

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

4 – 17 September 2018

Informal working group on measures such as area-based management tools, including marine protected areas

Oral report of the Facilitator to the plenary

Friday, 14 September 2018

Madam President,

Distinguished delegates,

I am pleased to report to you on the discussions of the Informal working group on measures such as area-based management tools (ABMTs), including marine protected areas (MPAs).

The Informal working group met on Friday, 7 September, Monday, 10 September, and Thursday, 13 September.

The discussions in the Informal working group were structured around the sections contained in the President's aid to discussions and related to:

- Objectives of ABMTs, including MPAs
- Relationship to measures under relevant instruments, frameworks and bodies
- Process in relation to ABMTs, including MPAs
- Identification of areas
- Designation process
- Implementation
- Monitoring and review
- Issues from the cross-cutting elements: use of terms, general principles and approaches, international cooperation, institutional arrangements and a clearing-house mechanism.

Before taking each of these issues in sequence, let me say that I do not intend to provide a comprehensive summary of the extensive and complex discussions that took place, but will rather give an overview of the main issues discussed and the general trends I observed.

Objectives of ABMTs, including MPAs

There was general convergence that ABMTs, including MPAs, are measures to achieve the objective of the international legally binding instrument (the instrument), namely conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (ABNJ).

There seemed to be convergence towards including certain overarching objectives in the instrument that would apply to the full range of ABMTs, including MPAs, such as the promotion of cooperation and coherence in the use of ABMTs, including MPAs, by regional and sectoral bodies and the implementation of existing obligations, in particular under the United Nations Convention on the Law of the Sea (UNCLOS). Reference was also made to the Aichi Biodiversity Targets and Sustainable Development Goal 14. The objective of establishing connected networks of MPAs to ensure long-term conservation and sustainable use was also proposed. It was also proposed that the objective of the instrument should not be to create a mechanism to establish ABMTs in ABNJ.

There was convergence that ABMTs, including MPAs, are tools to be established to achieve objectives specific to the identified area. There also seemed to be some convergence towards including specific objectives for different types of tools. In this regard, it was suggested that the instrument could provide a list of such specific objectives or allow for their elaboration at a later stage.

Relationship to measures under relevant instruments, frameworks and bodies

General Assembly resolutions 69/292 and 72/249 were recalled, in particular the recognition that the instrument should not undermine existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies. There was general convergence that the instrument should foster greater cooperation and coherence, including between relevant regional and sectoral bodies. Examples of such cooperation at the regional level were provided. Proposals were made that the instrument should, to a large extent, rely on existing frameworks and bodies to implement measures, and the point was made that no hierarchy between the global instrument and regional instruments should be established. Proposals were also made to set up a process of recognition of existing measures, either explicit or inherent, provided that those measures also comply with the objectives of the instrument. Recognition of measures under existing mechanisms would promote the establishment of a global network.

It was generally recognized that the instrument should respect the rights and jurisdiction of coastal States over all areas under their national jurisdiction, including the continental shelf within and beyond 200M and the exclusive economic zone. There was some convergence on the need for consultations with adjacent coastal States during the process of establishment of ABMTs, including MPAs, to address also issues of compatibility with measures established by adjacent coastal States. The issue of whether or not the consent of adjacent coastal States would be necessary to establish ABMTs, including MPAs, in ABNJ was raised.

Process in relation to ABMTs, including MPAs

It was generally recognized that the process that could be established under the instrument in relation to ABMTs, including MPAs, in particular with respect to decision-making and institutional set up, would need to be inclusive, transparent, consistent with relevant international instruments, including the United Nations Charter and UNCLOS, and enhance cooperation and coordination, while not undermining existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies.

The point was made that any new process under the instrument and the existing regional and sectoral processes should be mutually supportive, through a collaborative effort designed to contribute to the overall goals of the instrument.

Different approaches were proposed regarding the overall process to be set out in the instrument. While they could be clustered broadly into global, hybrid and regional approaches, it may be more useful to consider the proposals as ranging along a spectrum of such options. One approach, which favoured a robust set of functions to be mandated to the process and bodies established under the instrument, emphasized the need to establish a coherent process for the establishment, implementation and enforcement of ABMTs, including MPAs, which would be applicable to all States, address the fragmentation, inconsistencies and gaps in the mandates of the existing regional and sectoral bodies, while envisaging their participation in the overall process.

Another approach favoured a process which would rely more extensively on existing processes and the responsibilities of existing regional and sectoral frameworks in relation to ABMTs, including MPAs, while envisaging that some decision-making responsibilities and functions would be carried out at a global level. This type of process aimed at promoting cooperation and coordination and avoiding overlapping mandates. A proposal was made to promote a case-by-case approach to the identification of the required ABMT and which body/bodies (whether global, regional or a group of States) would be in the best position to take relevant decisions.

A third approach favoured a regional approach, viewing the instrument as a mechanism to strengthen existing regional bodies with the relevant expertise and competence to establish ABMTs, while promoting enhanced cooperation and coordination between these and other relevant bodies. To this end, model cooperation agreements could be annexed to the instrument.

A fourth approach envisaged that the instrument would provide general principles and approaches on the establishment of ABMTs, while recognizing the full authority of regional and sectoral organizations in decision-making, monitoring and review, without oversight from a global mechanism. Where those organizations do not exist, States could decide to establish them.

Notwithstanding these different approaches, there seemed to be a growing convergence on the need for a global decision-making body; a mechanism to provide scientific advice to that decision-making body, such as a subsidiary scientific or technical committee, a pool of experts, or reliance on existing regional scientific bodies; and a secretariat, to discharge administrative functions and possibly also consultation and coordination functions. The possibility of establishing additional subsidiary bodies was also put forward.

Different approaches regarding the roles and responsibilities of the global decision-making body were proposed. One approach envisaged a global body that would take binding decisions, including on the designation of multi-purpose MPAs and related conservation and management measures, and review, monitoring and compliance. Decisions on the establishment of ABMTs, including MPAs, would be taken following a process of consultation with a wide range of stakeholders, including existing regional and sectoral bodies, and based on the assessment and recommendations of a scientific or expert body. As part of its review, the scientific body would

also consult with relevant bodies and organizations that may be affected by any proposed measures, including to ensure that regional characteristics are fully reflected. It would also review and make recommendations to the decision-making body on the standards and criteria to be used for identification of areas and review the effectiveness of the established MPAs and the progress in achieving its objectives.

Another approach envisaged a global decision-making body tasked, for example, with setting overall guidelines, standards and objectives; making high level decisions, such as on the identification of priority areas for establishment of ABMTs, including MPAs; establishing processes for cooperation and coordination among existing regional and sectoral bodies and States; administering a global information database; and undertaking regular review of implementation of the instrument. Site selection was also identified as a potential role of that body, based on the advice of a scientific and technical body, as well as the recommendation of management measures, for consideration by relevant regional and sectoral bodies. The latter bodies would adopt relevant conservation and management measures; monitor and enforce such measures; cooperate and coordinate with global, regional and sectoral bodies and States; share information and data; and report on implementation.

Identification of areas

With regard to the process for identification of areas within which protection may be required, there seemed to be convergence that standards and criteria should be developed on the basis of the best available science, including existing international criteria and standards. In addition to the indicative list of criteria contained in the elements in section III of the report of the Preparatory Committee, criteria proposed during the discussions included the adverse impacts of climate change and ocean acidification, and traditional knowledge. The need to retain the flexibility to review and update standards and criteria as scientific knowledge develops was generally recognized.

Designation process

In terms of the designation process, it was broadly agreed that proposals to establish ABMTs, including MPAs, could be submitted by States parties to the instrument, either individually or collectively, including through competent organizations. Reference was made to the possibility that proposals could be submitted by other stakeholders, such as States entitled to become parties to the instrument, the scientific and technical body, civil society, or natural or juridical persons sponsored by a State party.

With respect to the content of proposals, some elements additional to those specified in section III of the report of the Preparatory Committee were referenced, including traditional knowledge. Different approaches were proposed regarding the duration of measures. One approach favoured specifying the duration, which would be linked to the objectives of the proposed measures. Another approach was that measures should not contain a sunset clause, but should be regularly reviewed to allow for updating, amendment or revocation as necessary.

Regarding consultation on and assessment of proposals, there seemed to be a general recognition that proposals should be made publicly available and that consultations should be time-bound, inclusive, transparent and open to all relevant stakeholders. To this end, it was proposed that an indicative list of stakeholders might be developed, which could include all States, including adjacent States, and relevant global, regional and sectoral bodies as well as industry, civil society, scientists, academia, and indigenous peoples and local communities with relevant traditional knowledge. The issue was raised as to whether the modalities of the consultation process should be articulated in the instrument itself, and if so, which details should be included. The importance of consultation and cooperation with existing regional and sectoral bodies and fully incorporating their perspectives was particularly emphasized. It was also noted that the special circumstances of SIDS needed to be taken into account.

A proposal was made that following these consultations, the proponent(s) of a measure should be given an opportunity to respond to the views expressed by stakeholders and amend their proposal.

There was general recognition of the need to establish a process for scientific review or assessment of proposals. The importance of regional characteristics and ensuring that any process of scientific review incorporated sufficient regional expertise, including traditional knowledge, was raised in that regard.

Different approaches were put forward regarding decision-making on matters related to ABMTs, including MPAs, in light of the various proposals on institutional arrangements. While the importance of consensus as the basis of decision-making by a global body was generally recognized, it was also proposed that, where consensus could not be achieved, voting might be resorted to. Different views on the involvement of adjacent coastal States in decision-making were put forward.

It was noted that the establishment of ABMTs, including MPAs, would necessarily take time, therefore interim measures may need to be applied.

Implementation

There was convergence on the responsibility of States parties to implement measures, including management plans, adopted in the context of ABMTs, including MPAs, by regulating activities and processes under their jurisdiction or control, including their flagged vessels. It was proposed that States non-parties also be encouraged to implement such measures.

In this regard, it was noted that nothing in the instrument should prejudice the right of States parties to adopt stricter measures with respect their flagged vessels, nationals, or such activities and processes. Different approaches, yet to be fully explored, were put forward regarding enforcement.

Monitoring and review

The need for monitoring and regular review of ABMTs, including MPAs, established under the instrument, including in support of an adaptive management approach, was generally recognized.

There was some convergence that reporting requirements should be set out in the instrument. There was also some convergence that monitoring, and review functions could be allocated to a subsidiary body established under the instrument. A compliance mechanism was also proposed. In this context, the need for standardized reporting procedures was emphasized.

Issues from the cross-cutting elements

Regarding the cross-cutting elements, it was proposed that some of them would benefit from additional discussion once the text and concepts related to ABMTs, including MPAs, have been further elaborated.

Use of terms - There was convergence that ABMTs and MPAs could be defined in the instrument and a number of international instruments were cited as possible sources of such definitions. Some specific definitions were proposed.

Relationship to UNCLOS and other instruments and frameworks and relevant global, regional and sectoral bodies and institutional arrangements - The views on the relationship to UNCLOS and other instruments and frameworks and relevant global, regional and sectoral bodies, as well as the views on institutional arrangements were presented earlier in relation to sections 4.2 and 4.3 of the President's aid to discussion.

General principles and approaches - A number of general principles and approaches relating to ABMTs, including MPAs, were cited. The view was expressed that these general principles and approaches could be operationalized through the measures and processes established by the instrument.

International cooperation – The issue of cooperation was discussed in-depth under sections 4.2 and 4.3 of the President's aid to discussion.

Clearing-house mechanism - There was convergence on the need for a clearing-house mechanism to share information relating to ABMTs, including MPAs, which would serve as a repository for baseline data, provide information on relevant activities, facilitate the sharing of best practices amongst State parties, practitioners and stakeholders, and support capacity-building. One proposal was for such a mechanism to serve as a hub for a network of regional and/or sub-regional clearing-houses.

Madam President,

Distinguished delegates,

This concludes my overview of the discussions in the Informal working group on measures such as area-based management tools, including marine protected areas.