maritime regions), Neoliberalism (Environmental governance and Globalization) and Constructivism (the Area - Common Heritage of Mankind - as an element of union and sharing among peoples). Obviously, these multiple approaches, as stated before, will have a significant impact on the governance process to be discussed later.

There is also an important part of the Global Ocean that is not considered to be under any national jurisdiction – the High Seas<sup>1</sup>. This portion is the remaining heritage from Hugo Grotius' *Mare Liberum* and it is considered one of the four major Global Commons<sup>2</sup>. It basically corresponds to the water column beyond the Economic Exclusive Zone (EEZ) of the coastal States and represents nearly two thirds of the whole Global Ocean (Ardron *et al.*, 2013). Its massive amount of water covers the Area, in accordance with Part XI of the UNCLOS, and the extended continental shelves beyond the 200 nautical miles, in accordance with article 76 of the UNCLOS.

Alternatively, notwithstanding the above considerations, one can also consider a different/complementary view over this object of study – the Ocean. That view, based on a philosophical line, considers the pure Global Ocean as a natural element for our own subsistence. This unified Global Ocean encompasses a holistic and integrated approach to our sustainable development. The importance of oceans for a sustainable development is widely recognized by the international community and was first embodied in Chapter 17 of Agenda 21 (UNCED, 1992). Recalling the United Nations document “The future we want” (United Nations, 2012) adopted from Rio+20, Member States advocated an “*holistic and integrated approaches to sustainable development that will guide humanity to live in harmony with nature and lead to efforts to restore the*

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<sup>1</sup> Also known as Area Beyond National Jurisdiction (ABNJ)

<sup>2</sup> Global commons (UN System Task Team, 2013) is a term typically used to describe international, supranational, and global resource domains in which common-pool resources are found. International law identifies four global commons, namely the High Seas, the Atmosphere, the Antarctica and the Outer Space. These resource domains are guided by the principle of the common heritage of mankind.

*health and integrity of the Earth's ecosystem". They stressed, among others, the importance of "the conservation and sustainable use of the oceans and seas and of their resources for sustainable development, including through their contributions to poverty eradication, sustained economic growth, food security and creation of sustainable livelihoods and decent work, while at the same time protecting biodiversity and the marine environment and addressing the impacts of climate change". While very ambitious, this desire is crucial for all States on Earth, since we depend on the environment to sustain our lives, at least as we are used to live...*

To conclude the analysis of this first component, we might also state that the final configuration for the Ocean, in terms of limits pursuant the UNCLOS, is still far to be accomplished. The outer limits of the continental shelves submitted by coastal States will determine, in a future, the final and binding national limits, as well as the limit of the Area – the Common heritage of Mankind.

## The Governance

The analysis of this complex equation called Ocean Governance, starts by qualifying the multiple scale ranges associated to the Ocean. The same principle can be applied to the second component – the Governance process – but in a higher level of impact. If we consider the vision over the Ocean, as seen before, not straightforward, then we will find out that the process of Governance itself is even more problematic.

My first contact with this concept goes back to nearly two decades, when Paquet (2000) described that although governance itself was not new, the science of governance was a fairly new discipline. By this time, several authors pointed out the meaning of governance with the common ground centered on management, coordination and decision-making. Sutherland (2005) and Sutherland & Nichols (2006) described this concept in a nutshell as:

*"Governance is about managing people's relationships with each other as they interact with their environment."*

Similarly to the Sutherland model, several other traditional governance models have been based on a management science approach where the premise is that leadership of

organizations (public, private or civic) is strong, and have good understanding of their environment (Paquet, 1999). In this context, management means the development of overarching systems of values, the formulation of policy and strategy, and the implementation of strategy (Barry *et al.*, 2000). Although governance overlaps management to a certain extent, it is more focused on setting the parameters and rules of conduct for managing a complex situation (Commission on Global Governance, 1995). Governance is aimed at accommodating conflicting, diverse interests and galvanizing cooperative action (Barry *et al.*, 2000).

After defining the overall idea subjacent to this concept, it is quite obvious that the success of this theory is highly dependent on the geopolitical content of its implementation. Assuming the present status in the International System, in accordance with the theory of IR, where all States are considered autonomous units, it is quite straightforward to implement such governance at local or national level since the government cover all governance's adopted principles. This might be more delicate when extending this concept beyond the national level. Basically, the global assumption is adopted in the governance concept, in other words to the Global Governance, as will be presented afterwards.

## The Global Governance

There is a wide range of opinions on Global Governance. This concept can run from one extreme position to the opposite. On one hand some scholars say that is a messy and vaguely cohesive concept, as it involves a myriad of ideas, people, and social forces (Harman & Williams, 2013). Some other say that is notoriously slippery, as it could be an attempt to control the pernicious aspects of globalization, and a synonym for world government (Weiss & Wilkinson, 2014). On the other hand, in a first glance, when asking, "What is global governance?" we might reach to the conclusion that "Global Governance appears to be virtually anything" (Dingwerth & Pattberg, 2006).

Anyhow, it is clear that Global Governance follows the mainstream principles that guide the "generic" governance. The main issue here is the legitimacy of their exercise, since we are involving with different levels of sovereignties (Keohane, 2011). We feel that we need this type of governance, what we don't know is how to set and implement it... it's

a fuzzy concept in a global world. Mazower (2012) said that we call Governance because we don't truly know what is happening. Other authors point out that its need emerged from the globalization phenomena (Weiss & Wilkinson, 2014) in the pick of economic growth in the mid-90. In fact, in the nineties, Rosenau & Czempiel (1992) came up with a notable work on Global Governance, stressing out that we were moving into something different in terms of world politics and defined Global Governance as governing without government. At the same time, the Swedish government launched the policy-oriented Commission on Global Governance whose report - Our Global Neighborhood (Commission on Global Governance, 1995) coincided with the initial publication of the Academic Council on the United Nations System journal Global Governance (Mazower, 2012). The Commission on Global Governance, provided the following definition:

*“Governance is the sum of the many ways individuals and institutions, public and private, manage their common affairs. It is a continuing process through which conflicting or diverse interests may be accommodated and co-operative action may be taken. It includes formal institutions and regimes empowered to enforce compliance, as well as informal arrangements that people and institutions either have agreed to or perceive to be in their interest... At the global level, governance has been viewed primarily as intergovernmental relationships, but it must now be understood as also involving non-governmental organizations (NGOs), citizens' movements, multinational corporations, and the global capital market. Interacting with these are global mass media of dramatically enlarged influence.”*

But what does global governance cover? According to Archer (2001) the apparent response is that it is intended to transboundary activities, normally outside of the exclusive control or jurisdiction of individual governments. This applies, for instances, to world trade and commerce. Archer also lists some emerging issues to be dealt on the twenty-first century. For instance, international crime, drug smuggling, cross-border environmental problems (where we can apply the transboundary issues applied to the

Global Ocean), the internet, tourism, migration of peoples, and the spread of diseases are just some of the more well-known. When considering its practice, Harman and Williams (2013), suggest that governing is not just about the process of managing a large set of actors and ideas, but is also an area of political contestation and conciliation. Therefore, the problems of global governance are partially related to the process itself, their mechanisms and involved actors, but also reflect the core dynamics of the politics of international relations (Harman & Williams, 2013). In this context, global governance reflects the technocratic, multiparticipative and inclusive approaches in which international relations are materialized.

How can one now conjugate this multiparticipative and global process together with the multiple Ocean scenarios early discussed? What combinations may result from that association?

## The Ocean Governance

*For several centuries, the bounty of the oceans was so vast that it was believed to be limitless ... however, it became clear that scarcity – the general economic fact of life – applies even to the oceans (Eckert, 1979).*

From the above sentence, one is able to conclude that the ancient certainty of limitless resources is an unfounded presumption. Both International Ocean (in this text representing the High Seas or, as previously stated, the Areas Beyond National Jurisdiction - ABNJ) and Global Ocean (the whole interconnected Ocean) require an appropriate sustainable model.

To better explain and to cover all possible case studies on Ocean Governance, the object of study will be split in two distinct parts; the International Ocean's Governance and the Global Ocean's International Governance, where the first one can be considered as a component of the latter one (Table 1).



	Ocean (UNCLOS)	Global Ocean (Holistic Approach)
Local Governance	<p>Local level</p> <p>Marine Governance Marine Cadastre</p> <p>National level</p> <p>Marine Management Marine Spatial Planning</p>	<p>Adoption of Global procedures to reduce social, environmental and economic impacts at national level</p>
Global Governance	<p>International Ocean Governance</p> <p>(The High Seas)</p>	<p>Global Ocean's International Governance</p> <p>(Multiparticipative and inclusive process)</p>

Table 1 – The Multiple approaches for Ocean Governance

### The International Ocean<sup>3</sup> Governance

This specific category of Global Governance is intimately connected to the Governance of the Global Commons<sup>4</sup> related to the Ocean. As Hardin (1968) alert, the global commons might not be sustainable if not regulated. The sense of limitless, as pointed out by Eckerd (1979), will vanish due to the pressure of progress over time. One example in our history is the establishment of the rules set out<sup>5</sup>, during the first Conference of the UN on the Law of the Sea<sup>6</sup>, to establish the limits of the coastal States' continental shelf. The depth criteria, set to the 200 meters depth, and the exploitation criteria, set to an unclear extension but somehow close to the depth criteria adopted in 1958, diverged from each other as technological progress push further deeper the capability to explore the seabed. This is a clear example on how the unlimited sense of resources and their spatial domain is reduced as a consequence of progress over time. This technological progress is in fact creating a lessening process of our global commons.

<sup>3</sup> By International Ocean we mean the part of the Ocean that represents the Oceans Global Common – the High Seas.

<sup>4</sup> Global commons have been traditionally defined as those parts of the planet that fall outside national jurisdictions and to which all nations have access. The governance of the global commons represents a specific aspect of global environmental governance. Stewardship of the global commons cannot be carried out without global governance.

<sup>5</sup> The provision on the external limit, based on the 200 meters isobath and on exploitability, was to be seen as obsolete in light of technological progress and was radically modified in the 1982 Convention (Treves, 2008).

<sup>6</sup> The 1958 Geneve Conference

Today we observe it in the Ocean, in the future will be in the today's unlimited outer space... it's just a matter of progress over time, but that time will come.

The demanding of resources is a real fact. It's an essential action to the survival of the States. In the present world order is a crucial element and disregarding that true might bring up some worst consequences. The share that remain from Hugo Grotius' ocean is now resumed to an area that exists only beyond the 200 nautical miles. The management of that area is achieved in multiple ways, in accordance with the UNCLOS (Figure 1). The portion underneath the water column is clearly defined in the UNCLOS, although is still an ongoing process (at least to define the location of their limits, since they depend on the output product of the Commission on the Limits of the Continental Shelf – the recommendations). The remaining part - the Area – considered Common Heritage of Mankind, is also subject to an agreed management, in this case assumed by the International Seabed Authority (ISA).

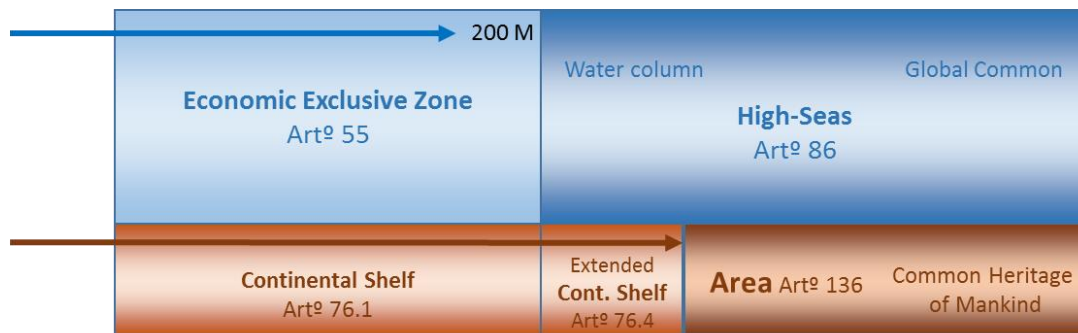


Figure 1 – The areas beyond the 200 nautical miles in accordance with UNCLOS.

In contrast, the High-seas consists in a patchwork of international organizations (Table 2) and treaties to manage the ocean resources and human activity since no mechanism of the UNCLOS provide any type of management in these areas beyond any state's national jurisdiction (Wilson, 2016). Despite these several governance bodies no instruments exist to coordinate across geographic areas and sectors, resulting in gaps and overlapping of their jurisdictions (Figure 2).

Regional fisheries management organizations		Regional seas organizations	
<b>CCSBT</b>	Commission for the Conservation of Southern Bluefin Tuna	<b>CCAMLR</b>	Commission for the Conservation of Antarctic Marine Living Resources
<b>GFCM</b>	General Fisheries Commission for the Mediterranean	<b>MAP</b>	Mediterranean Action Plan for the Barcelona Convention
<b>IATTC</b>	Inter-American Tropical Tuna Commission	<b>OSPAR</b>	OSPAR Commission (from the Oslo and Paris Conventions)
<b>ICCAT</b>	International Commission for the Conservation of Atlantic Tuna	<b>SPREP</b>	Secretariat of the Pacific Regional Environment Programme
<b>IOTC</b>	Indian Ocean Tuna Commission	<b>Global/sectoral organizations</b>	
<b>NAFO</b>	Northwest Atlantic Fisheries Organization	<b>IMO</b>	International Maritime Organization
<b>NEAFC</b>	North East Atlantic Fisheries Commission	<b>ISA</b>	International Seabed Authority
<b>NPAFC</b>	North Pacific Anadromous Fish Commission	<b>IWC</b>	International Whaling Commission
<b>SEAFO</b>	South East Atlantic Fisheries Organization		
<b>SIOFA</b>	South Indian Ocean Fisheries Agreement		
<b>SPRFMO</b>	South Pacific Regional Fisheries Management Organization		
<b>WCPFC</b>	Western and Central Pacific Fisheries Commission		

Table 2 – International Governance Bodies with High Seas Mandate. Adopted from - <http://www.pewtrusts.org/~media/assets/2016/08/mappinggovernancegapsonthehighseas.pdf> (Wilson, 2016).

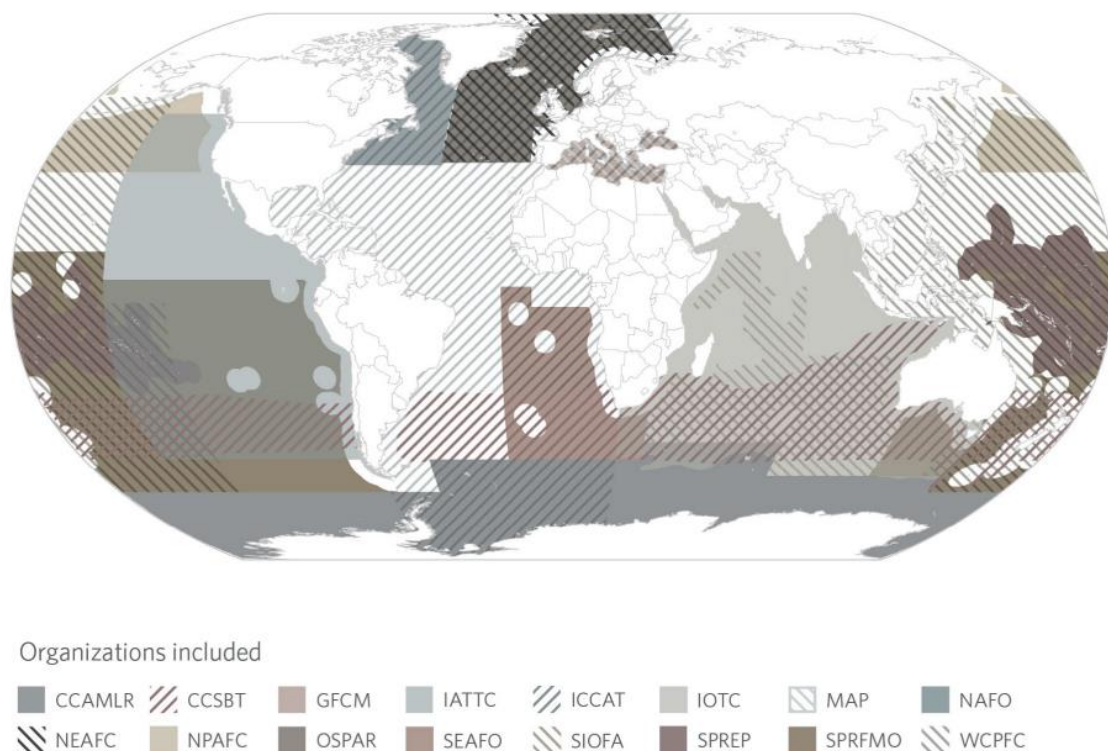


Figure 2 – Overlapping of international governance organization with high seas mandates. Adopted from <http://www.pewtrusts.org/~media/assets/2016/08/mappinggovernancegapsonthehighseas.pdf> (Wilson, 2016).

At the European level, on 10 November 2016, the European Commission and the EU's High Representative set out a joint agenda for the future of our oceans, proposing 50 actions for safe, secure, clean and sustainably managed oceans in Europe and around the world<sup>7</sup>. This agenda is shaped on a widely shared understanding that the ocean governance framework needs to be strengthened, that pressures on the oceans need to be reduced and that the world's oceans must be sustainably used. It also highlights that a better understanding about the oceans is essential to achieve these objectives (European Commission, 2016).

### The Global Ocean's International Governance

*Oceans are a common treasure without physical boundaries. Treasure has always attracted pirates. We need more guardians – MPAs – against piracy in areas within and beyond national jurisdictions. After all, the seas are our life (Midori & Paxton, 2017).*

The final outlook on this paper resumes to the alternative combination for Ocean Governance. That would be a decisive exercise to be conducted and takes as input the non-boundary global ocean. This level of governance spans beyond the High-seas. One can actually consider the extension of the adopted mechanisms, in certain critical matters that could impact on and compromise the marine ecosystem integrity.

A good global governance of the Ocean requires much more than a simple exercise of management. It requires the identification of a common threat, which can expose our own existence. Threats like over-exploitation, climate change, acidification, pollution and declining biodiversity are present day threats that affect the Global Ocean and, therefore, affect everyone who lives in this planet. This is a problem that goes beyond the High-seas, it may also include areas of national jurisdiction, but that cannot be sustained due to the impossibility of establishing physical barriers to hold the hazard. Human well-being cannot be achieved without the protection and conservation of the

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<sup>7</sup> [https://ec.europa.eu/maritimeaffairs/sites/maritimeaffairs/files/list-of-actions\\_en.pdf](https://ec.europa.eu/maritimeaffairs/sites/maritimeaffairs/files/list-of-actions_en.pdf)

Earth's ecosystem as a whole. To preserve the quality of life that the oceans have provided to humankind, while sustaining the integrity of their ecosystems, a change will be required in how humans view, manage and use oceans, seas and marine resources. This also includes having common global policies to be used inland which may impact in the Ocean.

A good initiative in this context was the Ocean Conference, within the scope of the UN Sustainable Development Goals, in which those common threats were identified. Another good initiative was the implementation of Marine Protected Areas as a Global Ocean protective measure (see Figure 3). Hopefully, the adoption of other tools, as well as the strengthening of the Maritime Protected Areas network may come up with some global solutions, but the question is: how engaged would be the Coastal States to promote this policies within and outside their national jurisdiction areas?

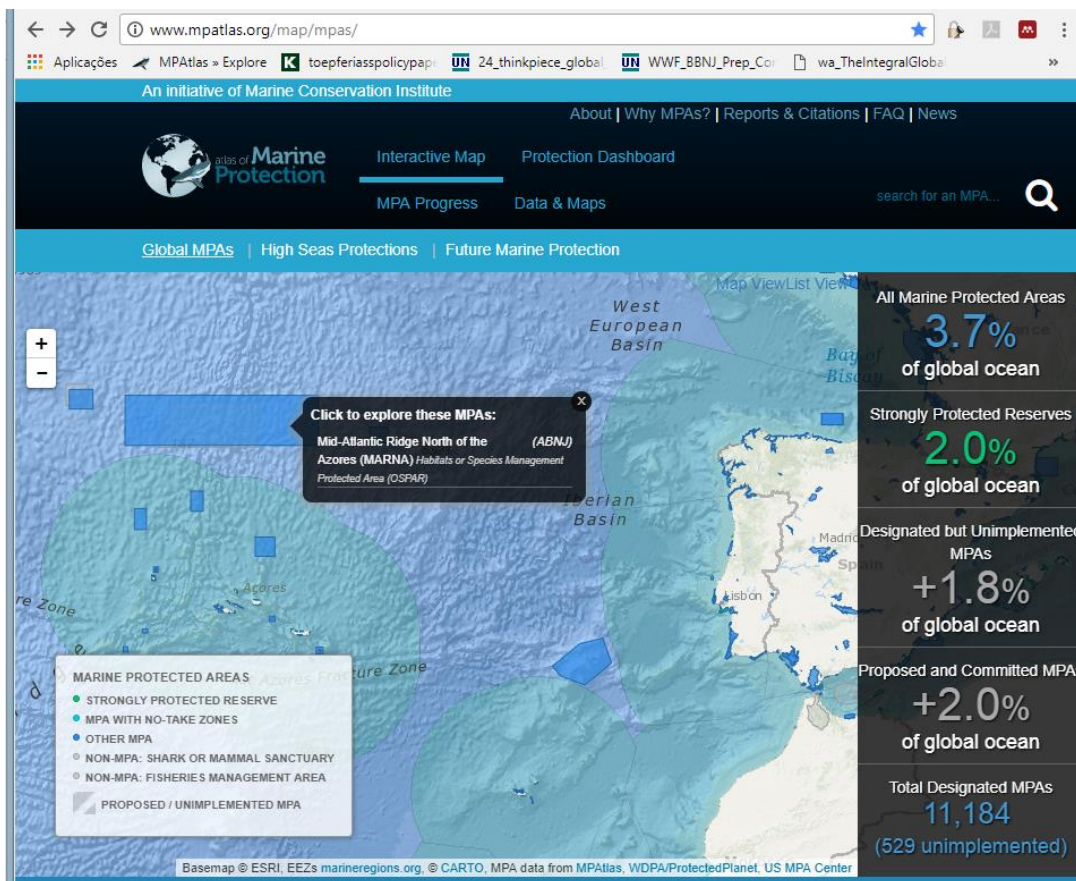


Figure 3 – Marine Protected Areas will act as sanctuaries to preserve our Biological Diversity. The present Convention on Biological Diversity sets 10% of the world's marine areas under MPA status by the year 2020. According to the Atlas of marine protection (<http://www.mpatlas.org/progress/targets/>) we are still in 3.7%.

## Final Remarks – From wish to concerted strategy

*In a revolution, as in a novel, the most difficult part to invent is the end.*

Alexis de Tocqueville

As mentioned before, the Global governance is a complex issue. It is even more complex because it consist of the participation of States, which are defined on their own national determinations and politics. In the absence of a global binding institution, whit supranational authority, global governance is the only way to move forward in order to guarantee the containment of the new global threats, especially those related to the environment. The application of global governance to the global ocean is not an easy task. Implementing the necessary measures in Ocean Governance requires full engagement from all States and result in multiple challenges, since policies made onshore will impact offshore. From public engagement to science education and ethics, there are still several dimensions that need to be addressed to fully achieve an effective Ocean Governance. The challenges are many and complex, but we need to move ahead. From an extended review of the literature it seems that we are not completely sure that this is the right way to do so... but we a direction, a route to secure the environmental status of the Ocean. It is not in our horizon of time to have a global constitution, maybe not even in the next generations (Keohane & Nye, 1977). We have, however, a “Constitution for the Oceans”, our known UNCLOS, and for sure a unique world to preserve ourselves. If a world government is not in our horizon, then we definitely should engage in this Global Governance applied to the Global Ocean following one concerted strategy ... for our sake and for the sake of the generations yet to come.

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