sustainability

MDPI

Article

The Interplay between the CAOF Agreement and BBNJ Agreement: A Chinese Perspective

Dan Liu

KoGuan School of Law, Shanghai Jiao Tong University, Shanghai 200030, China; liudan2015@sjtu.edu.cn

Abstract: After years of negotiation, in 2018, five Arctic coastal states and five other members, including China, reached the Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean (CAOF Agreement). Meanwhile, at the sessions of the BBNJ negotiation, which were mandated by the UN General Assembly Resolution 72/249, expectations for a legally binding BBNJ Agreement in the future also increased. This paper outlines the convergence and potential conflict between the CAOF Agreement and the envisioned BBNJ Agreement. Moreover, owing to its important role in international ocean governance, China's treaty obligations to the CAOF Agreement and its position on the four major issues of the BBNJ Agreement need to be carefully observed. More importantly, this paper provides an analysis of China's views regarding the interplay between the two agreements to offer a reference for BBNJ governance.

Keywords: CAOF Agreement; BBNJ; China's position; conflict and congruence

check for updates

Citation: Liu, D. The Interplay between the CAOF Agreement and BBNJ Agreement: A Chinese Perspective. *Sustainability* **2022**, *14*, 14575. https://doi.org/10.3390/su142114575

Academic Editors: Guifang Julia Xue, Xiangxin Xu and Tim Gray

Received: 26 September 2022
Accepted: 31 October 2022
Published: 6 November 2022

Publisher's Note: MDPI stays neutral with regard to jurisdictional claims in published maps and institutional affiliations.

Copyright: © 2022 by the author. Licensee MDPI, Basel, Switzerland. This article is an open access article distributed under the terms and conditions of the Creative Commons Attribution (CC BY) license (https://creativecommons.org/licenses/by/4.0/).

1. Introduction

Areas beyond national jurisdiction (ABNJ) belong to all but no-one, and therefore, are a "global common". Members of the United Nations have engaged in negotiations to expand the Convention on the Law of the Sea (UNCLOS) to include a new international legally binding instrument (ILBI) on the conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction (ABNJ). It is hoped that the new instrument will ensure compatibility with various stakeholders, especially developing countries, to address existing inequalities in sharing the benefits (including access) accrued from the organisms of ABNJ. Such benefits could include a wide range of resources, including samples, the results of basic and applied research, and monetary benefit sharing in relation to commercialization from utilizing the marine genetic resources (MGRs) of ABNJ. Based on Resolution 59/24 in 2004, the Ad Hoc Open-ended Informal Working Group was established by the United Nations to study BBNJ issues [1]. In 2015, in accordance with the consensus reached and recommendations made by the Ad Hoc Working Group, UN Resolution 69/292 decided to establish a Preparatory Committee (PreCom) to facilitate the discussion of the BBNJ Draft Text under the United Nations Convention on the Law of the Sea (UNCLOS) [2]. In Resolution 72/249 of 2017, the General Assembly decided to convene an Intergovernmental Conference (IGC) to organize four sessions, originally scheduled from 2018 to the first half of 2020 [3]. Due to the pandemic, IGC-4 was eventually postponed until March 2022, and a combination of plenary sessions was carried out to conduct text-based negotiations on the BBNJ issues [4]. The General Assembly decided that a fifth session would be held in August 2022. At the time of writing, four IGC sessions were convened as scheduled, so this article only reflects regulatory development before IGC-4.

On 3 December 2018, in the sixth round of negotiations, the Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean (CAOF Agreement) was reached by the five coastal states of the Arctic Ocean (Russia, the US, Canada, Norway and Denmark, or A5) and Iceland, China, Japan, South Korea and the European Union. The CAOF Agreement aims to regulate unregulated fishing in the high seas portion of the

central Arctic Ocean (CAO) around the fisheries jurisdiction of five Arctic coastal states, and to implement fisheries conservation and management measures in the regime.

The central focus of this study is the interaction between the CAOF Agreement and the envisioned BBNJ Agreement. The geographic coverage of the BBNJ Agreement will include all marine areas beyond national jurisdiction, which means that the agreement will not only reach the high seas of the CAO but also potentially influence Arctic MGRs. Previous studies show that a new BBNJ Agreement could have potential implications for Arctic governance. In particular, the consistency and potential conflicts between the two agreements [5] (p. 1) require more in-depth study. Some even suggested that it is necessary to introduce special rules because of the special ecological conditions in the Arctic [6] (pp. 234–240).

China is an important contributor to global fisheries governance and has also played an important role in the development and utilization of MGRs and relevant scientific research. China's fisheries are characterized by the world's largest catches, highest fishing efforts and the most fishermen and fishing fleets. China has 0.86 million fishing vessels (including both marine and inland) and contributed to 12.68 million tons of marine capture production in 2018, accounting for 18.9% and 15% of global fishing vessels and marine captures, respectively [7] (p. 2). Since the formation of the National Marine Survey Fleet in 2012, the number of China's marine research vessels has increased from the initial 19 to 50 by 2019 [8] (p. 10). These include the *Xue Long* icebreakers and the *Xiang Yang Hong*, *Da Yang*, *Ke Xue* and *Dong Fang Hong* series of general research vessels [9]. In terms of patent applications for MGRs, according to the report of the World Intellectual Property Organization, China ranks third in the world, with 518 first filings, behind the United States (1113) and Japan (773) [10]. Against this background, China's role in ocean affairs has attracted increasing global attention. The debate during the complex multilateral BBNJ negotiations has been broadly characterized as representing a conflict between developed states, which favor status quo arrangements, and developing states, which favor benefit sharing [11] (pp. 143–144). As a typical developing country with the largest population, China is not only an active player in the BBNJ negotiations but also one of the state members of the CAOF Agreement. It is worth noting China's position on the interaction between the two agreements because it may affect the direction of future BBNJ negotiations.

Following the introduction in section one, the second section briefly summarizes the current progress of the CAOF Agreement and the envisioned BBNJ Agreement and outlines the congruence between them. The article next considers the potential interplay of the two agreements, particularly the issue of application scope, area-based management tools (AMBTs) and membership of the agreements. The fourth section attempts to observe the involvement of China in the Arctic and BBNJ Regimes, including such notable factors as China's treaty obligations under the CAOF Agreement and China's position on the unconfigured BBNJ Agreement. The fifth section offers some observations on China's views regarding the potential regimes of interaction between the two agreements. The last part looks ahead to the prospects of the two agreements, on the basis of which it analyzes the specific directions in which China is most likely to make policy adjustments to areas of interaction between the two agreements.

2. Progress and Congruence of the CAOF Agreement and BBNJ Agreement

The high seas portion of the Bering Sea is almost ice-free in late summer, and is located closer to China, South Korea and Japan than many of the areas where those countries' long-range fishing boats currently operate. Living marine resources such as the Arctic fisheries and MGRs of ABNJ have become more accessible to Asian countries, including China. In the 2018 White Paper on China's Arctic Policy (White Paper) released by the Chinese Government, marine environmental protection and marine living resources (including fisheries and MGRs) were included within the framework for its Arctic interest [12]. Without understanding the negotiation process and interlinkages of the two agreements, it will be difficult to understand China's involvement in the negotiation of the two agreements (discussion in Sections 4 and 5).

2.1. Current Progress of the Agreements

The process for the development of an international legally binding instrument for the BBNJ under UNCLOS has been running for more than ten years. The issue of marine biodiversity in areas beyond national jurisdiction first came to the attention of the United Nations in 2003 at its fourth meeting of the Informal Consultative Process on the Oceans and the Law of the Sea [13]. In 2011, four elements of the "package deal" for the BBNJ Agreement were identified by the Working Group: marine genetic resources (MGRs); area-based management tools (ABMTs), including marine protected areas (MPAs); capacity building and technology transfer (CB&TT); and environmental impact assessments (EIAs) [14]. More importantly, the General Assembly mandated that PreCom lead the BBNJ negotiations and required it to review the four elements of the package deal, stating that the process set out in Resolution 69/292 "should not undermine existing relevant instruments and frameworks" [2]. Initially, PreCom planned four sessions of the Intergovernmental Conference (IGC). Due to the COVID-19 pandemic, IGC-4 was eventually held in March 2022. Following IGC-4, the revised draft texts were published on 30 May [15] and 11 July of 2022 [16]. The General Assembly decided to convene IGC-5 in August 2022 [17], hoping for the possibility to adopt a final agreement. Despite the growing expectations for a binding BBNJ Agreement, the road to the conclusion of the agreement has not been as smooth as expected.

Compared to the BBNJ negotiations, the CAOF Agreement had a gestation period of almost twenty years, beginning with a US congressional resolution passed in 2008 as Public Law 110-243, which called for necessary steps to negotiate such an agreement [18]. In April 2015, the five Arctic coastal states (including Canada, Denmark, Norway, Russia and the United States, or "A5") reached the Declaration Concerning the Prevention of Unregulated High Seas Fishing in the Central Arctic Ocean (2015 Oslo Declaration), in which they made the commitment to implement interim measures to prevent unregulated fishing in the high seas portion of the CAO [19] (pp. 13–14). Despite its "soft law" nature and limited state members, the Oslo Declaration is an important step for fisheries management in the marine Arctic. A legally binding treaty, namely, the CAOF, was finally signed in Ilulissat on 3 October 2018 [20]. This agreement was designed to enter into force 30 days after the deposit of the tenth ratification document and will be in effect for sixteen years [21] (Article 13). As the last of the ten signatories [22], China submitted its instrument in May 2021, and the CAOF Agreement entered into force on 25 June of the same year [23].

2.2. Congruence of Agreements

There are several commonalities between the CAOF Agreement and the envisioned BBNJ Agreement. First, marine ecological elements have been one of the major concerns of the two agreements. In its preamble, UNCLOS highlights the importance of ecological connectivity: "the problems of ocean space are closely interrelated and need to be considered as a whole". To ensure the conservation and sustainable use of marine biodiversity in ABNJ, the ecological connectivity of the oceans must be fully taken into consideration in the preparation of international instruments. Therefore, environmental impact assessment (EIA) and other environmental norms [16] (Part IV) are incorporated into the negotiation draft of the BBNJ negotiations. On the other hand, fisheries management in the central Arctic Ocean (CAO) is not driven by unsustainable or unmanaged fishing that has taken place but is based, in part, on the lack of scientific information on the dynamics of fish stocks and ecosystems in the regime. Meanwhile, the CAOF Agreement embodies a convergence of the precautionary approach, adopting a "fisheries policy-first" approach that avoids a repetition of the "catch-first, manage-second" disaster that has occurred in fisheries management in other regions [24].

Second, both agreements will rest upon the general framework of the 1982 UNCLOS and the 1995 UN Fish Stocks Agreement (UNFSA). Some basic elements of the CAOF Agreement, namely, the precaution approach, compatibility requirement, and cooperation among states and other international bodies, give effect to the obligations expressed both in

UNCLOS and UNFSA [5] (p. 2). UNCLOS sets out articles on "conservation and management of the living resources of the high seas" with gaps regarding marine biodiversity [25]. The envisioned BBNJ Agreement itself represents a new "implementing instrument" of UNCLOS to conserve and sustainably manage ABNJ [26] (p. 118).

Third, the two agreements are aligned in the general direction of the overall objective to be achieved. The objective of the CAOF Agreement is to prevent unregulated fishing in the regulatory area of the CAO through the application of precautionary conservation and management to safeguard marine ecosystems, as well as the conservation and sustainable use of fish stocks [21] (Article 2). In contrast, the BBNJ Agreement aims "to ensure the conservation and sustainable use of marine biological diversity" of ABNJ [16] (The Preamble). It seems that the basic purposes of the two agreements are likely to be consistent with each other or at least to minimize the likelihood of conflict between the two regimes [5] (p. 5).

3. Potential Interaction between the CAOF Agreement and Envisioned BBNJ Agreement

As stated previously, leading research suggests that there will be potential interaction between the CAOF Agreement and the envisioned BBNJ Agreement, implying a potential impact on state members of the two agreements. In this regard, there is no signal that China will make a move; however, areas of interplay, such as the application scope of the agreements, membership and prospects of the agreements and the issue of the privileged role of coastal states, could influence the marine and Arctic policy of China.

3.1. Application Scope

To afford an IGC with the mandate, the UN General Assembly Resolution 72/249 states that the process and result of the BBNJ negotiations should not undermine "existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies" [3]. This requirement, however, leaves room for practical interaction between the BBNJ Agreement and other legal documents, typically the CAOF Agreement.

The CAOF Agreement applies to "fish" and defines them as "species of fish, mollusks and crustaceans" [21] (Article 1(b)), excluding only "sedentary species" in the context of UNCLOS. Accordingly, the CAOF Agreement covers any fish stocks, including straddling or highly migratory species, discrete high seas stocks, and anadromous and catadromous stocks, excluding marine mammals [19] (pp. 15–16).

The question of whether the ILBI on BBNJ should address the issue of fisheries has always been at the forefront of the meetings held by the Ad Hoc Open-ended Informal Working Group and the IGC sessions. None of the elements of the BBNJ "package deal" refer explicitly to fisheries. Moreover, "the use of fish and other biological resources as a commodity" and "fishing and fishing activities under international law" still appear to be outside the application scope of the Third Draft Agreement of 2022 [15] (Article 8.2). However, fish can be potentially perceived as MGRs. The establishment of any ABMTs, including MPAs, could also have a bearing on the current fisheries governance scheme. Last, some activities with respect to fish could require an EIA [27] (pp. 320–321). In this regard, a report released by the Informal Working Group highlights the diverse views among the delegations, whereby some support the inclusion of fisheries in the new BBNJ instrument through the incorporation of the work of existing regional fisheries management organizations (RFMOs); on the other hand, others emphasize that high seas fisheries were already regulated by the 1995 Fish Stocks Agreement and should not be included in the BBNJ Agreement [28]. Previous IGC sessions have not yet settled divergent views on the fisheries matter, especially regarding how the BBNJ Agreement will relate to the mandates and work of the RFMOs [5] (p. 4). Even at IGC-4 of 2022, opinions were dispersed on the inclusion of fish as genetic resources and the inclusion of derivatives [29].

Thus far, the IGC's past work has not provided a clear solution to the question of how the envisioned BBNJ Agreement might undermine the existing legal instruments, such as the CAOF Agreement. As long as the IGC included commercial fishing affecting

biodiversity in marine ABNJ in the discussions, it was foreseeable that there could be conflicts and interactions between the CAOF Agreement and envisioned BBNJ Agreement.

3.2. ABMTs, Adjacency and the Privileged Role of Coastal States

The second issue that may cause conflicts between the two agreements is whether coastal states should enjoy privileges with regard to the establishment of ABMTs for areas beyond national jurisdiction.

Adjacency has been proposed as a concept that might bridge the ABNJ and areas under coastal state jurisdiction [30] (p. 3). At the IGC and during PreCom, some delegations proposed the principle of adjacency, which means that coastal states should have priority rights over measures taken and activities conducted in the ABNJ adjacent to their maritime areas [31] (p. 42). This understanding of adjacency is more evident in a 2017 Policy Brief that focuses on the particular influence of coastal states on the resource management of ABNJ to which they lie adjacent [32] (p. 1). The central content of the policy brief reflects the basic ideas put forward by the Pacific Small Island States group (PSIDS) at the Second PreCom, which states that specific consideration should be given to adjacent coastal states in ABNJ activities [33]. It is worth noting that in the President's Aid to Negotiations of December 2018, adjacency was included as a possible general principle or approach to guide the ILBI of BBNJ [34]. At present, the key provision regarding adjacency contained in the draft texts Article 4(2) of IGC [16] remains unbracketed. However, the existence of the principle of adjacency in the contemporary law of the sea is questionable, although the term "adjacent" appears several times in both the articles and annexes of UNCLOS. One may also notice that adjacency as a legal principle did not appear in any of the draft texts from May 2019 to July 2022, owing to a lack of support.

Instead of adjacency, "due regard" has been regarded as the most appropriate principle that could balance the rights of adjacent coastal states in BBNJ negotiations [30] (p. 3). The proposal to incorporate adjacency into the ILBI has been opposed by some delegations, who are concerned that it would imply that adjacent coastal states might enjoy greater interest, or greater rights, in ABNJ than other states [30] (p. 2). Accordingly, the ideas of due regard and adjacency were advocated side-by-side at the fourth session of PreCom in July 2017 [35]. This means that issues related to adjacency could be addressed in the ILBI by including the clause of "due regard" [36] (pp. 437–466). Article 4(2) of the Fourth Draft Text of 2022 states that the rights and jurisdiction of coastal states in AWNJ, including the continental shelf within and beyond 200 nm and the EEZ, shall be respected in accordance with UNCLOS. This statement may be interpreted via two approaches. The first is to give some priority to the interests of the coastal state in the context of actions taken by the coastal state under the new BBNJ instrument that in some way interfere with the interests of the coastal state. Another interpretation is to confer certain rights and interests on the coastal state in a manner that duly takes into account the element of "due regard" [31] (p. 5).

While the Arctic and Arctic fisheries did not become a definitive issue during the BBNJ negotiations, will the parties to the CAOF Agreement play any privileged role due to adjacency and develop additional ABMTs for the central Arctic Ocean under the envisioned BBNJ Agreement? Some extreme versions propose that ecological connectivity between maritime areas within national jurisdiction and that of the high seas can directly support the assertion that prioritizes the interests of coastal states in conserving biodiversity [32] (p. 6). Therefore, the founding members or new members of the CAOF Agreement may be expected to argue that they have shown greater interest in activities in the central Arctic Ocean, including resource exploration and exploitation, than countries that have not yet joined the arrangement. In contrast, with regard to MGRs straddling the boundary between ABNJ and AWNJ, one response to this argument is that adjacent coastal states should not have preferential rights in the distribution of benefits, since MGRs in ABNJ are not essentially a transboundary biological resource [31] (p. 62). Another response might be that the CAOF Agreement may indeed create an area-based management tool based on delays

in potential commercial fishing but that the members of the agreement do not enjoy any privileges as a result [5] (p. 6).

In any event, it remains to be seen whether the above views of countries participating in any regional agreements or arrangements would ultimately confer any priority to those countries in the establishment of area-based management tools during the BBNJ negotiations.

3.3. Membership and Prospects of the Agreements

The issue of membership and future prospects of the CAOF Agreement are intertwined with each other. There are currently ten founding members of the CAOF Agreement. Since the agreement had entered into force in June 2021 [37], it is reasonable and lawful for the founding members to invite states with a "real interest" to join the agreement [21] (Article 10(2)) in the future. The broad interpretation of "real interest" refers to states with a fishing interest, including the coastal states concerned, those that have actually fished on the high seas and those that intend fish in the future [38] (p. 20), and such an interpretation could lead to the danger of misuse. Therefore, states with interests in arctic fishing and those members of future RFMOs, as applied in the CAO, could be the new members of the CAOF Agreement after invitation by its founding members. Under the sunset clause established in Article 13, the CAOF Agreement will remain in force for sixteen years and shall be automatically renewed for five years, unless any party raises objection [21] (Article 13(2)). The possible scenarios after the duration of the CAOF Agreement include the following: first, the parties may terminate the agreement and reach a new agreement establishing an additional RFMO; second, the parties may decide to terminate the agreement in favor of a new agreement that permits commercial fishing. The first scenario would not only achieve the original intent of the agreement [21] (Article 13(3)) but also quell academic criticism about the overlap of the agreement and other RFMO application areas [39] (pp. 26–27). However, the second scenario may also occur, as climate change will allow more fish stocks to move north to the "Agreement Area" to support fisheries, while scientific information obtained through the Joint Program for Scientific Research and Monitoring (JPSRM) may also enable sustainable fisheries management in the region [5] (p. 6).

Compared to the CAOF Agreement, the BBNJ Agreement will be an open treaty because the IGC sessions have been open to "all States members of the United Nations, members of the specialized agencies and parties to UNCLOS" [3]. It should also be noted that, in accordance with UN General Assembly Resolution 72/249, the IGC's mandate was based on the idea that "the process and outcome (of the BBNJ negotiations) should not undermine the existing relevant legal instruments and frameworks" [3]. At some point, from the perspective of five Arctic coastal states, some practical questions may affect the consensus reached by founding members and future members of the CAOF Agreements. For example, what if some parties to the CAOF Agreement support the establishment of additional ABMTs for the CAO through the future BBNJ Agreement, while other parties disagree?

If the parties of the future CAOF Agreement negotiate to replace the agreement with a new agreement, or even establish a regional fisheries management organization for the CAO, is it possible for the other parties of the BBNJ Agreement to overturn this decision? [5] (p. 6).

4. China's Involvement in Arctic and BBNJ Regimes

China's interest in Arctic and BBNJ regimes is driven by environmental and political-economic globalization [40]. The Chinese fisheries industry and its overall economy are vulnerable to climate change, such as sea-level rise threatening major sea-based trade and population centers along the low coastline of China. Since the jurisdiction coverage of the CAOF Agreement (high seas portion) and BBNJ Agreement (ABNJ) is "global commons", which should be subject to global governance, the interconnections between environmental science and the Chinese climate have been presented as a major argument for China as a legitimate participant in ocean and Arctic governance. The global sourcing of resources

for fueling continuous Chinese economic growth is also helpful for understanding China's role in the Arctic and BBNJ regimes [40] (pp. 241).

4.1. Role of China in the Arctic and BBNJ Regimes

China is not only the largest developing country but also a large country with the special nature of "land and sea coordination" [41] (pp. 240) China's phenomenal growth is also tilting the international political and economic system with its effects [41] (p. 242). However, one may not ignore that China has been a geographically disadvantaged country. Notably, the marine area under China's jurisdiction is approximately three million square kilometers, ranking behind the world's top 20 [42] (pp. 192–193). As of July 2022, the population of China is more than 1.4 billion, equivalent to more than 18% of the total world population [43]. For Chinese politicians and policymakers, balancing the needs of large populations for marine resources and international calls for environmental protection requires a high degree of political wisdom. China's actual domestic conditions are also projected on its engagement both in the BBNJ negotiations and Arctic affairs.

China became an accredited observer of the Arctic Council in 2013. Since then, China has played a significant role in addressing Arctic issues based on the principle of "respect, cooperation, win-win result and sustainability" [44]. According to the White Paper on China's Arctic Policy (White Paper) released by the Chinese Government in 2018, China has a strategic interest in science and research, the security of sea lanes, environmental protection, resources and the supply of energy, which is the framework for its Arctic interest [12]. In the White Paper, China identifies itself as a "stakeholder" in Arctic affairs, which is reflective of the policy orientation of the Chinese Government under international law [45] (p. 269). Accordingly, China has actively participated in Arctic affairs such as scientific research, environmental protection, resource exploitation and utilization, Arctic governance and international cooperation, and the maintenance of peace and stability in the Arctic.

The Chinese government has actively participated in the BBNJ negotiations. After 19 years of negotiation on the BBNJ international agreement, the positions of negotiating parties are dispersed on issues such as ABMTs and EIA. The rationale behind the different positions is clearly the different interests between developing and developed countries on the issue of MGRs [46] (p. 74). The Chinese government has made written submissions [47,48] to PreCom and has continuously participated in the IGC sessions [48] in a constructive way. The overall objective of China is to ensure that the future BBNJ Agreement is properly positioned in accordance with the existing framework of international law and that as much balance is struck as possible between the conservation and sustainable use of resources, while also taking into account the interests and concerns of the negotiators and making progress step-by-step [49–51].

4.2. China's Treaty Obligations under the CAOF Agreement

At the time when the CAO Agreement entered into force, state parties began to undertake two commitments. First, state parties committed to preventing the start of unregulated fishing in the high seas of the CAO [21] (The Preamble). The Agreement classified future fishing in the region into two categories: commercial and noncommercial fishing. Article 3 states that, in principle, commercial fishing by contracting states is prohibited, with two exceptions. The first is under authorization of their vessels to only take conservation and management measures in accordance with regional fisheries management organizations, and the second involves parties conducting commercial fishing in the agreed area in accordance with the established interim conservation and management measures [21] (Article 3(a)&(b)). It should be noted that noncommercial fishing, such as scientific research in accordance with the JPSRM framework, exploratory fishing and scientific research activities related to the fishing of fish stocks, are excluded from the above regulations set out in Article 3 [21] (Article 3(2)–(4)).

Second, before commercial fishing in the region becomes a reality and actually begins in the region, the CAOF Agreement requires the contracting parties to establish a JPSRM. The JPSRM will be launched two years after the agreement's entry into force, and the parties will not only develop a separate "Data Sharing Protocol" but also convene joint scientific meetings every two years [21] (Article 4(2),(5)&(6)). In scientific meetings, there are some issues that should be considered by state parties, including China. These should consider a range of issues, such as how to: organize the JPSRM and develop data-sharing protocols; advance the relevant rules for exploratory fishing; involve scientific and technical organizations, institutions and relevant scientific programs involved in IPSRM; and provide opportunities for the participation of holders of indigenous and local knowledge [21] (Article 4(4)). In February 2020, for the first time, the science meeting was held at the Joint Research Centre of the European Commission in Italy [52]. At the meeting, approximately forty scientists participated in events organized for the Provisional Scientific Coordinating Group established under the agreement [53].

The driving force for China's implementation of the CAOF Agreement includes three aspects. First, the political will to build a "maritime community with shared future (MCSF)" [54] will facilitate China's future implementation. The "A5+5" process of the agreement opens up a brand-new model to enable the non-Arctic stakeholders to become involved in Arctic governance. China is concerned with participating in Arctic affairs through fisheries governance due to the global impact of the Arctic ecosystem and environment [45] (p. 270). China's position to "hold in favor of conservation in a scientific manner and of rational use" [12] of Arctic fisheries is another driving force for its implementation. Fisheries are one of the four types of resources mentioned by the White Paper. China not only committed itself to the process of formulating a legally binding international agreement (namely, the CAOF Agreement) but will also continue to support the establishment of Arctic RFMO/As [12]. Third, polar scientific research capabilities enable China to make the commitment. The White Paper emphasizes that China will carry out appropriate exploratory fishing in the central Arctic Ocean, strengthen investigation and research into fishery resources, and play a constructive role in fisheries management in the region [12].

There are also obstacles to China implementing the CAOF Agreement. The deteriorating US-China relations and the war between Russia and Ukraine have led to a complex geopolitical landscape, which, in turn, may cast shadow on international cooperation in the Arctic. On 3 March 2022, following Russia's invasion of Ukraine, the seven Arctic Council members announced a joint statement on co-operation, including the suspension of participation in all meetings of the Arctic Council and its subsidiary bodies, as well as awaiting consideration of the modalities for the Council's work [55].

It has been suggested that the crisis poses challenges for China's involvement in Arctic affairs, including sub-governmental events that have provided additional opportunities for the implementation of the CAOF Agreement [56]. The sunset clause of the agreement represents a compromise among the diverse interests of A5 and five other parties. Those whose national fishing grounds surrounded the high seas portion of the CAO would have preferred to avoid the possibility of a high seas fishery for even longer [37]. In contrast, parties from Asia, including China, who have fleets seeking fishing opportunities in the "new fishing ground" in the Arctic would have favored a shorter ban. The disagreement among the parties on whether and how long to unseal commercial fishing will also hinder China's future implementation.

4.3. China's Position on the Unconfigured BBNJ Agreement

Since its participation in the negotiations, the Chinese government's position has been mainly reflected in the proposals and statements in the negotiation of an ILBI on BBNJ. For the future BBNJ Agreement, China stresses that it must encompass "four topics in the 2011 package" [57], which includes the MGRs, ABMTs/MPAs, EIAs and CB&TT.

For MGRs, China maintains that the definition of "genetic resources" in the Convention on Biological Diversity and the International Treaty on Plant Genetic Resources for Food and Agriculture can serve as useful references for the definition of MGRs, but should not include derivatives [48] (paras. 9–10). According to the relevant provisions of UNCLOS, the in situ collection of MGR samples is essentially within the scope of marine scientific research (MSR) in ABNJ. For China, free access should therefore be introduced to promote the development and sustainable use of MGRs without compromising the freedom of MSR and the rights of intellectual property [48] (para. 12). China also asserts that the monetary benefit-sharing mechanism should not be applied in the field of MGRs until large-scale commercial development actually begins [58] (pp. 17–18).

With respect to ABMTs/MPAs, China emphasized at IGC-1 that the envisioned BBNJ Agreement should state that the objective of the ABMTs, including MPAs, is to conserve and sustainably use marine biodiversity, which includes MGRs, species and ecosystems [49] (p. 1). While it should be noted that there is a difference between the ABMTs and MPAs, the former includes both integrated management tools and multisectoral management tools [59], and the latter refers to "a geographically defined marine area" that is specifically designated and intended to manage specific conservation objectives [34] (p. 64). In the fourth session of PreCom, China proposed the "due regard" rule as a general criterion for dealing with relations between adjacent coastal states and other states carrying related activities. This proposal was also supported by the United States [35]. The Chinese delegation also recommended the establishment of the Conference of Parties (CoP) to perform the decision-making and supervision functions for the ABMTs. In its proposal, while stressing the right of adjacent coastal states to participate fully in the consultation and assessment process of the CoP, China also noted that these countries have equal status rather than any privileged rights in the decision-making process [49] (pp. 4–7).

Regarding EIAs, China agrees with the majority of representatives that the institutional arrangements for EIAs should comply with the basic legal framework and procedural requirements under UNCLOS, and at the same time, puts forward its own propositions on the subject and on the scope of EIAs. In the BBNJ negotiations, some developed countries, including Australia and New Zealand, stressed the importance of the internationalization of the EIA process, i.e., to enable broad subjects of ocean governance, such as scientific and technical institutions, international or nongovernmental organizations, adjacent coastal states and other entities, to participate in the EIA process and to monitor and review the EIAs of each country. On the other hand, it has been observed that China, Japan, South Korea and other countries emphasized the central role of "state-led decision-making" and opposed the participation of third parties and adjacent coastal states in the decision-making process of EIAs [60] (p. 40). For example, the Chinese government maintained in its statement on 20 April 2017 that, in accordance with the main provisions containing EIAs under UNCLOS, the subject of EIAs in the IBIL should be "States planning to undertake marine activities" [48] (para. 18). For China, there should be a basic threshold of EIAs; that is, states need to have reasonable grounds to believe that the relevant marine activities may cause significant pollution to the marine environment or produce significant and harmful environmental changes [48] (para. 23). China also insisted that, since the transboundary effect of activities under national jurisdiction has already been stated in the relevant provisions of UNCLOS, the scope of EIAs in the BBNJ international instrument should be limited to ABNJ activities, including those that could cause significant environmental impacts on areas under the jurisdiction of coastal states, but excluding activities occurring within AWNJ [48] (para. 19).

CB&TT is one of the important ways of enhancing the capacity of developing countries in the conservation and sustainable use of BBNJ, while it still remains a controversial area in the IGC sessions. For China, CB&TT should be based on the following principles: win-win cooperation; equally voluntary; intellectual property protection; and preferential treatment for developing countries [58] (p. 19). The following recommendations were also made by the Chinese government at IGC-1: First, the envisioned BBNJ Agreement should take into

account the interests of developing countries, such as the least developed countries, landlocked and geographically disadvantaged countries, and small island countries. Second, the agreement should promote diversified international cooperation, including the establishment of platforms for international cooperation and information-sharing mechanisms, as well as the utilization of the Intergovernmental Oceanographic Commission (IOC) and other similar international organizations. Third, as a Chinese proverb says, "it is better to teach them how to fish than to give them fish"; China advocates that through education, technical training and joint research, the capacity of developing countries to conserve and sustainably use the BBNJ can be effectively improved [48] (paras. 21–24).

5. Prospects of the BBNJ Negotiation in the Post-CAOF Agreement Era and the Role of China

5.1. Identity of the CAOF Agreement and Its Relationships with MGRs in the Arctic

In the Arctic Council, a large marine ecosystem in the CAO has been listed as one of the key platforms for the effective implementation of an ecosystem approach to the marine environment and biodiversity conservation in the Arctic region [61]. This means that an Arctic biodiversity conservation plan should integrate the relevant activities in all ecologically relevant areas into its mandate, regardless of whether its jurisdiction is fragmented [6] (p. 238). The potential geographic scope of the BBNJ Agreement could include high seas waters and the seabed beyond national jurisdiction, which would have significant implications for Arctic waters, as much of the high seas in the CAO is outside the jurisdiction of coastal states in the Arctic Ocean [62] (pp. 2–5). However, the landmark CAOF Agreement, upon its entry into force, covers the regime that includes waters within the fisheries jurisdiction of the five coastal states [21] (Article 1(a)). The geographical coverage of the two regimes poses two questions: First, what is the legal identity of the CAOF Agreement? Second, how can the institutional complex related to the conservation of Arctic marine genetic resources of ABNJ be addressed?

The CAOF Agreement is no doubt a legally binding instrument under the law of treaties, but its identity in ocean governance needs to be further classified. Reading from the text of its Preamble [21], it appears that the "A5+5" does not consider that the CAOF Agreement constitutes an RFMO or regional fisheries arrangement (RFMA). However, previous studies suggest that the CAOF Agreement is an RFMA [63] because its agreement area is broader than that of other Arctic regional regulatory bodies—in particular, the OSPAR Commission or the North-East Atlantic Fisheries Commission (NEAFC)—and that this Agreement may serve to establish the "objective of conservation and management measures" in the context of UNFSA [64] (Article 1(1)(d)). It is true that the classification of the CAOF Agreement shall not simply depend on the views of the parties of the agreement or any stipulations in the agreement but shall be based on its legal nature and function in ocean governance. In this regard, some consider the CAOF Agreement as effectively an ABMT, which can be identified as a management tool [5] (p. 6); others seem to disagree because the agreement only sets out a moratorium on fisheries that could be outside the scope of the ILBI [62] (p. 6). To this author, considering the ongoing discussion on whether fisheries shall be within the ILBI during the IGCs (discussion in Section 3.1), the classification of the CAOF Agreement as an ABMT within the ambit of the ILBI will not contradict its nature as an RFMA under the current law of the sea.

Another relevant debate is about whether the global, regional or hybrid body should function as an appropriate institution to implement the Arctic ABMTs/MPAs that have been included in the package deal of the IBIL. The global approach advocates strong functions for the process and institutions to be established by the ILBI, and therefore, emphasizes the need to establish a coordinated process for the establishment and implementation of ABMTs/MPAs that can be applied to all parties [65].

The regional approach favors a process based on existing regional frameworks related to ABMT/MPAs, while expecting that some of the decision-making and functions of this process will be implemented at the global level [65]. Delegates had different views on the

adoption of global or regional approaches in the BBNJ negotiations. The Arctic coastal states and Iceland resist a global approach for the BBNJ and prefer a regional approach that does not undermine existing regional institutions [66] (pp. 3–4). Some states actively involved in Arctic affairs (notably China, Japan and South Korea) used to express similar positions in the PreCom sessions [62] (p. 2). These Asian states are also state members of the CAOF Agreement.

While it is attractive to choose a "regional approach" for MGRs in Arctic ABNJ, it will only work if the plan is scientifically feasible or politically influential. For the former plan, key suggestions include the following: protection of the evidence base of the BBNJ; an effective set of compliance and enforcement mechanisms; involvement of relevant stakeholders, etc. [67] (p. 34).

For the latter plan, some offer other options, such as the establishment of a CAO Regional Seas Organization, or even a Regional Ecosystem Organization [62] (p. 9). However, potential problems such as overlapping with the mandates of "existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies" [3] need to be avoided, despite the advantages that may be achieved through these plans. At this point, one may recall the large marine ecosystems (LMEs) [68] or other mechanisms of the Arctic Council, not to mention the CAOF Agreement as an existing RFMA.

5.2. Challenges of the BBNJ Negotiations

The delegates made efforts to reach consensus at the fourth session of the IGC, while the degree of disagreement among them varied depending on the subject matter. On MGRs and EIAs, opinions are dispersed and sometimes even antagonistic between developed and developing countries, especially regarding the design of an access and benefit-sharing mechanism or the subject responsible for the decision on EIAs. With regard to ABMT, unlike previous IGC sessions, delegations adopted a small-step approach at IGC-4, not only agreeing on the establishment and management of MPAs but also requesting the inclusion of the Global Environment Facility in the revised text to create possibilities for the financial mechanism of the future BBNJ instrument [4]. However, deadlocks remain unsolved; among the challenges are the lack of consensus on some basic principles and the lack of involvement by the non-state stakeholders.

There are still major differences among the delegates on some important issues, such as whether the envisioned BBNJ Agreement should incorporate the principle of the common heritage of mankind (CHM) or freedom of the high seas. In July 2017, the Chair's streamlined non-paper on elements of draft text (Chair's streamlined non-paper) of PreCom proposed four options for the integration of these principles: the first two options include applying the CHM or freedom of the high seas to the new regime governing MGRs of the ABNJ; the third option is the alternate principle of the "common concern of humankind"; the fourth option is no indication of the applicable legal regime [69]. In the third session of PreCom, developing countries insisted that the principle of CHM should apply to MGRs and called for the access and benefit-sharing mechanism, but most developed countries were not willing to respond, and countries such as Japan and Russia rejected the proposal regarding monetized benefit sharing [70]. Likewise, the principle of high seas freedom was also a ceaseless topic at IGC-4. With regard to MGRs, some delegations expressed views similar to the principle of freedom of the high seas in the traditional sense. Other delegates therefore quipped that during the informal meeting on MGR, "access to the high seas could not be prohibited" [35].

Needless to say, there has been an imbalance in the weight given to the discussions among delegates of the IGC on the topics included in the package deal. During the IGC sessions, when the debates on whether CHM or high seas freedom should be applied in the MGRs, some other issues such as ABMTs have already been advanced to a substantive level of discussion. More importantly, one may notice that mention of CHM was expunged from the First Draft Text of May 2019, and this elicited strong reactions at IGC-3 [71]. Consequently, it was included as one of the "general principles and approaches" in Article

5 of the Second and Third Draft Texts, while the brackets remain unchanged. To achieve the goal of conserving and sustainably using the marine resources of the ABNJ, it will inevitably be necessary to restrict and increase the cost of access to the sea by states in the future, which may conflict with the freedom of the high seas under article 87 of UNCLOS. In the long run, ignoring the very principles of UNCLOS would not only lead to an unpredicted negotiation process but also jeopardize the implementation of the BBNJ Agreement. Algeria, for example, speaking on behalf of the African Group, argued that "the adoption of a new instrument without this principle (i.e., the common heritage of mankind)" would be tantamount to giving life to a soulless treaty of such importance or to putting a ship into water without navigation instruments [72].

Another issue that warrants consideration for implementing ABMTs/MPAs is the extent to which stakeholders are involved in the BBN negotiation process. In the regime of environmental management, the lack of public participation in policy formulation often leads to the so-called "policy failure". For example, the RFMOs have faced widespread problems with regard to transparency and public participation, as evidenced by the fact that the participation of neither the media nor NGOs achieves the same level of participation as the Convention on Biological Diversity or other similar forums [67] (p. 41). The Chair's streamlined non-paper prepared a list of general principles and approaches that may be included in the text of the ILBI, including inter alia public availability of information, public participation, stakeholder involvement, and transparency [69] (para. 24). However, the fourth session of IGC, held from 7 to 18 March 2022, was still criticized due to "the lack of equitable participation" [73]. For the first week, non-state actors and observers were not allowed to access the UN building, and during the second week, only "three silent observers were allowed to enter into the conference room each day" [4]. To ensure that the ABMT/MPA functions better than the "paper plan" or "paper park", it is necessary to ensure that all participating sectors and participants have the right to be informed about the specific scope of MPA and actively involved in the decision making about "what and where to protect" [67] (p. 41).

5.3. China's Position Regarding Potential Conflict of the Agreements

Of the three potential issues of interplay between the CAOF Agreement and the future new instrument of BBNJ, the treaty membership that could trigger scenarios (discussion in Section 3.3) stemmed primarily from the concerns of Arctic state members of the CAOF Agreement. There is no direct or indirect proof to show that such concerns are also addressed in official Chinese documents or Chinese literature [74]. China's views, which focus on the Arctic fisheries and MGRs, and ABMTs in the ILBI, shed some light on its position regarding the potential conflict between the CAOF Agreement and the envisioned BBNJ Agreement.

5.3.1. Arctic Fisheries and MGRs

China's position regarding fisheries mostly focused on the application scope of the envisioned BBNJ Agreement and how this new instrument of BBNJ will coordinate the mandates and work of the RFMOs.

For the application scope of the BBNJ Agreement, China holds the view that a distinction should be made between fish as a carrier of MGRs and fish as a commodity, and derivatives should not be included in the scope of MGRs. For the former, the provisions of UNCLOS on the freedom of MSR should apply, while the latter should be regulated by international fisheries agreements, including the 1995 UNFSA [48] (para. 5 & para. 11). On the issue of fisheries management, China maintains a cautious approach whereby the conservation and sustainable use of fishery resources under the envisioned BBNJ Agreement should continue to be governed by existing RFMO/As [48] (para. 4). China also asserts that the new international instrument should not contravene with existing relevant legal instruments or frameworks as well as the relevant global, regional and sectoral bodies, in particular, by avoiding conflicts with the mandates of the Food and Agriculture Orga-

nization, International Maritime Organization, and International Seabed Authority [48] (para. 5).

As far as Arctic MGRs are concerned, China's position needs to be further analyzed from Chinese official documents and studies of Chinese scholars. The 2018 Arctic Policy shows a broad and vague image of China's position on Arctic MGRs. On the one hand, China emphasizes the "appropriate protection" of Arctic biodiversity, and on the other hand, it advocates transparency and rationality in the process of developing and utilizing Arctic MGRs, as well as fairness and equity in the benefit sharing of such resources [12]. Ambassador Xinmin Ma, former head of the Chinese delegation to IGC-1, highlighted several positions on the conservation and utilization of Arctic MGRs that are consistent with the Chinese government's overall position on MGRs prior to the release of the 2018 White Paper. First, free access should be applied to the in situ access of MGRs in the deep seabed area or on the high seas. Second, the different legal regimes of Arctic MGRs should be applied, depending on the location of the sea areas of the MGRs. For the MGRs in AWNJ, the provisions of the CBD should be applied. For those of the ABNJ, there is no stipulation in international law. Third, the monetary benefit-sharing mechanism should not be applied before large-scale commercialized exploitation actually begins [58] (p. 18).

To date, the IGC's work still has a long way to go in deciding whether fisheries should be included and how a new legal instrument of the BBNJ might coexist with the existing RFMO/As and legal instruments of international law. The CAOF Agreement is an existing RFMA under the law of the sea. Generally, China's position regarding fisheries management is consistent with that of the Arctic coastal states, especially on the issue that the new instrument of BBNJ should "seek to promote greater coherence with, and not undermine existing legal instruments and frameworks (notably the CAOF Agreement)" [5] (p. 3). Minor differences still exist. For example, China is of the view that the freedom of MSR under UNCLOS shall apply to "fish as carrier of MGRs" [48] (para. 12).

5.3.2. ABMTs

Regarding the interplay between the CAOF Agreement and ABMTs of the Arctic, there are two interesting arguments. Since the ABMT for the high seas of the CAO is one of many tools for ABNJ that have been included in the BBNJ Agreement, the ABMTs/MPAs of the IGC mandate are currently the most likely to interact with the CAOF Agreement. It follows that the Arctic coastal states participating in the IGC negotiations may seek to play a certain privileged role in the establishment of ABMTs in a given ABNJ, while the CAOF Agreement only confers them equal rights with other parties [5] (p. 6). To this author, since the classification of the CAOF Agreement as an ABMT within the ambit of the ILBI does not contradict its nature as an RFMA in the context of the current law of the sea (discussion in Section 5.1), the argument will instead focus on adjacency or the privileged role of the coastal states.

China neither endorses adjacency nor supports the privileged role of coastal states, but it proposes the rule of due regard to balance the special needs of coastal states. In the fourth session of PreCom, China proposed using due regard or the coastal states' right to address the adjacency issue [75]. Despite early challenges, the role of "due regard" in reconciling the interests of members has been gradually recognized in ICG. With regard to MGRs straddling the boundary between ABNJ and AWNJ, the Fourth Draft Text states that if MGRs in areas beyond national jurisdiction happen to be discovered within national jurisdiction, "due regard" shall be given to the rights and legitimate interests of any coastal state within its jurisdiction in carrying out activities related to those resources [16] (Article 9.2 [with bracket]). The Draft Text further emphasizes that the decision making and recommendations by the Conference of the Parties shall exert due regard for the rights, duties and legitimate interests of member states, including the sovereign rights of coastal states over the seabed and subsoil under UNCLOS [16] (Article 19 [merging Article 15 and 19], Opinion I(4)). The reference of "due regard" to "the rights and legitimate interests

of coastal State" is a testament to the important role of due consideration in dealing with interactions between coastal states and other states [31] (p. 54).

China's position in relation to the rule of "due regard" may have some implications for its views regarding the potential interaction between the CAOF Agreement and the BBNJ Agreement. In this regard, the representative of China made two remarks on the issue of "due regard" in IGC-1. First, states should exert due regard for the rights and freedom of other states under UNCLOS, including adjacent coastal states, when carrying out resource-related activities on the high seas or in the deep seabed area [49] (p. 3). As in the case of the five Arctic coastal states, they are entitled to marine areas within national jurisdiction under UNCLOS, as well as to exercise sovereignty, sovereign rights and jurisdiction over such areas [45] (p. 266)—no more, no less. Second, pursuant to UNCLOS, each state has "equal rights" in the ABNJ, while the adjacent coastal states should not enjoy any "special privileges [49] (p. 3). For the areas within the CAO that are beyond national jurisdiction, these areas are the high seas; the seabed and subsoil thereof beyond the continental shelves (including those beyond 200 nautical miles) of the Arctic coastal states form the deep seabed area [45] (p. 266). China maintains that all states, including non-Arctic states, enjoy the right of exploration and exploitation in the deep seabed area [12], even if the exploration activities are yet to come. In this regard, China calls for the attention of the ISA, stating that "the formulation of the Exploitation Regulations" should take into account the on-going drafting process and an agreement on BBNJ [76].

6. Conclusions

The envisioned BBNJ Agreement is "a key component of a larger tapestry" that aims to ensure fair and equitable benefit sharing, in addition to achieving global biodiversity targets, while also protecting large marine areas that remain unregulated [4]. The prospects for the eventual success of future IGC sessions are still unclear, but as the IUCN proposed at the IGC-4 closing plenary, "the time to be bold, visionary and pragmatic is now" [4]. Considering the current complex geopolitics, will the IGC balance the interests of various state groups as well as ocean ecology? Time will tell. On the other hand, the high seas portion of the CAO and the resources therein, both biological and ecologically unique, might be the last true frontier on the planet. The 16-year moratorium on commercial fishing imposed by the CAOF Agreement is also a collective effort by the five Arctic coastal states and other members to address the fragile ecology of the Arctic. There is currently a slim chance of interaction between the CAOF Agreement and the envisioned BBNJ Agreement. However, state parties of the two agreements may have to deal with some hard questions, such as the inclusion or exclusion of fisheries in the MGRs, the argument for the privileged role of the Arctic coastal states, and how the BBNJ Agreement might seek to achieve coherence with and not undermine the existing RFMO/As and international legal frameworks such as the CAOF Agreement.

China has played a constructive role in the BBNJ negotiation and Arctic affairs. China's position, especially on the protection and utilization of the fisheries and MGRs of ABNJ and on technology transfer and benefit sharing, is consistent with its status as the largest developing country. China's basic views of the future BBNJ Agreement, such as the new legal document not "undermining" existing legal instruments and rules and adhering to the CHM principle, also reflect its maintenance of the position for developing countries. It should not be overlooked that some aspects of China's position—in particular, the proposals for the different treatment of fish as carriers of MGRs and fish as commodities, and the advocacy of replacing "adjacency" with "due regard"—are different from the claims of Arctic coastal states. For the long term, among the three areas of interaction between the two agreements, the issue of the privileged rights of coastal states mostly influences China's implementation of the CAOF Agreement and Arctic policy due to its fishing interest in the Arctic. However, since China's interest in the Arctic and BBNJ regimes is driven by the combined forces of environmental and political–economic globalization, it remains to be seen to what extent the shifts in China's fisheries policy in the economic sector will affect

its political and environmental position on the four major issues of the BBNJ negotiations in the future.

Funding: This paper was funded by the Southern Marine Science and Engineering Guangdong Laboratory (Zhuhai) as part of the project grant number SML2020SP005, and the Shanghai Philosophy and Social Sciences Program (grant number 2018BFX012).

Institutional Review Board Statement: Not applicable.

Informed Consent Statement: Not applicable.

Data Availability Statement: Not applicable.

Conflicts of Interest: The authors declare no conflict of interest.

References

1. UN General Assembly. Resolution A/RES/59/24 (17 November 2004). Available online: http://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_59_24.pdf (accessed on 12 July 2022).
2. UN General Assembly. Resolution A/Res/69/292 (19 June 2015). Available online: https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/18 (accessed on 12 July 2022).
3. UN General Assembly. Resolution A/RES/72/249 (24 December 2017). Available online: http://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/468/77/PDF/N1746877.pdf?OpenElement (accessed on 12 July 2022).
4. IUCN. A Reporting Service for Environment and Development Negotiations, BBNJ IGC-4 Final. Available online: http://enb.iisd.org/marine-biodiversity-beyond-national-jurisdiction-bbnj-igc4 (accessed on 12 July 2022).
5. Balton, D. What will the BBNJ agreement mean for the Arctic fisheries agreement? *Mar. Policy* **2022**, *142*, 103745. [CrossRef]
6. De Lucia, V. The Arctic Environment and the BBNJ Negotiations: Special Rules for Special Circumstances? *Mar. Policy* **2017**, *86*, 234–240. [CrossRef]
7. Zhang, C.; Chen, Y.; Xu, B.; Xue, Y.; Ren, Y. The dynamics of the fishing fleet in China Seas: A glimpse through AIS monitoring. *Sci. Total Environ.* **2022**, *819*, 153150. [CrossRef] [PubMed]
8. Hu, B. Controversies in ABNJ Marine Genetic Resources Exploitation and Their Resolution: On the Role of China in the "South-North Confrontations". *Pac. J.* **2022**, *28*, 10. (In Chinese)
9. Zhang, C. Nine extraordinary Chinese research vessels (2 October 2020). Available online: http://chinadialogueocean.net/en/climate/15239-nine-extraordinary-chinese-research-vessels/ (accessed on 12 July 2022).
10. WIPO. Patent Landscape Report: Marine Genetic Resources (2019). Available online: https://www.wipo.int/publications/en/details.jsp?id=4398&plang=EN (accessed on 12 July 2022).
11. Ethan, B.; Nengye, L.; Michelle, L. Australia as a Middle Power: Challenging the Narrative of Developed/Developing States in International Negotiations Surrounding Marine Genetic Resource. *Ocean. Dev. Int. Law* **2021**, *52*, 143–144.
12. State Council Information Office of the People's Republic of China (SCIO). China's Arctic Policy (January 2018). Available online: https://english.www.gov.cn/archive/white_paper/2018/01/26/content_281476026660336.htm (accessed on 12 July 2022).
13. Report on the Work of the United Nations Open-Ended Informal Consultative Process on Oceans and the Law of the Sea, Letter dated 9 June 2003 from the Co-Chairperson of the Consultative Process addressed to the President of the General Assembly, UNGA A/58/95 (Report of 4th Informal Consultative Process). Available online: https://documents-dds-ny.un.org/doc/UNDOC/GEN/N03/409/70/PDF/N0340970.pdf?OpenElement (accessed on 12 July 2022).
14. Letter dated 30 June 2011 from the Co-Chairs of the Ad Hoc Open-ended Informal Working Group to the President of the General Assembly, UNGA A/66/119. Available online: https://digitallibrary.un.org/record/707498 (accessed on 15 July 2022).
15. Further revised draft text of an agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction (Hereinafter Referred to as the Third Draft Text, (30 May 2022). Available online: https://www.un.org/bbnj/sites/www.un.org.bbnj/files/igc_5_-_further_revised_draft_text_final.pdf (accessed on 12 July 2022).
16. Advance Edited Version for Intergovernmental Conference on an International Legally Binding Instrument under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction Fifth Session (Hereinafter Referred to as the Fourth Draft Text, 11 July 2022). Available online: https://www.un.org/bbnj/sites/www.un.org.bbnj/files/further_revised_draft_text_advance_edited_110722.pdf (accessed on 12 July 2022).
17. UNGA A/76/L.46, (24 March 2022). Available online: http://documents-dds-ny.un.org/doc/UNDOC/LTD/N22/298/78/PDF/N2229878.pdf?OpenElement (accessed on 30 July 2022).
18. Joint Resolution, Public Law 110–243, 110th Congress (2 June 2008). Available online: https://www.congress.gov/110/plaws/publ243/PLAW-110publ243.pdf (accessed on 12 July 2022).
19. Valentin, J.S.; Alexander, P.; Nengye, L. The 2018 Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean: A Critical Analysis. *Int. J. Mar. Coast. Law* **2019**, *34*, 195–244.

20. Arctic Council. Exploring the Arctic Ocean: The Agreement that Protects an Unknown Ecosystem (28 October 2020). Available online: http://arctic-council.org/news/exploring-the-arctic-ocean-the-agreement-that-protects-an-unknown-ecosystem/ (accessed on 12 July 2022).
21. CAOF Agreement. Full text of the CAOF Agreement, see International Agreement to Prevent Unregulated Fisheries in the Central Arctic Ocean (3 October 2018). Available online: http://treaty.mfa.gov.cn/tykfiles/20181217/1545037896205.pdf (accessed on 12 July 2022).
22. The other Nice Signatories are: Canada, Iceland, The Kingdom of Denmark (in respect of Greenland and the Faroe Islands), Norway, The Russian Federation, The United States of America, Japan and South Korea, and the European Union. See International Agreement to Prevent Unregulated Fisheries in the Central Arctic Ocean (25 June 2021). Available online: https://www.dfo-mpo.gc.ca/international/arctic-arctique-eng.htm (accessed on 12 July 2022).
23. Ministry of Foreign Affairs of the Peoples Republic of China the CAOF Agreement. Available online: http://treaty.mfa.gov.cn/Treaty/web/detail1.jsp?objid=1545033178819 (accessed on 12 July 2022). (In Chinese)
24. Min, P.; Henry, P.H. A Precautionary Approach to Fisheries in the Central Arctic Ocean: Policy, Science, and China. *Mar. Policy* **2016**, *63*, 154–156.
25. Robert, B.; Nobuyuki, Y. Shaping an international agreement on marine biodiversity beyond areas of national jurisdiction: Lessons from high seas fisheries. *Mar. Policy* **2016**, *71*, 210–216.
26. Houghton, K. Identifying new pathways for ocean governance: The role of legal principles in areas beyond national jurisdiction. *Mar. Policy* **2014**, *49*, 118–126. [CrossRef]
27. Konrad, J.M. New implementing agreement under UNCLOS: A threat or an opportunity for fisheries governance? *Mar. Policy* **2017**, *84*, 320–321.
28. Letter Dated 13 February 2015 from the Co-Chairs of the Ad Hoc Open-Ended Informal Working Group to the President of the General Assembly, A/69/780 (13 Feb 2015), para. 19. Available online: http://digitallibrary.un.org/record/788512 (accessed on 12 July 2022).
29. IISD. Summary report, 7–18 March 2022: 4th Session of the Intergovernmental Conference (IGC) on the BBNJ. Available online: https://enb.iisd.org/marine-biodiversity-beyond-national-jurisdiction-bbnj-igc4-summary#brief-analysis-igc-4 (accessed on 12 July 2022).
30. Mossop, J.; Schofield, C. Adjacency and Due Regard: The Role of Coastal States in the BBNJ Treaty. *Mar. Policy* **2020**, *122*, 103877. [CrossRef]
31. Su, J. The Adjacency Doctrine in the Negotiation of BBNJ: Creeping Jurisdiction or Legitimate Claim? *Ocean. Dev. Int. Law* **2021**, *52*, 41–63. [CrossRef]
32. Dunn, D.C.; Crespo, G.O.; Vierros, M.; Freestone, D.; Rosenthal, E.; Roady, S.; Sloat, M.R. *Adjacency: How Legal Precedent, Ecological Connectivity, and Traditional Knowledge Inform Our Understanding of Proximity*; Hereinafter referred to as Policy Beief; Nereus Program of Nippon Fundation: Vancouver, BC, Canada, 2017; p. 1. Available online: https://nereusprogram.org/reports/policy-brief-adjacency-how-legal-precedent-ecological-connectivity-and-traditional-knowledge-inform-our-understanding-of-proximity/ (accessed on 12 July 2022).
33. PSIDS. Submission to the Second Meeting of the Preparatory Committee for the Development of an International Legally Binding Instrument under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Useof Biological Diversity of Areas beyond National Jurisdiction (BBNJ PreCom). Available online: https://www.un.org/depts/los/biodiversity/prepcom_files/rolling_comp/PSIDS_second.pdf (accessed on 12 July 2022).
34. President's Aid to Negotiations, UN Doc. A/CONF.232/2019/1 (3 December 2018). Available online: https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/413/20/PDF/N1841320.pdf?OpenElement (accessed on 12 July 2022).
35. IISD. Summary of the Fourth Session at Summary of the Fourth Session of the Preparatory Committee on Marine Biodiversity Beyond Areas of National Jurisdiction: 10–21 July 2017. Available online: http://enb.iisd.org/events/4th-session-bbnj-preparatory-committee/summary-report-10-21-July2017 (accessed on 12 July 2022).
36. Elferink, A.G.O. Coastal states and MPAs in ABNJ: Ensuring consistency with the LOSC. *Int. J. Mar. Coast. Law* **2018**, *22*, 437–466. [CrossRef]
37. Balton, D. Landmark Arctic Fisheries Agreement Enters into Force: The Multilateral Agreement Will Prevent Commercial Fishing in a Fragile and Poorly Understood Ecosystem (4 Aug 2021). Available online: Chinadialogueocean.net/en/fisheries/18300-landmark-arctic-fisheries-agreement-enters-into-force/ (accessed on 12 July 2022).
38. Henriksen, T.; Hoenneland, G. *; Sydnes. A. Law and Politics in Ocean Governance: The UN Fish Stocks Agreement and Regional Fisheries Management Regimes*; Martinus Nijhoff Publishers: Leiden, The Netherlands, 2006; p. 20.
39. Molenaar. E Fisheries Regulation in the Maritime Zones of Svalbard. *Int. J. Mar. Coast. Law* **2012**, *27*, 26–27.
40. Bertelsen, R.G.; Gallucci, V. The return of China, post-cold war Russia, and the Arctic: Changes on land and at sea. *Mar. Policy* **2016**, *72*, 240–245. [CrossRef]
41. Yuan, W.; Chang, Y.-C. Land and Sea Coordination: Revisiting Integrated Coastal Management in the Context of Community Interests. *Sustainability* **2021**, *13*, 8183. [CrossRef]
42. Huang, H. *China's Diplomacy and Internationa Law*, 1st ed.; Law Press: Beijing, China, 2019; pp. 192–193. (In Chinese)
43. China Population. Available online: https://www.worldometers.info/world-population/china-population/ (accessed on 12 July 2022).

44. The Arctic Council. People's Republic of China: Observer Report 2020. Available online: https://oaarchive.arctic-council.org/bitstream/handle/11374/2717/SAOXIS2_Arctic-Council-Observer-REPORT-2019-2021_CHINA.pdf?sequence=1&isAllowed=y (accessed on 12 July 2022).
45. Ma, X. China's Arctic policy on the basis of international law: Identification, goals, principles and positions. *Mar. Policy* **2019**, *100*, 265–276.
46. Zheng, M.-z. Negotiations on International Agreements on Marine Biodiversity Beyond National Jurisdiction and China's Participation. *Environ. Prot.* **2020**, *3*, 74. (In Chinese)
47. Written Submission of the Chinese Government on Elements of a Draft Text of an International Legally Binding Instrument under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction (7 March 2017). Available online: http://www.un.org/depts/los/biodiversity/prepcom_files/rolling_comp/China.pdf (accessed on 5 July 2022).
48. Written Submission of the Government of the People's Republic of China (PRC) (20 April 2017). Available online: https://www.un.org/depts/los/biodiversity/prepcom_files/streamlined/China.pdf (accessed on 5 July 2022).
49. Statement by Mr. Ma Xinmin, Head of Chinese Delegation on the First Session of the Intergovernmental Conference on the Negotiation of an International Instrument on BBNJ (7–10 September 2018). Available online: https://www.un.org/bbnj/sites/www.un.org.bbnj/files/china-item-7-abmts-including-mpas-chinese-statement-en.pdf (accessed on 5 July 2022).
50. Statement on Behalf of the Group 77 and China (18 March 2022). Available online: www.un.org/bbnj/sites/www.un.org.bbnj/files/hxbpxickm8rf_en.pdf (accessed on 5 July 2022).
51. Permanent Mission of People's Republic of China. Statement by Ambassador Wu Haitao at the 74th Session of the United Nations General Assembly on Oceans and the Law of the Sea (10 December 2019). Available online: https//un.China-mission.gov.cn/eng/chinaandun/legalaffairs/hyf/201912/t20191212_8412279.htm (accessed on 12 July 2022).
52. European Commission. Arctic: Agreement to Prevent Unregulated Fishing Enters into Force (25 June 2021). Available online: http://oceans-and-fisheries.ec.europa.eu/news/arctic-agreement-prevent-unregulated-fishing-enters-force-2021-06-25_en (accessed on 12 July 2022).
53. Fish Focus. EU moves to Ban Unregulated Fisheries in Central Arctic Ocean. Available online: http://fishfocus.co.uk/eu-moves-to-ban-unregulated-fisheries-in-central-arctic-ocean/ (accessed on 12 July 2022).
54. On 23 April 2019, Presient Xi Jinping of the People's Republic of China Called for Efforts to Safeguard Maritime Peace and to Build a MCSF at the 70th Founding Anniversary of the Chinese PLA Navy. At the Celebration, He Pointed out That Our Blue Planet Is Not Divided into Isolated Islands by the Ocean, but Is Connected by the Ocean to become a Community with a Shared Future, so the Peoples of the World Should Share Honor and Disgrace. See Xinhua News Agency. Xi Proposes Building Maritime Community with Shared Future (23 April 2019). Available online: http://chinaplus.cri.cn/news/politics/11/20190423/279439.html (accessed on 12 July 2022).
55. US Deparatment of State. Joint Statement on Arctic Council Cooperation Following Russia's Invation of Ukriane (3 March 2022). Available online: https://www.state.gov/joint-statement-on-arctic-council-cooperation-following-russias-invasion-of-ukraine/?module=inline&pgtype=article (accessed on 12 July 2022).
56. Hong, N. Ukraine War May Freeze both Russia and China out of Arctic Cooperation (11 March 2022). Available online: https://chinaus-icas.org/research/ukraine-war-may-freeze-both-russia-and-china-out-of-arctic-cooperation/ (accessed on 12 July 2022).
57. Closing Statement on Behalf of the Group of 77 and China, by Mr. Qasim Azia, Mission of Paristan to the United States, at The Fourth Session of the Intergovermental Conference on an International Legally Binding Instrument under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction (18 March 2022). Available online: https://www.un.org/bbnj/sites/www.un.org.bbnj/files/hxbpxickm8rf_en.pdf (accessed on 12 July 2022).
58. Ma, X.-m. China and the UNCLOS: Practices and policies. *Chin. J. Glob. Gov.* **2019**, *5*, 1–20.
59. International Union for Conservation of Nature (IUCN). Marine Protected Areas in Areas Beyond National Jurisdiction: Report of the Workshop on Marine Protected Areas in Areas Beyond National Jurisdiction (16–17 May 2017). Available online: https://www.iucn.org/sites/default/files/2022-09/bbnj_mpa_workshop_gland_16-17_may_2017-1.pdf (accessed on 12 July 2022).
60. Shi, Y. Challenges of Negotiations on Marine Biological Diversity of Areas Beyond National Jurisdiction and China's Approach—A Perspective of Maritime Community with a Shared Future. *Asia Pac. Secur. Marit. Aff.* **2022**, *1*, 40. (In Chinese)
61. PAME. Central Arctic Ocean LME, 13/18: LME Factsheet Series. Available online: https://www.pame.is/images/03_Projects/EA/LMEs/Factsheets/13_Central_Arctic_Ocean_LME.pdf (accessed on 12 July 2022).
62. Da Lucia, V. The BBNJ negotiations and ecosystem governance in the arctic. *Mar. Policy* **2022**, *142*, 103756. [CrossRef]
63. Liu, D. The 2015 Oslo Declaration on Arctic High Seas Fisheries: The Starting Point Toward Future Fisheries Management in the Central Arctic Ocean. In *Arctic Yearbook 2017*; APECS: Tromsø, Norway. Available online: http://arcticyearbook.com/images/yearbook/2017/Scholarly_Papers/21_The_2015_Oslo_Declaration_on_Arctic_High_Seas_Fisheries.pdf (accessed on 12 July 2022).

64. 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 (UN Fish Stocks Agreement, or UNFSA) (4 August 1995). Available online: https://legal.un.org/avl/ha/aipuncls/aipuncls.html (accessed on 12 July 2022).
65. Informal Working Group on Measures such as ABMTs, Including MPAs, Oral Report of the Facilitator to the Plenary (14 Sep 2018). Available online: https://www.un.org/bbnj/sites/www.un.org.bbnj/files/final_oral_report_facilitator_abmts_mpas_final.pdf (accessed on 12 July 2022).
66. Nichola, A.C. Institutional arrangements for the new BBNJ agreement: Moving beyond global, regional, and hybrid. *Mar. Policy* **2020**, *122*, 104143.
67. Elizabeth, M.D.S. Implementation challenges of area-based management tools (ABMTs) for biodiversity beyond national jurisdiction (BBNJ). *Mar. Policy* **2018**, *97*, 34–43.
68. PAME. PAME-Ecosystem Approach to Management. Available online: https://www.pame.is/index.php/projects/ecosystem-approach (accessed on 12 July 2022).
69. Chair's Streamlined Non-Paper on Elements of a Draft Text of an International Legally Binding Instrument under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction (July 2017), para. 41. Available online: http://www.un.org/depts/los/biodiversity/prepcom_files/Chairs_streamlined_non-paper_to_delegations.pdf (accessed on 12 July 2022).
70. Hu, X.-d.; Gao, Y.; Dai, Y. On The Basis of Issues and Solutions of BBNJ International Negotiations (13 December 2017). Available online: http://www.comra.org/2017-12/13/content_40104103.htm (accessed on 12 July 2022). (In Chinese).
71. Da Lucia, V. A Very Quick Look at the Revised Draft Text of the new Agreement on Marine Biodiversity in Areas beyond National Jurisdiction (23 January 2020). Available online: http://www.ejiltalk.org/a-very-quick-look-at-the-revised-draft-text-of-the-new-agreement-on-marine-biodiversity-in-areas-beyond-national-jurisdiction/ (accessed on 12 July 2022).
72. Permanent Mission of Algeria to the United Nations, Statement on behalf of African group H.E. by Ambassador Mohammed Bessedik (19 August 2020). Available online: https://statements.unmeetings.org/media2/21996848/algeria-obo-african-group.pdf (accessed on 12 July 2022).
73. Morgera, E.; Snow, B.; Mia Strand, One Ocean Hub; Vadrot, A.; Langlet, A.; Rodríguez, S.R.; University of Vienna; ERC Project MARIPOLDATA. Participation in the BBNJ negotiations matters (11 April 2022). Available online: https://oneoceanhub.org/participation-at-bbnj-negotiations-matters/ (accessed on 12 July 2022).
74. Shi, Y.-b. Settlement of disputes in a BBNJ agreement: Options and analysis. *Mar. Policy* **2020**, *122*, 104156. [CrossRef]
75. IISD. Summary of the Fourth Session of the Intergovernmental Conference on an International Legally Binding Instrument under the UN Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biodiversity of Areas Beyond National Jurisdiction (7–18 March 2022). Available online: http://enb.iisd.org/sites/default/files/2022-03/enb25225e.pdf (accessed on 12 July 2022).
76. Comments by the Government of the People's Republic of China on the Draft Regulations on Exploitation of Mineral Resources in the Area, 20 December 2017. Available online: www.isa.org.jm/files/documents/EN/Regs/2017/MS/ChinaEN.pdf (accessed on 12 July 2022).