

WCEL Webinar 6
Are Multilateral Environmental Agreements effective for ocean conservation
in the Asia-Pacific Region?



Examining the Law of the Sea, and Post Law of the Sea Developments for the Pacific Islands: Unfinished Business

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The following is a summary of the remarks given by Dr. Transform Aqorau:

As recognized in the preamble of the United Nations Convention for the Law of the Sea (UNCLOS), problems in our oceans are interrelated. Most countries in the Pacific are dependent on the oceans. The Law of the Sea Convention (LOSC) is universally accepted as the general framework governing all uses of the oceans. It sets out the rules, rights, duties and obligations of all states, large or small, developing or developed, including landlocked states. The LOSC contains general rules of application, and also enables provisions to further develop rules for regional and subregional application. The LOSC is one, if not the most comprehensive multilateral agreement developed under the auspices of the United Nations. The LOSC regulates maritime jurisdiction, boundaries, islands, reefs, research and technology transfer, living and non-living resources, protection and preservation of the marine environment, and marine scientific research. Its dispute settlement provisions create a level playing field to ensure that the rights of all states are protected. The key imperative against which the LOSC operates is founded in the preambular paragraph that “the problems of ocean space are closely interrelated and need to be considered as a whole”.¹

Most countries in the Pacific attained their independence in the 1970s, just as UNCLOS was being negotiated. This expanded the concept of marine jurisdiction for most Pacific Islands. At the same time, states were given greater control and endowed with greater responsibility as custodians of the largest tuna stocks in the world. The Pacific is the largest ocean in the world and has the largest and healthiest tuna stocks in the world. Most of the islands are small and surrounded entirely by the ocean (with some exceptions such as Papua New Guinea). For the Pacific Island States, the LOSC, political independence, self-reliance and economic independence, have been intertwined from outset. The LOSC has given control, but also responsibility, over a wider jurisdictional oceanic space. The Pacific Islands are endowed by nature as the custodians of the largest tuna stocks in the world.

¹ United Nations Convention for the Law of the Sea (1982)
https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf.

Small Island Countries are now confronted with threats of climate change, especially sea level rise. With these impacts, it is important to ensure sustainability of tuna stocks and marine environments, especially from land-based pollution. A more comprehensive approach to ensure protection of these habitats is important in order to maintain healthy oceans. The effectiveness of these approaches depends on the capacity of the countries.

There are also ongoing geo-political issues faced by Pacific Island Countries such as the ongoing struggle to control fisheries resources and transportation lanes. The quest for new frontiers in science, medicine, and pharmaceutical products, as well as control over resources, is leading to increased militarization of the oceans.

There have been gaps in implementation and tuna stocks continue to be exploited. There is therefore a need for ongoing reforms and hard work must happen at various governance scales – international, national and local. These gaps led to both hard and soft law responses. The hard law responses include the Food and Agriculture Organization (FAO) Compliance Agreement and the United Nations Fish Stocks Agreement. The Western and Central Pacific Fisheries Commission (WCPFC) was established in the Western and Central Pacific Ocean (WCPO). The soft law responses include the FAO Code of Conduct for responsible fishing, as well as the ongoing efforts to address biodiversity conservation in areas beyond national jurisdiction.

There is still unfinished business for the Pacific Islands to implement UNCLOS. Instead, most measures are still state-centric. There should be an increasing role for all stakeholders, especially non-state actors, such as NGOs and industry, to help shape and reform implementation of multilateral agreements. The unfinished business includes:

- The need to improve governance over oceans;
- Weaknesses in the consensus-making processes of RFMOs;
- Limits to the efficacy and effectiveness of RFMOs, with states being the main subjects of international law;
- Increasing concerns about welfare of crews and observers on fishing vessels; and
- Over-capitalization of fleets and subsidies distorting the fishery.

Finally, the drivers of change, include:

- Market based measures;
- Ecolabels for consumers, retailers and NGOs;
- The need to ensure all stakeholders have an increased voice and role in shaping international law; and
- The need for reform and restructuring.