

Tonga Delegation
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
First substantive session, on Agenda Item 7: Consideration of the subject matter referred
to in paragraphs 1 and 2 of General Assembly resolution 72/249

New York, 10th September 2018

Measures such as area-based management tools, including marine protected areas

Check against delivery

Madam Facilitator,

Thank you for giving my delegation the floor and allow me to align my intervention with that delivered by Egypt on behalf of the Group of 77 and China, Maldives on behalf of AOSIS and Nauru on behalf of PSIDS.

Madam Facilitator,

4.1 Objectives: Tonga is of the view that the ILBI could set out a general provision which would provide an overarching objective applicable to all categories of ABMTs/MPAs, in addition to the specific objectives for specific ABMTs, including MPAs.

The overarching objective could be “the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction” pursuant to GA res 69/292 and 72/249.

In this vein, the ILBI could provide for specific objectives for ABMTs and MPAs, which could include:

1. ensure resilience, conservation, protection, and maintenance of marine ecosystems, habitats and species;
2. prevent significant adverse impacts;
3. rehabilitate marine ecosystems, habitats and species;
4. ensure sustainable socio-economic development and use;
5. ensure food security;
6. avoid conflicts among users and/or human activities;
7. create scientific reference areas (base-line research); and
8. safeguard aesthetic or natural and/or wilderness values.

Flexibility in the provisions of the ILBI will be required to cater for the protection level necessary for the designated area, depending on the level of protection and time needed for that particular ABMT to work. The ILBI could also allow for the creation and

implementation of representative and well-connected network of MPAs in ABNJ, which would take into consideration cumulative impacts of multiple stressors, including impacts from climate change.

Tonga is open to discussing working definitions of ABMTs, including MPAs, as well as other terms that will be used under this element.

4.2(a) Bearing in mind the mandate set out under UNGA resolution 72/249, the instrument would need to ensure that existing measures under legal instruments and frameworks and global, regional and sectoral bodies are not undermined. There are a number of ways in which the ILBI could address this issue:

- (a) Set out a general provision under the ILBI, which recognizes and protects in general, the mandates of relevant global, regional or legal frameworks, by indicating that such mandates will not be undermined; or
- (b) In developing operational provisions of the ILBI, specifically incorporate the need for sufficient consultation with relevant stakeholders, whether it be in relation to the designation process, or otherwise, factoring in how the proposed ABMT would be compatible with existing ABMTs. Such consultation should take place from the beginning of the process so that the tool would be effectively designed, implemented and enforced.

4.2(b) In order to address issues of compatibility among measures under the ILBI and adjacent coastal States, provisions or articles under the ILBI could set requirements for proponents of ABMTs to engage in adequate consultation with adjacent coastal States, which would include sharing information and data early in the process.

These requirements can be factored into the ABMT process through the proposal stage. It could set out when the consultation or sharing of information is to take place, the type of information, in particular, how it aims to be compatible with existing ABMTs in adjacent coastal States and propose plans of implementation. Consideration of joint efforts, particularly for small island developing States could be factored into such process.

4.2(c) As mentioned earlier, a general provision indicating that the mandates of relevant global, regional or legal frameworks will not be undermined could be incorporated into the operational provisions of the ILBI, as well as the need for sufficient consultation with adjacent coastal States, whether it be in relation to the designation process, or otherwise, factoring in how the proposed ABMT aligns or enhances the existing ABMTs.

4.3 There should be clear institutional arrangements in the instrument that would serve different purposes and guide the processes under ABMTs, including MPAs. Such institutional arrangements could include:

- receipt of ABMT proposals;
- oversight of implementation and compliance/enforcement;

- coordination of consultation;
- providing scientific and technical advice; and
- making final decisions.

These different functions can possibly be divided within the ILBI institution under a Secretariat, Scientific and Technical Body, Compliance Mechanism/Committee, Assembly (a global political decision-making body)

- Tonga is of the view that to ensure consistency and uniformity in decision making, and also to factor in the work of existing regional frameworks, the appropriate institution in relation to ABMT for the ILBI could include a Global institution with input from the regional level.
- The appropriate processes for the ABMTs should be comprehensive and systematic as well as practical (implementable).
- The provisions should also address issues on sharing of data and information and obligation to consult with adjacent coastal States. It will also set out the manner in which the consultation will take place, (for instance in case of SIDS, web-based consultation is not sufficient to be used in the scattering islands), the type of information shared, plans of implementation, monitoring and review and consideration of joint efforts, particularly for SIDS.
- The ILBI should also set standards and criteria, such as baseline information (amongst others) to be applied to the different approaches in ABMTs.

(a) The appropriate decision-making process in relation to ABMTs for the ILBI would be part of an institutional arrangement which utilizes a Hybrid Approach. We envision a global ILBI institutional arrangement with sufficient inclusion or consultations with regional organisations or coastal States. It grants the ILBI institutional arrangement the ultimate decision-making authority of designating ABMTs/MPAs with substantial input from regional organizations.

4.3(b) The appropriate process in relation to ABMTs for the ILBI should be as follows:

1. Formulation of Proposal

State Parties jointly or individually, or sponsoring natural or judicial persons possessing the nationality of a State Party can submit a proposal. The proposal could include the category of ABMT/ MPAs to be utilised, the purpose, and the scientific evidence, amongst others. In addition, and most importantly, consultation should take place at this stage with adjacent coastal States and relevant global, regional and sectoral bodies. The results of the consultation should form part of the proposal. Article 19 of the Rio Declaration can be built upon, which requires the need to provide timely notification and relevant information to affected States and relevant stakeholders.

2. Submission of Proposal

The Proposal shall be submitted by the Proponent to the Secretariat;

3. Consultation

The Secretariat will then disseminate the proposal widely amongst State parties, Regional Organisations and adjacent states, and relevant global, sectoral and regional bodies for consultation purposes and feedback. Upon receiving feedback, the Secretariat will prepare the relevant documents and have it submitted to the Scientific Committee established by the ILBI institution to consider for recommendation to the COP.

4. Assessment of Proposal

The Scientific Committee then assesses the proposal and recommends to the COP, based on the ILBI, whether to endorse or not.

5. Decision making

The COP will then decide whether or not to designate the ABMT or MPA based on the recommendation of the Scientific Committee.

6. Implementation

Once an ABMT or MPA is designated, the obligation will fall on all State parties to ensure it is preserved in accordance with the decision of the COP.

7. Monitoring and review

The conservation and management plan measures may be adjusted to reflect the status of the area, based on the review process and the findings of the monitoring and review process. The actual monitoring and review will fall on the proponents, with the oversight of the ILBI global and regional institution, and State parties. As mentioned previously, the preference is for there to be a COP, Secretariat, subsidiary bodies or committees, and regional and national branches to facilitate the establishment of an ABMT.

In an instance where an obligation falls on State Parties, consideration must be made on the capacity of small island developing States to implement such obligations and the need for appropriate assistance to SIDS to undertake such an obligation.

8. Compliance mechanism

A compliance mechanism will be vital for this particular element, and the need to clearly set out what amounts to non-compliance.

9. Enforcement mechanism

An enforcement mechanism will be a key element to ensure that there is effective implementation of the requirements.

4.3(c) Under the ILBI, the institutional arrangement necessary would include the following:

- An international ILBI;
- Secretariat;
- Conference of the Parties, Assembly or Meeting of the State Parties;

- Scientific and Technical committees;
- Competent regional bodies;
- Possibly national focal points

4.3(d) Yes

4.3.1 (a) &(b) Identification of areas, standards and criteria could include:

- Baseline information;
- Uniqueness;
- Biological productivity;
- Vulnerability and threats including climate change;
- Economic and social factors;

In addition to the existing internationally recognized criteria for area-based conservation measures which guide the identification of priority areas to be developed, which was raised by G77, Tonga suggests the inclusion of areas of historical and cultural significance, in addition to the PSIDS' "economic and social factors" criteria proposed by PSIDS.

Tonga is supportive of the call for accountability and liability as compliance will make implementation of the respective objectives meaningful.

In light of the rapid advancements in technology and scientific research, Tonga is of the view that standards and criteria should be set broadly so as to enable incorporation of further changes in scientific research and what we know about the areas and ecosystems. Further, there needs to be mechanism to timely and effectively revise the standards and criteria as appropriate.

4.3.1(c) Existing criteria currently used can be factored into this process in the preparation and analysis of a proposal. In the event a proposed ABMT overlaps or is adjacent to an existing ABMT, it is important to ensure that the objectives by the proposed ABMT meets existing objectives.

4.3.1(d) The instrument can set out the general requirements, and specific details can be further elaborated under guidelines to be developed by the Scientific & Technical Committee. A deadline to establish such details would ensure timely adoption of the guidelines.

4.3.1(e) Yes, the instrument should provide the possibility of reviewing and or updating standards and criteria to factor in scientific and technological advancement, changes in ecosystem so that better criteria or standards necessary to enhance the objectives of ABMTs or MPAs can be adopted.

4.3.2 In furtherance of views expressed on behalf of the Group of 77 and China and AOSIS, Tonga is of the view that the category of proponents of ABMTs can be expanded to include States in joint action with another State as well as natural and juridical persons that are sponsored by a State Party. Examples of how such a mechanism can operate exists under the ISA.

Tonga places great importance on stakeholder consultation. Therefore, we believe in inclusive engagement and do not believe that an exhaustive list of stakeholders should be included in the ILBI. Tonga is supportive of CB&TMT opportunities for States where ABMTs, including MPAs, are set up adjacent to their respective EEZ to facilitate and enable consultation on the establishment, implementation and enforcement of ABMTs, including MPAs.

4.3.2 (i)(a)(i) Designation process: As mentioned in 4.3 above, persons who can make proposals can be:

- (a) State parties individually or jointly;
- (b) State parties co-sponsoring Observers; and/or
- (c) Natural or juridical persons sponsored by State Parties.

4.3.2(i)(a)(ii) As mentioned in 4.3 above, the proposals will be submitted to the Secretariat. The Secretariat will issue a notification to all States Parties and Observers, and the general public the proposal and allow for consultation for a set period of time.

The responses to the consultation will be compiled by the Secretariat and conveyed to the Scientific & Technical Committee for consideration and recommendation to the Conference of the Parties/Assembly.

4.3.2(i)(a)(iii) Tonga's response

Further to that mentioned in 4.3 above and based on the best available science, precautionary approach and the ecosystem approach, the content of the proposals should include the following:

- Baseline information/ data;
- Location and boundaries of the proposed site;
- Description of the characteristics, biodiversity and features of the area supported by appropriate and adequate data and information;
- Description of users and multiple and potential activities taking place and the potential impact;
- Documentation of consultation undertaken with relevant sectoral, regional or global bodies and any adjacent States which have taken place;
- Plan for review, and monitoring;
- Means of compliance;
- Proposed timeframe;
- Description of the existing environment and their relationship to existing adjoining uses or habitation, with adequate details of any significant physical, biological, or social or cultural heritage items may be affected by the potential activity supported by adequate and appropriate data and information as accepted by the Scientific Committee;

- Types, sources and volume of materials used in the proposed activity; and
- Possible environmental impacts and mitigation measures to be undertaken.

4.3.2(ii)(a) The ILBI could set out general categories of stakeholders in a non-exhaustive list. To specify and limit the scope may result in important stakeholders not being consulted.

4.3.2(ii)(b) Appropriate modalities for consultation would be the need for arrangements, which facilitate coordination amongst relevant stakeholders, and standard procedures to facilitate meaningful consultations to take place at various stages of the process, including updating and reviewing the standard criteria. Sufficient time should also be factored in, to allow for substantive feedback from all stakeholders.

4.3.2(ii)(c) Other modalities for the provision of scientific advice on the proposal to be included in the instrument could include:

- (a) The development of a list of national or regional experts to form a pool of independent experts. The ILBI can set out the general expertise required and the selection process for these independent experts and their respective terms and geographic representation.
- (b) The ability to hire competent consultants. The ILBI could set out the process for hiring consultants with relevant and sufficient level of expertise, as well as the issues of remuneration and the duration of their term.

4.4 - 4.5 (Implementation, Monitoring and Review)

In ensuring that we are creating an implementable instrument, particularly in respect of this element, the ILBI should cater for the special case of SIDS in ensuring that the implementation of ABMTs, including MPAs do not disproportionately impact SIDS, and specific ABMTs have a robust implementation plans, depending on the nature and purpose of the tool.

In terms of monitoring and review, such obligations could be undertaken by the relevant entity (State parties/ proponent) reporting to a BBNJ body (Scientific and Technical body) where the submission is assessed before review by a global body. The Scientific and Technical body could provide oversight of the monitoring and review and then regularly report to a global (governing) body.

Further, while not raised in the President's Aid-to-Discussion, it is necessary to consider the purpose the monitoring and review would serve. Such purpose could be to ensure that the ABMT serves the purpose for which it was established and that it is effective, for example. Such review could provide an opportunity to revise the implementation plan so as to ensure challenges to achieving its objective can be overcome.

4.6. Cross cutting issues:

Use of terms:

Tonga considers working definitions of the following terms would be necessary:

- Rehabilitation
- Marine Protected Area
- ABMTs
- MPAs, building upon the definition under IUCN Categories I and II;
- Marine Reserves;
- Marine spatial planning; and
- Monitoring

4.6.3 On general principles and approaches

Tonga fully supports the principles and approaches put forward on behalf of PSIDS noting that these principles will guide the implementation of ILBI. This can be adequately reflected in the ILBI through a general provision listing the principles, which would provide a guide to achieving its objectives.

4.6.6. Clearinghouse mechanism

In addition to the purposes proposed by PSIDS, Tonga considers it necessary that the CHM would act as a repository of data and information relevant to ABMTs, including scientific information, management plans and decisions of the COP. Additionally, the clearinghouse mechanism can include non-technical summaries of the ABMT, sufficient and relevant data, descriptive information and maps.

Tonga reiterates that a clearinghouse mechanism is not an end in and of itself and its full utilisation vests in the capacity of all users to understand and apply the data and information stored therein. Tonga places emphasis on the need to strike a balance between transparency in the operation of the CHM and the need for security and confidentiality to ensure that the information is not abused or used for unintended (not peaceful) purposes.