

(Translation)

**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**

Item 7: Measures such as area-based management tools,
including marine protected areas (4.1-4.3)

September 7 and 10, 2018

Madame facilitator,

At the outset, the Chinese delegation congratulates you for your appointment as facilitator on this important item and trusts that under your effective leadership, positive progress will be made in the discussions. The Chinese delegation associates itself with Egypt's statement on behalf of the Group of 77 and China and wishes to make some additional comments and suggests:

4.1 Objectives of area-based management tools, including marine protected areas

The new international instrument should explicitly provide that the objectives of the area-based management tools (ABMTs), including marine protected areas (MPAs), is the conservation and sustainable use of marine biodiversity.

In this regard, the Chinese delegation would like to emphasize three points. First, the ABMTs should include all regional-based management measures

and approaches, not only limited to MPAs. Second, the conservation and sustainable use of marine biodiversity are the dual objectives of the ABMTs. A reasonable balance should be struck between the two to avoid favoring one over the other. The ABMTs, including MPAs, are not limited to reserve areas. Nor can it be simply understood as marine sanctuary. Third, the target of ABMTs, including MPAs, is marine biodiversity, i.e., marine genetic resources, species and ecosystem. The specific objectives of protection and management measures should be identified accordingly.

4.2 Relationship to measures under relevant instrument, frameworks and bodies

4.2 (a) The manner to set out the relationship

The ABMTs, including MPAs, to be regulated under the new international instrument take marine biodiversity as protected object. They are different from the MPAs which aim at the protection of marine living resources under the existing regional and sectoral instrument or bodies. As far as the conservation of marine biodiversity is concerned, the new international instrument in most cases will not overlap with the MPA measures under existing instrument or bodies. However, the possibility of such overlap cannot be excluded.

In light of the above, the new international instrument should differentiate the specific circumstances of whether the conservation of marine biodiversity is concerned so as to adopt different approaches. With regard to the circumstances in which the conservation of marine biodiversity has been regulated under existing instrument, the existing rules should be applied. Under other general circumstances, the provisions of the new international instrument should applied.

4.2 (b) The provisions concerning adjacent coastal States

The Chinese delegation considers that, the rule of “due regard” provided in the UNCLOS is the general standard to deal with the relations between the adjacent coastal States as well as the State conducting activities in the areas beyond national jurisdiction. We suppose that, the new international instrument should address the issue of compatibility between measures under the new international instrument and those established by adjacent coastal States in accordance with the rule of “due regard”.

We fully understand the concerns of the relevant adjacent coastal States on this issue. Therefore, we suppose that the new international instrument explicitly provides that, in establishing the measures of ABMTs, including MPAs, the opinions of the adjacent coastal States should be taken into account in appropriate approach.

The main basis for the Chinese delegation to make the above suggestions includes: first, according to the UNCLOS, States shall conduct activities on the high seas or in the Areas with “due regard” for the rights and freedom of other States, including adjacent coastal States. Second, pursuant to the UNCLOS, each State enjoys equal rights in the areas beyond national jurisdiction. The adjacent coastal States do not have any special privileges.

4.2 (c) The manner to respect for the rights of coastal States over all areas under national jurisdiction.

The new international instrument should explicitly provide that, the ABMTs, including MPAs, shall not undermine the rights of coastal States over all areas under their national jurisdiction in accordance with the UNCLOS, including the rights over the exclusive economic zone, and the continental shelf within and beyond 200 nautical miles. Nor shall they undermine the rights of each State in the areas beyond national jurisdiction in accordance with the UNCLOS.

4.3 Process in relation to area-based management tools, including

marine protected areas

4.3 (a)-(d) Most appropriate approach for institutional arrangement

The Chinese delegation proposes that, the new international instrument should, without undermining the mandates and functions of existing regional and sectoral bodies, establish the Conference of Parties (CoP) to discharge the function of decision-making and supervision. Under the CoP, a Council and a Secretariat should also be established.

This institutional arrangement focuses on two key points. First, the mandates of existing regional and sectoral bodies, including their existing mandates on the conservation of marine biodiversity, should not be undermined. Second is to establish new institutional arrangement of the CoP to deal with the issue of ABMTs with the objectives of the conservation and sustainable use of marine biodiversity.

The CoP is the highest decision-making body, in charge of reviewing the proposal raised by States Parties for ABMTs, including MPAs, and monitoring. The decision on relevant proposals should be made by States Parties on the basis of consensus.

The Council is the executive body of the CoP, making policies, standards and rules in accordance with the authorization of the new international instrument. Several standing and non-standing committees may be established under the Council, such as scientific and technical committee and legal committee, which are in charge of researching the relevant scientific and legal issues as well as providing advisory opinions. Under the committees, *ad hoc* working groups may be set up when necessary and carry out the work in accordance with the authorization of committees.

The Secretariat, as a permanent institution, is in charge of daily administrative affairs and conduct coordination with other international organizations.

When the measures of ABMTs to be adopted under the new international instrument touch upon the mandates of regional or sectoral bodies in aspect of the conservation of marine biodiversity, consultation and coordination may be conducted between the scientific and technical committee and existing bodies, to explore the most appropriate conservation measures.

4.3.1 Identification of areas

(a) Process

The Chinese delegation considers that, the identification of areas which may need protection should follow the following procedures:

The State which raises a proposal conducts investigation and collects scientific information in accordance with relevant standards. Then it carries out study on the obtained scientific information and makes comparison with the required standards, to identify the scope of protected areas. The final step is to submit the relevant proposal to the CoP for review.

(b) Standard and criteria

The Chinese delegation considers that, the identification of relevant protected areas should be based on the best scientific evidence, and meet both standards and criteria of the bioecological factors and socio-economic factors. The decisions should be made on a case-by-case basis. Among others, with regard to what specific criteria should be included in bioecological factors and socio-economic factors, it is not necessary for the new international instrument to provide an exclusive list. Rather, this should be decided by the competent body under the new international instrument through discussion.

(c) Level of detail

The Chinese delegation suggests that it is advisable to refer to the approach of setting out the standards and criteria of ABMTs adopted in existing international instruments and not to include specific standards and criteria. Instead, relevant standards and criteria should be formulated by the competent body under the framework of the new international instrument.

(d) The possibility of reviewing and/or updating the standards and criteria

The Chinese delegation considers that, the new international instrument may provide that the standards and criteria may be reviewed and updated according to actual needs.

4.3.2 Designation process

(i) Proposal

The Chinese delegation considers that, the proposal to establish a MPA should be raised by States Parties, and be submitted to the CoP which is to be established according to the new international instrument.

The content of the proposal should include the following:

- General description of the proposed MPA.
- Description of the objectives and targets of protection.
- Legal basis, scientific data and factual evidence of the MPA.
- Management plans and measures.
- Scientific research and monitoring plans.
- Duration of protection.

(ii) Consultation on and assessment of the proposal

(a) The scope of participators in the coordination and consultation process should be decided according to the objectives, target and areas of the conservation and the entities concerned. They include but are not

limited to States, international organizations, and other stakeholders including non-State entities, such as civil society, industry, scientists and traditional knowledge holders. In order to maintain an open coordination and consultation process, the new international instrument only needs to contain general provisions instead of listing specific stakeholders.

(b) The State which raises a proposal should fully take account of the opinions from States Parties, relevant international organizations and non-State entities. Consultation and coordination should be conducted when necessary.

(c) The new international instrument may establish a scientific and technical committee to evaluate the necessity, scientificity, reasonableness and feasibility of ABMTs. It may also establish a legal committee to provide evaluations and recommendations in legal aspect. The members of the relevant committees are elected from candidates recommended by each State and work in their individual capacity.

(iii) Decision-making

(a) (i) The new international instrument should adopt a consensus-based decision-making model to determine the ABMT related matters.

(a) (ii) The new international instrument may establish the CoP to give effect to the decisions related to ABMTs.

(b) The decisions related to ABMTs should be made on the basis of extensive consultation and comprehensive consideration of the concerns of States Parties and the mandates of relevant competent international organizations, to enhance cooperation and coordination.

(c) Adjacent coastal States may fully participate in the consultation and assessment in the designation process. But in the decision-making procedure, adjacent coastal States have equal status with other States Parties.