



High Seas Alliance recommendations for Institutional Arrangements under the new international legally binding instrument

April 2018

The High Seas Alliance (HSA) recommends that the international legally binding instrument (ILBI) under the UN Convention on the Law of the Sea (UNCLOS) on the conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction (ABNJ), establishes a robust institutional framework that includes the following elements.

1. Conference of the Parties

The new ILBI should establish a decision-making body such as a CoP, to be convened every year with a Review Conference every five years. Functions of the global body should include the following.

- **Standard-setting, review and decision-making, including:**
 - establishing objectives, procedures, standards and/or guidelines, based on best available scientific information;
 - designating marine protected areas (MPAs), including marine reserves;
 - adopting, recommending and regularly reviewing and revising management measures for MPAs and other Area Based Management Tools (ABMTs);
 - adopting interim and emergency measures;
 - reviewing, assessing and ensuring effective implementation of global environmental impact assessment (EIA) and strategic environmental assessment (SEA) processes;
 - deciding whether and under what conditions an activity should proceed in ABNJ;
 - adopting measures to implement an access and benefit sharing regime for marine genetic resources (MGRs); and
 - adopting measures relating to capacity building and technology transfer.
- **Monitoring and review** functions, including assessing progress by States Parties and competent sectoral and regional bodies in implementing the agreement.
- **Ensuring compliance**, including through corrective actions based on the recommendations of the Compliance Committee.
- **Facilitating and promoting cooperation, coordination** and consistency among Parties, and competent sectoral and regional bodies, including by promoting integration of biodiversity considerations in their deliberations.

- Administering a global information repository such as a **clearing-house mechanism**.
- Adopting **amendments** to the instrument and its annexes.
- Designating **subsidiary bodies** necessary to achieve the objectives of the instrument.
- Adopting **programmes of work and budgets**.
- Overseeing the development of a **financial mechanism** to support the implementation of the objectives of the instrument.
- Other functions identified in the instrument.

2. Decision-making

1. Decisions at the CoP should be taken by majority voting, after all reasonable efforts to achieve consensus have failed.
2. Non-participation of dissenting Parties should not prevent the adoption of measures.

3. Scientific Committee

- The Scientific Committee should be composed of independent experts from different regions, including experts from existing scientific bodies and non-State nominated experts.
- The Scientific Committee should:
 - make recommendations to the CoP regarding the scientific aspects of MGRs and ABMTs, including MPAs, EIAs and capacity building and transfer of marine technology;
 - respond to scientific, technical, technological and methodological questions and requests from the CoP and its subsidiary bodies;
 - review proposals for MPAs, make recommendations to the CoP on the designation of MPAs and associated management measures; recommend emergency measures to protect a proposed area from an imminent threat; and conduct reviews of the effectiveness and ecological coherence of the MPA network in order to identify gaps and recommend amendments and/or areas that should be part of the network;
 - provide assistance as needed in preparing EIAs and other assessments required by the ILBI, including by developing and managing a pool of experts capable of conducting and reviewing EIAs and other assessments for States seeking assistance;
 - coordinate with the scientific bodies of regional and sectoral organizations as well as other expert scientific bodies;
 - establish ad-hoc working groups with specific tasks as needed; and
 - establish guidelines for EIAs; review EIAs and SEAs; provide recommendations on whether or not proposed projects should proceed and if so, what conditions are needed to prevent significant adverse effects; and carry out periodic and ex-post evaluations.
- The instrument may also need a Technical Committee, to provide technical advice and recommendations based on advice from the Scientific Committee.

4. Secretariat

A permanent Secretariat for the ILBI should be established to provide administrative and logistical support; support States Parties in implementing the ILBI; convene meetings of the CoP and subsidiary bodies; liaise with and facilitate cooperation between States Parties, non-Parties, international and national bodies, and non-governmental organizations.

5. Compliance Committee

A Compliance Committee should be established to: recommend cooperative measures for monitoring, control and surveillance, and enforcement; monitor compliance, identify non-compliant States Parties and non-Parties; recommend measures to facilitate implementation and compliance; and implement compliance functions relating to ABMTs, including MPAs, EIAs, capacity building and technology transfer and access and benefit sharing of MGRs.

6. Dispute settlement mechanism

A strong dispute settlement mechanism is a vital component of compliance and implementation and essential to effective implementation of the new instrument.

- The dispute settlement mechanism under the new instrument should use and build on existing procedures provided under Part XV of UNCLOS.
- Innovative dispute resolution procedures could also include fact-finding commissions¹ as well as accessible non-binding dispute resolution mechanisms.²
- The new Instrument should also allow for advisory opinions³ by the International Tribunal of the Law of the Sea (ITLOS).

7. Clearing-house mechanism

A clearing-house mechanism (C-HM) should be established to:

- provide a centralized information access point for the dissemination, sharing and coordination of knowledge (including traditional knowledge), data and information, and including access to evaluations and publications;
- support linkages and interoperability between existing C-HMs;

¹ Article 5 of Annex VIII, special expert panel (*i.e.*, article 29 of the Fish Stocks Agreement, to resolve technical disputes, and conciliation mechanisms included in Part XV in articles 284, 297 and 298 of UNCLOS).

² See also examples of recent dispute settlement facilitating governance and implementation: (i) The South Pacific RFMO (SPRFMO) Convention Article 17 allows a party to object to a proposed measure, followed by examination by a Review Panel. This procedure has been successfully used so that necessary measures are not delayed but the objecting party has an avenue for its objections; and (ii) The Espoo Convention's Implementation Committee and the Aarhus Committee's Compliance Committee include innovative, non-confrontational and non-binding review provisions whereby problems can be identified and resolved collaboratively. The Espoo Convention also allows for the possibility of an Inquiry Commission.

³ See <https://www.itlos.org/jurisdiction/advisory-proceedings>.

- facilitate international science cooperation, including through reinforcing and extending existing global monitoring networks;
- provide support to States Parties, including through a website for the agreement that provides information on best practices, experts and practitioners among States Parties and partners, and mechanisms for States Parties and partners to exchange information; and
- provide training through a global network of regional training centres.

To support these functions, a viable C-HM will require adequate funding and support.

8. Finance mechanism

1. A funding mechanism is essential to ensure adequate, predictable and sustainable funding for capacity building and transfer of relevant marine technology, and to support assessment, planning, management, research, and long-term monitoring in candidate MPAs and designated MPAs under the ILBI and other priority areas, such as ecologically or biologically significant marine areas (EBSAs).
2. A global trust fund with its own endowment and appropriate, independent management should be established, with funding provided from both assessed financial contributions and voluntary contributions, and potentially fees levied on commercial activities conducted in ABNJ. Innovative financing mechanisms, including public-private partnerships, could also be considered.
3. Priority access to the fund should be given to developing countries including LDCs and SIDs to assist them in meeting their commitments under the instrument, support scholarships and fellowships, training and other opportunities, support regional scientific and technological centers, and support the CH-M.
4. A Finance or Finance and Administration Committee may be necessary to administer the mechanism.

Through the United Nations, States from around the world are now entering into formal negotiations for a treaty to protect the biodiversity in areas beyond national jurisdiction – the high seas. As set out in UN Resolution 72/249, the Intergovernmental Conference will convene four meetings from September 2018 through early 2020.