



An International Instrument on Conservation and Sustainable Use of Biodiversity in Marine Areas beyond National Jurisdiction

Exploring Different Elements to Consider

PAPER XI

Basic Ideas for a Possible Institutional Structure^{*}

By Thomas Greiber and Tullio Scovazzi, with comments from Kristina Gjerde

Commissioned by the German Federal Agency for Nature Conservation with funds from the German Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety.



^{*} DISCLAIMER: The views expressed in this paper do not necessarily reflect those of the German Federal Agency for Nature Conservation or the German Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety.

1. Background

At the 2012 United Nations Conference on Sustainable Development (Rio+20), States committed themselves 'to address, on an urgent basis, building on the work of the Ad Hoc Open-ended Informal Working Group and before the end of the sixty-ninth session of the General Assembly, the issue of the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, including by taking a decision on the development of an international instrument under the United Nations Convention on the Law of the Sea.'¹ This commitment was recalled and reaffirmed by the United Nations General Assembly (UNGA) in its 67th and 68th session.² In its resolution 68/70, the UNGA also requested the United Nations Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction (UN Working Group) to make recommendations to the UNGA 'on the scope, parameters and feasibility of an international instrument under the Convention'.³ These recommendations shall help to prepare for the decision to be taken at the 69th session of the UNGA in 2015, whether to start the negotiation of an international instrument on the conservation and sustainable use of biodiversity in areas beyond national jurisdiction (ABNJ).

The International Union for Conservation of Nature (IUCN) in collaboration with different partners has prepared a series of policy briefs to provide technical input to the ongoing ABNJ discussions, and thereby support the UNGA decision-making process. As indicated in **Paper I**, one of the issues to be discussed under 'parameters could be the institutional framework of a future international instrument for which the following paper aims to provide some basic ideas.

2. Rational

For the operationalization of a future international instrument for ABNJ under the United Nations Convention on the Law of the Sea (UNCLOS) the parties to the instrument would need to discuss a number of implementation questions, take binding as well as non-binding decisions, launch coordination and integration processes, and undertake reviews and assessments. For example, standards, guidelines and criteria for environmental impact assessments (see **Paper VIII**), or the application of area-based management tools (see **Paper VI**) could be discussed and decided.

To perform these tasks, the instrument would require an efficient, effective and transparent institutional structure, with specific bodies that possess designated powers and functions agreed upon by the parties. Based on experiences in implementing other multilateral environmental agreements, the following outline suggests a possible basic structure comprising regular Meetings of the Parties, an Executive Committee, a Scientific Committee, a Compliance Committee, and a Secretariat.

¹ UNGA resolution 66/288. 'The future we want.' UN doc. A/RES/66/288, of 11 September 2012. Paragraph 162.

² UNGA resolution 67/78. 'Oceans and the law of the sea.' UN doc. A/RES/67/78, of 11 December 2012. Paragraph 181. UNGA resolution 68/70. 'Oceans and the law of the sea.' UN doc. A/RES/68/70, of 9 December 2013. Paragraph 197.

³ UNGA resolution 68/70. 'Oceans and the law of the sea.' UN doc. A/RES/68/70, of 9 December 2013. Paragraph 198.

3. Meeting of the Parties

A future international instrument for ABNJ under UNCLOS would need a governing organ bringing together representatives of all parties to the instrument to take critical decisions and ensure accountability. Such an organ could be organized in the form of a Meeting of the Parties, and have equal representation from each member party, meet regularly to adopt rules of procedure, elect its president and officers, assess and approve budgetary matters, and establish policies to implement the provisions of the instrument. Furthermore, the Meeting of the Parties could

- elect members of established Committees;
- review reports from the Committees, Secretariat and member parties;
- promote studies and make recommendations that foster international cooperation and improve the instrument's effectiveness;
- review progress made and any difficulties encountered in the implementation of the instrument;
- address matters of party compliance;
- decide upon proposals to update or amend the instrument, or any annexes or protocols; and
- establish subsidiary organs, as necessary to perform its functions.

With regard to its decision-making procedures, each party would have one vote and all efforts should be made to reach decisions by consensus. If all efforts to reach consensus are exhausted, different quorums (simple and qualified majority) could be determined depending on the particular subject matter at stake.

4. Executive Committee

The general purpose of an executive body is to oversee the policies and procedures established by a governing body are carried out. The Meeting of the Parties could therefore establish an Executive Committee that would meet more frequently according to its own rules of procedure. To help ensure equity and fairness, member parties and different regions of the world should be equitably represented. In addition, the term of office could be set on rotation such that at the end of each term, half of the Executive Committee rotates out and is replaced by new members. Finally, it could be determined that members of the Executive Committee cannot serve more than a certain number of consecutive terms.

Executive Committee members should be qualified in the field of conservation and sustainable use of marine biological diversity in order to consider matters related to:

- Marine genetic resources, including questions on the sharing of benefits;
- Area-based management tools, including marine protected areas;
- Environmental impact assessment;
- Capacity building and transfer of marine technology; and
- Any other matters conferred by the Meeting of the Parties.

The Executive Committee would submit regular reports of its activities and make recommendations related to member party compliance to the Meeting of the Parties. To perform its functions, the Executive Committee could have authority to establish subsidiary organs and invite public or private organizations or individuals to participate and consult on particular issues, as necessary.

5. Scientific Committee

Scientific advisory bodies are an important feature of multilateral environmental agreements because they support informed, science-based decision-making and minimize the potential influence of biased interests promoted by individual states or stakeholder groups (see *Paper XII*). To provide advice on scientific and other technical matters related to implementation of the instrument, the Meeting of the Parties could establish a Scientific Committee.

Members of the Scientific Committee should be nominated by member parties based on their high moral character and recognized competence in marine sciences and conservation. Based on the nominations, the Meeting of the Parties could elect the Scientific Committee members with consideration given to their diversity of experiences and competences and to equitable geographical and gender distribution. Similar to the Executive Committee, the Scientific Committee could follow a rotational term of office with members serving no more than a limited number of consecutive terms. Once elected, Scientific Committee members should serve in their personal capacity, act objectively in the best interest of the instrument, and make a solemn declaration to perform their functions impartially and conscientiously. These functions could include the following:

- Providing advice to the Meeting of the Parties, individual member parties, and other organs of the instrument on scientific and technical matters having a bearing on implementation of the instrument;
- Conducting scientific assessments of the conservation status of marine biological diversity components;
- Advising on the development and coordination of research and monitoring programs;
- Facilitating the exchange of scientific information and of conservation techniques; and
- Any other tasks conferred by the Meeting of the Parties and other organs of the instrument.

Decisions of the Scientific Committee should involve an equitable voting procedure with all efforts made to reach consensus. Working groups to help deal with specific tasks could be established by the Scientific Committee as necessary. Finally, the Scientific Committee would submit regular reports of its actions, including decisions and recommendations, with explanations, and activities to the Meeting of the Parties.

6. Compliance Committee

A mechanism for compliance and verification helps implement and enforce environmental agreements; builds confidence and cooperation among parties; produces information to improve the agreement; and addresses cases of non-compliance (see *Paper XIII*). A compliance and verification mechanism could designate a specialized body to resolve disputes and facilitate, promote and improve compliance with the instrument through non-confrontational means.

A Compliance Committee could consist of members nominated by member parties as well as organizations and institutions that are partners to the instrument. The nominees should possess high moral character and competence in legal matters relating to the conservation and sustainable use of marine biodiversity. The election of Compliance Committee members by the Meeting of the Parties and partners to the instrument should take diversity of experiences and competences and equitable geographical and gender distribution into consideration. Once elected, Compliance Committee

members should serve in their personal capacity, act objectively in the best interest of the instrument, avoid direct and indirect conflicts of interest, and make a solemn declaration that he or she will perform his or her functions impartially and conscientiously. A rotational term of office and limit of consecutive terms could also apply to Compliance Committee members.

The Compliance Committee would adopt appropriate recommendations and offer legal and technical advice to help a party to achieve compliance. Before making a recommendation to the Meeting of the Parties, the Compliance Committee could consider and request any relevant information from the party whose compliance is in question, other parties, and the Secretariat, and consult with other instrument bodies. Once a recommendation is submitted, the Meeting of the Parties could either endorse the recommendation or take other, appropriate non-confrontational actions.

7. Secretariat

Secretariats provide support to member parties to implement an agreement. For the purposes of this instrument, the Secretariat could

- convene, arrange and service ordinary as well as any extraordinary sessions of the Meeting of the Parties;
- liaise with and facilitate cooperation between member parties and non-parties, and international and national bodies whose activities are directly or indirectly relevant to the conservation and sustainable use of marine biological diversity beyond national jurisdiction;
- assist the parties in implementation of the instrument;
- execute decisions addressed to it by the Meeting of the Parties;
- invite the attention of the Meeting of the Parties to any matter pertaining to the instrument; and
- provide information to the general public concerning the instrument and its objectives.

In particular, the Secretariat could consult with the Executive and Scientific Committees to prepare guidelines covering, *inter alia*, environmental impact assessments, area-based management tools, including marine protected areas, capacity-building and technology transfer, and emergency measures. In addition, the Secretariat could provide procedural assistance to the Compliance Committee to address issues of member party compliance.

List of Papers

Paper I: Introduction on Scope, Parameters and Feasibility

Paper II: Enhancing Cooperation and Coordination

Paper III: Options and Approaches for Access and Benefit-sharing

Paper IV: Governance Principles

Paper V: Understanding Area-based Management Tools and Marine Protected Areas

Paper VI: Options and Approaches for Establishing and Managing MPAs

Paper VII: Relation between Environmental Impact Assessments, Strategic Environmental Assessments and Marine Spatial Planning

Paper VIII: Options for Environmental Impact Assessment Elements

Paper IX: Technology Transfer and Capacity-building

Paper X: Existing Regulatory, Institutional and General Governance Gaps

Paper XI: Basic Ideas for a Possible Institutional Structure

Paper XII: International Procedures to Ensure Science-based Decision-making

Paper XIII: Compliance and Verification Mechanisms