

Marine Protected Areas Beyond Areas of National Jurisdiction: What's Mine is Mine and What You Think is Yours is also Mine

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The article analyses the progress and challenges related to the establishment of marine protected areas (MPAs), in particular beyond national jurisdiction, in light of relevant global goals. A number of myths related to MPAs are highlighted, as well as issues of a legal and institutional nature that have arisen recently as a result of proposals to establish MPAs beyond national jurisdiction. In particular, the article focuses on issues relating to the establishment of these MPAs as they relate to the on-going process of establishment of the outer limits of the continental shelf of coastal States pursuant to the United Nations Convention on the Law of the Sea.

INTRODUCTION

The year 2010 is a milestone in a number of respects. It is not only the International Year of Biodiversity; it also marks the beginning of the deadlines by which States, at the World Summit on Sustainable Development (WSSD) in 2002, agreed to achieve a number of actions to move forward the protection and preservation of the marine environment and achieve sustainable fisheries. In particular, they had then set out to: encourage the application, by 2010, of the ecosystem approach; develop and facilitate the use of diverse approaches and tools, including the establishment of marine protected areas (MPAs) and representative networks of such areas by 2012 and time/area closures for the protection of nursery grounds and periods; and maintain or restore fish stocks to levels that can produce the maximum sustainable yield with the aim of achieving these goals for depleted stocks not later than 2015. They had also set out to establish, by 2004, a regular process under the United Nations for global reporting and assessment of the state of the marine environment, including socio-economic aspects (the Regular Process).¹

So where do we stand in 2010? Some progress has been made towards the application of ecosystem

approaches.² But, by and large, much remains to be done in respect of the other commitments and it is likely that the WSSD ambitions will not bear much fruit by their intended deadlines. For example, in spite of increasing steps being taken by the General Assembly of the United Nations, the Food and Agriculture Organization of the United Nations (FAO), regional fisheries management organizations (RFMOs) and at the national level, several fish stocks continue to be in a poor state. The FAO estimated that, in 2007, more than half of the stocks that it monitored were fully exploited and 28% were either overexploited, depleted or recovering from depletion, with no possibilities in the short or medium term of further expansion and with an increased risk of further declines.³ While the first phase, the 'assessment of assessments', for the establishment of the Regular Process, is completed, the Regular Process is not operational yet and the General Assembly is currently debating its modalities.⁴ As regards MPAs, as at April 2010, only 0.7% of the world's oceans were

² For recent developments, see the following reports of the United Nations Secretary-General: *Oceans and the Law of the Sea: Report of the Secretary-General* (A/64/66, 13 March 2009), paras 141–150; *Oceans and the Law of the Sea: Report of the Secretary-General, Addendum* (A/64/66/Add.1, 25 November 2009), paras 217–224; and *Oceans and the Law of the Sea: Report of the Secretary-General, Addendum* (A/64/66/Add.2, 19 October 2009), paras 117–127, available at <http://www.un.org/Depts/los/general_assembly/general_assembly_reports.htm>.

³ FAO, *The State of World Fisheries and Aquaculture 2008* (FAO, 2009); and the *Report of the Secretary-General submitted to the resumed Review Conference in accordance with Paragraph 32 of General Assembly Resolution 63/112 to Assist it in Discharging its Mandate under Article 36, Paragraph 2, of the Agreement* (A/CONF.210/2010/1, 4 January 2010), available at <http://www.un.org/Depts/los/convention_agreements/review_conf_fish_stocks.htm>.

⁴ *Oceans and the Law of the Sea* (General Assembly Resolution 64/71, 4 December 2009), paras 173–183; *Report on the Work of the Ad Hoc Working Group of the Whole to Recommend a Course of Action to the General Assembly on the Regular Process for Global Reporting and Assessment of the State of the Marine Environment, including Socio-Economic Aspects – Letter dated 10 September 2009 from the Co-Chairs of the Ad Hoc Working Group of the Whole addressed to the President of the General Assembly* (A/64/347, 11 September 2009), available at <<http://www.un.org/Depts/los/index.htm>>.

¹ See Johannesburg Plan of Implementation (UN Doc. A/CONF.199/20, 4 September 2002), Resolution II, Annex.

under protection, most of which were under national jurisdiction.⁵

Why has progress been limited? Besides limited capacity or political will at both the national and international levels and difficulties in international negotiations to identify concrete guidance to assist achieving those goals, a number of institutional and legal challenges exist. This article focuses on the progress and challenges related to MPAs, in particular MPAs beyond national jurisdiction. As will be shown, in spite of the global goals for establishing MPAs and networks of MPAs that will be briefly described first, a number of myths related to MPAs, in particular beyond national jurisdiction, exist, which may slow progress towards their establishment. Issues of a legal and institutional nature that have arisen recently as a result of proposals to establish MPAs beyond national jurisdiction, in the context of regional organizations, will also be considered. In particular, issues relating to the establishment of MPAs beyond national jurisdiction as they relate to the on-going process of establishment of the outer limits of the continental shelf of coastal States will be analysed.

GLOBAL GOALS ON MPAS

An increasing number of international instruments, including conventions, political declarations and plans of action, are calling for the use of area-based management tools, in particular MPAs, for the protection and preservation of the marine environment and its biodiversity and the sustainable use of its resources.

WSSD PLAN OF IMPLEMENTATION

In 2002, at the WSSD, States committed to:

Develop and facilitate the use of diverse approaches and tools, including the ecosystem approach, the elimination of destructive fishing practices, the establishment of marine protected areas consistent with international law and based on scientific information, including representative networks by 2012 and time/area closures for the protection of nursery grounds and periods, proper coastal land use and watershed planning and the integration of marine and coastal areas management into key sectors.⁶

Particularly relevant to the establishment of MPAs in areas beyond national jurisdiction is the concept of networks of MPAs. A representative network refers to the

selection and protection, within MPAs, of each significant ecosystem type or species in a country or region, as well as the full range of interconnected habitat types that comprise ecosystems, independently of their jurisdictional location. Representative networks of MPAs are considered to offer the best form of protection for specific species, ecosystems and habitats.

RESOLUTIONS OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS

The General Assembly is the global political forum in which all matters pertaining to the oceans and seas, including the implementation of the United Nations Convention on the Law of the Sea (UNCLOS),⁷ are discussed on an annual basis. In relation to the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction, the Assembly has been assisted by the *Ad Hoc* Open-Ended Informal Working Group that it established in 2004.⁸

The Assembly has adopted a number of resolutions on oceans and the law of the sea and on sustainable fisheries, which contain recommendations that are relevant to MPAs. In 2002, it called upon States to develop national, regional and international programmes for halting the loss of marine biodiversity, in particular fragile ecosystems, and endorsed the WSSD recommendation.⁹ This latter call was reiterated in 2003 and 2004.¹⁰ Since 2005, the Assembly has consistently reaffirmed:

the need for States to continue their efforts to develop and facilitate the use of diverse approaches and tools for conserving and managing vulnerable marine ecosystems, including the possible establishment of marine protected areas, consistent with international law and based on the best scientific information available, and the development of representative networks of any such marine protected areas by 2012.¹¹

⁷ United Nations Convention on the Law of the Sea (Montego Bay, 10 December 1982).

⁸ The Working Group was established by paragraph 73 of General Assembly Resolution 59/24: Oceans and the Law of the Sea (General Assembly Resolution 59/24, 17 November 2004), and has met three times to date.

⁹ Oceans and the Law of the Sea (General Assembly Resolution 57/141, 12 December 2002), paras 51 and 53.

¹⁰ Oceans and the Law of the Sea (General Assembly Resolution 58/240, 23 December 2003), para. 54; Oceans and the Law of the Sea (General Assembly Resolution 59/24, 17 November 2004), para. 72.

¹¹ Oceans and the Law of the Sea (General Assembly Resolution 60/30, 29 November 2005); Oceans and the Law of the Sea (General Assembly Resolution 61/222, December 2006); Oceans and the Law of the Sea (General Assembly Resolution 62/215, 22 December 2007); Oceans and the Law of the Sea (General Assembly Resolution 63/111, 5 December 2008); and General Assembly Resolution 64/71, n. 4 above.

⁵ See World Database on Marine Protected Areas (WDPA, undated), available at <<http://www.wdpa-marine.org/#/countries/about>>. See also *Report on Implementation of the Programme of Work on Marine and Coastal Biological Diversity, Note by the Executive Secretary* (UNEP/CBD/SBSTTA/14/INF/2, 14 April 2010).

⁶ See Johannesburg Plan of Implementation, n. 1 above, para. 32(b).

In its 2009 resolution, the Assembly also called upon States to strengthen, in a manner consistent with international law, in particular UNCLOS, the conservation and management of marine biodiversity and ecosystems and national policies in relation to MPAs. It encouraged States to foster progress in the implementation of the 2012 target for the establishment of MPAs, including representative networks, and called upon them to consider further options to identify and protect ecologically or biologically significant areas, consistent with international law and on the basis of the best available scientific information.¹²

In the context of its resolutions on sustainable fisheries, the General Assembly has urged States, relevant international organizations and RFMOs to consider measures, including seasonal and area closures and zones reserved for selected fisheries, particularly artisanal fisheries, in order to address by-catch, catch by lost or abandoned gear, fish discards and post-harvest losses, including juvenile fish.¹³

In 2005, the General Assembly further addressed the issue of MPAs in relation to fishing activities by encouraging progress to establish criteria on the objectives and management of MPAs for fisheries purposes and, in this regard, welcomed the proposed work of the FAO to develop technical guidelines, in accordance with UNCLOS, on the design, implementation and testing of MPAs for such purposes.¹⁴ In 2006, in respect of areas where vulnerable marine ecosystems, including seamounts, hydrothermal vents and cold water corals, are

known to occur or are likely to occur, the General Assembly adopted a number of measures, including a call upon RFMOs with a competence to regulate bottom fisheries, for their respective regulatory areas, to close such areas to bottom fishing and ensure that such activities do not proceed unless conservation and management measures have been established to prevent significant adverse impacts on vulnerable marine ecosystems. Flag States were also called upon to adopt and implement such measures.¹⁵ The review of implementation of those measures was undertaken by the Assembly at its sixty-fourth session in 2009. As a result of the review, the Assembly noted with concern that, despite the progress made, the urgent actions it had called for had not been sufficiently implemented in all cases and that further actions, in accordance with the precautionary approach, ecosystem approaches and international law, were needed.¹⁶

DECISIONS OF THE CONFERENCE OF THE PARTIES TO THE CONVENTION ON BIOLOGICAL DIVERSITY

The Conference of the Parties (COP) to the Convention on Biological Diversity (CBD)¹⁷ adopted the target of developing marine and coastal protected areas (MCPAs), including representative networks, by the year 2012, thereby echoing the commitment made at the WSSD. In Decision VII/5, Appendix III,¹⁸ it agreed that an effective marine and coastal biodiversity management framework would comprise sustainable management practices and actions to protect biodiversity over the wider marine and coastal environment, including the establishment of integrated networks of MCPAs consisting of MCPAs where threats are managed and where extractive uses may be allowed; and representative MCPAs where extractive uses are excluded, and other significant human pressures are removed or minimized. Decision VII/5 also emphasizes that the success of both types of MPAs is related to sustainable management practices over the wider marine and coastal environment.

At its eighth meeting, the COP adopted Decision VIII/24 on protected areas, which includes options for cooperation for establishing MPAs in areas beyond

¹² General Assembly Resolution 64/71, *ibid.*, paras 152 and 156.

¹³ Sustainable Fisheries, including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and related instruments (General Assembly Resolution 58/14, 24 November 2003); Sustainable Fisheries, including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and related instruments (General Assembly Resolution 59/25, 17 November 2004); and Sustainable Fisheries, including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and related instruments (General Assembly Resolution 60/31, 29 November 2005).

¹⁴ See General Assembly Resolution 60/31, *ibid.*, para. 75. This call was reiterated in Sustainable Fisheries, including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and related instruments (General Assembly Resolution 61/105, 8 December 2006); and Sustainable Fisheries, including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and related instruments (General Assembly Resolution 62/177, 18 December 2007).

¹⁵ The full range of measures adopted is contained in General Assembly Resolution 61/105, *ibid.*, paras 83–90.

¹⁶ See Sustainable Fisheries, including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and related instruments (General Assembly Resolution 64/72, 4 December 2009), paras 118–122.

¹⁷ Convention on Biological Diversity (Rio de Janeiro, 5 June 1992).

¹⁸ Decision VII/5, Marine and Coastal Biological Diversity (13 April 2004).

national jurisdiction.¹⁹ The COP also adopted outcome-oriented targets for the year 2010 on marine and coastal biodiversity (Decision VIII/15, Annex IV).²⁰ Two of these targets are particularly relevant to MPAs: at least 10% of each of the world's marine and coastal ecological regions should be effectively conserved; particularly vulnerable marine and coastal habitats and ecosystems, such as tropical and cold water coral reefs, seamounts, hydrothermal vents, mangroves, seagrass, spawning grounds and other vulnerable areas in marine habitats should be effectively protected.

At its ninth meeting the COP, in Decision IX/20 on marine and coastal biodiversity,²¹ also adopted scientific criteria for identifying ecologically or biologically significant marine areas in need of protection, and scientific guidance for designing representative networks of MPAs. Work has also been ongoing, in the context of the CBD and other organizations such as the Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization (UNESCO), towards the development of a biogeographic classification system for deep and open ocean areas. The biogeographic classification system would provide a basis to implement an ecosystem approach in deep and open ocean areas, including through marine spatial planning and the establishment of representative networks of MPAs.²²

MARINE PROTECTED AREAS: MYTHS AND REALITIES

This section outlines some of the misconceptions related to the establishment of MPAs, in particular in relation to objectives and management types of MPAs.

MPAs can be complex to develop and manage as the marine environment is generally much less understood than the terrestrial environment. However, one of the main challenges to making progress in the establishment of MPAs, in spite of the global goals and commitment towards establishing such areas, has been the misguided perception associated with the term 'protected areas'. The term often gives the impression that the areas under protection have to be closed to users and commercial activities, and carry heavy restrictions on local uses. In the marine realm, the fear is also that such areas would restrict navigation and passage, among other things. In recent years, the term 'area-based management tools' has been used at the General

Assembly as a more broadly encompassing term which covers, among other items, MPAs, fisheries closures, migratory corridors, sanctuaries, special areas and particularly sensitive sea areas for shipping purposes, impact and preservation reference zones in the context of mining, and biosphere reserves.

MPAs can be established for a number of different long-term conservation objectives and provide a tool to manage both human uses and user conflicts in a geographically defined area. Such objectives include protection of ecologically or biologically important areas and habitats; conservation and management of marine species and organisms; preservation of important geological or geomorphological processes; protection of beautiful seascapes, cultural or historic sites; and environmental monitoring as part of scientific studies. To achieve these objectives, MPAs range from areas of strict protection, where no activities are allowed, to areas zoned for multiple uses, where activities are simply restricted or their extent managed.²³

Over the years, several definitions of MPAs have been proposed in various contexts, including the CBD,²⁴ the FAO,²⁵ and the International Union for the Conservation of Nature (IUCN),²⁶ but all have common elements. As those definitions show, the extent and fluidity of the marine system means that attempts to protect an area by 'fencing' it off and closing it to all activities generally do not succeed. MPAs do not necessarily entail that people should be excluded from the area that is protected. On the contrary, MPAs are only effective if all

²³ Ibid.

²⁴ The following definition was elaborated by the *Ad Hoc* Technical Expert Group on Marine and Coastal Protected Areas: '... any defined area within or adjacent to the marine environment, together with its overlying waters and associated flora, fauna, and historical and cultural features, which has been reserved by legislation or other effective means, including custom, with the effect that its marine and/or coastal biodiversity enjoys a higher level of protection than its surroundings'; see *Report of the Ad Hoc Technical Expert Group on Marine and Coastal Protected Areas, Note by the Executive Secretary* (UNEP/CBD/SBSTTA/8/INF/7, 13 February 2003).

²⁵ The FAO, *Fisheries Glossary* includes the following definition: '... a protected marine intertidal or subtidal area, within territorial waters, exclusive economic zones or in the high seas, set aside by law or other effective means, together with its overlying water and associated flora, fauna, historical and cultural features. It provides degrees of preservation and protection for important marine biodiversity and resources; a particular habitat (e.g. a mangrove or a reef) or species, or sub-population (e.g. spawners or juveniles) depending on the degree of use permitted. The use of MPAs (for scientific, educational, recreational, extractive and other purposes, including fishing) is strictly regulated and could be prohibited': FAO, *Fisheries Glossary* (FAO, undated), available at <<http://www.fao.org/fi/glossary>>.

²⁶ The IUCN defines a protected area as: '... a clearly defined geographical space, recognized, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values'. The definition applies to all types of protected areas (terrestrial, freshwater, coastal and marine). See IUCN, *World Commission on Protected Areas* (IUCN, undated), available at <http://www.iucn.org/about/union/commissions/wcpa/wcpa_overview/>.

¹⁹ Decision VIII/24, Protected Areas (15 June 2006).

²⁰ Decision VIII/15, Framework for Monitoring Implementation of the Achievement of the 2010 Target and Integration of Targets into the Thematic Programmes of Work (15 June 2006).

²¹ Decision IX/20, Marine and Coastal Biodiversity (9 October 2008).

²² See *Oceans and the Law of the sea: Report of the Secretary-General, Addendum* (A/64/66/Add.2), n. 2 above.

the users of the area have a stake in their success and understand the value in placing some form of restriction in order to ensure the long-term sustainability of the area. This is particularly important as regards MPAs beyond national jurisdiction where a multitude of activities are taking place, from shipping to fishing and marine scientific research, but where enforcement remains difficult and the good will of various stakeholders is the main guarantee of success. Also, for an MPA to achieve its intended objectives, it must be borne in mind that what happens in the seabed should not be isolated from what happens in the water column, and *vice versa*, because activities in either will most likely impact the flora and fauna of the other.

MPAS BEYOND AREAS OF NATIONAL JURISDICTION: A CHALLENGE TO THE LAW OF THE SEA?

In spite of the global goals on MPAs, a number of sensitive issues have delayed progress in establishing MPAs beyond areas of national jurisdiction. In particular, some view MPAs beyond areas of national jurisdiction as impeding the freedom of the high seas (see below), as embedded in UNCLOS, in particular the freedom of navigation and fishing. In addition, MPAs beyond areas of national jurisdiction need to be established in the context of the particular legal status of these areas. This includes specific interests, rights and competence of various entities, including the interests of the international community, the rights of coastal States over their extended continental shelf, the competence of global organizations such as the International Seabed Authority (ISA), and those of regional environmental and fisheries organizations with competence beyond areas of national jurisdiction.

In light of the above, it is important to consider the international legal framework relevant for the establishment and management of MPAs, before considering the issues raised by current proposals for the establishment of such MPAs beyond areas of national jurisdiction.

THE LEGAL FRAMEWORK FOR MPAS

United Nations Convention on the Law of the Sea UNCLOS provides the global legal framework for all activities in the oceans and seas, including the establishment of MPAs.

Jurisdictional Framework Established by UNCLOS UNCLOS divides marine space into a number of zones, measured from baselines extending along the coast.

The rights and obligations of States, in these areas, are more or less extensive. The zones under national sovereignty or jurisdiction include the internal waters,²⁷ the archipelagic waters,²⁸ the territorial sea,²⁹ the contiguous zone,³⁰ the exclusive economic zone (EEZ)³¹ and the continental shelf.

For the purpose of this article, the regime for the continental shelf (Part VI of UNCLOS) deserves particular attention. The continental shelf comprises the seabed and subsoil of the submarine areas that extend beyond the territorial sea throughout the natural prolongation of the land territory to the outer edge of the continental margin or to a distance of 200 nautical miles from the baselines where the outer edge of the continental margin does not extend up to that distance.³²

The coastal State has sovereign rights for the purpose of exploring the continental shelf and exploiting its natural resources, which include the mineral and other non-living resources of the seabed and subsoil, together with living organisms belonging to sedentary species.³³ These rights are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State. These rights do not depend on occupation, effective or notional, or on any express proclamation (Article 77).

On its continental shelf, the coastal State also has rights and jurisdiction with regard to artificial islands, installations and structures (Article 80); drilling (Article 81); submarine cables and pipelines (Article 79); and marine scientific research (Article 246). Part VI of UNCLOS does not explicitly refer to the jurisdiction of the coastal State for the protection and preservation of the marine environment or to its right to take measures for the conservation and sustainable use of sedentary species. However, such rights can be inferred from other provisions, which refer to the right and duty of the coastal State to control pollution from activities that impact the continental shelf (for example, Articles 79, 80, 208, 210 and 216).

The rights and jurisdiction of the coastal State outlined above also apply to the extended portion of the continental shelf. This is an important point to keep in mind as we further consider current proposals to establish

²⁷ See UNCLOS, n. 7 above, Articles 2 and 8.

²⁸ *Ibid.*, Part IV.

²⁹ *Ibid.*, Part II.

³⁰ *Ibid.*, Part II.

³¹ *Ibid.*, Part V.

³² Article 76 of UNCLOS provides the detailed rules on how to establish the outer limits of the continental shelf beyond 200 nautical miles: *ibid.*

³³ *Ibid.*, Article 77 of UNCLOS provides a definition of the term 'sedentary species'.

MPAs beyond areas of national jurisdiction. Pursuant to UNCLOS, information on the limits of the continental shelf beyond 200 nautical miles have to be submitted by the coastal State to the Commission on the Limits of the Continental Shelf (CLCS), which makes recommendations to the coastal States. The limits of the shelf established by a coastal State on the basis of these recommendations are final and binding (Article 76).

To date, the CLCS has received 51 submissions, of which 27 are partial submissions (that is they only cover part of the expected extended continental shelf of the submitting State). Forty-five States have also submitted preliminary information in anticipation of a future submission. The CLCS has adopted recommendations in respect of 11 submissions.³⁴ Until the CLCS has completed its work, the limits of the respective surface area of the seabed and its subsoil beyond and within areas of national jurisdiction will remain uncertain, thereby possibly creating a complex jurisdictional situation for the establishment of any MPA beyond areas of national jurisdiction, as will be shown below.

Areas beyond the limits of national jurisdiction include the high seas and 'the Area'. The high seas (Part VII of UNCLOS) are all parts of the sea that are not included in the EEZ, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State. The high seas are open to all States and freedom of the high seas includes freedom of navigation, overflight, fishing, marine scientific research, construction of artificial islands, and laying of cables and pipelines. This freedom should be exercised with due regard for the interests of other States in their respective exercise of the freedom of the high seas (Article 87) and alongside other obligations under UNCLOS, in particular the general obligation for States to protect and preserve the marine environment, as described below. The Area (Part XI of UNCLOS) is the seabed and ocean floor and subsoil thereof beyond the limits of the continental shelf. The Area and its resources are the 'common heritage of mankind' (Article 136), on behalf of which the ISA acts in managing the Area and administering the exploration and exploitation of its resources.

Protection of the Marine Environment and Conservation of Marine Life Besides its jurisdictional framework, UNCLOS provides the legal framework for the protection and preservation of the marine environment and for the conservation and management of marine living resources.

Part XII of UNCLOS, in particular Article 192, establishes a general obligation for States to protect and

preserve the marine environment. States must take, individually or jointly, all necessary measures to prevent, reduce and control pollution from any source. Among the measures that States are required to take are those necessary to protect and preserve rare or fragile ecosystems, as well as the habitat of depleted, threatened or endangered species and other forms of marine life (Article 194(5)). Together, these provisions form the basis for the implementation of MPAs.

States are also required to cooperate on a global basis and, as appropriate, on a regional basis, directly or through competent international organizations, in formulating and elaborating international rules, standards and recommended practices and procedures consistent with UNCLOS, for the protection and preservation of the marine environment, taking into account characteristic regional features (Article 197).

With respect to the Area, Article 145 of UNCLOS requires the ISA to establish rules, regulations and procedures to ensure the effective protection of the marine environment, the protection and conservation of the natural resources of the Area and the prevention of damage to its flora and fauna from harmful effects that may arise from activities in the Area, defined as activities of exploration for, and exploitation of, the resources of the Area (Article 1). The Council of the ISA must disapprove areas for exploitation in cases where substantial evidence indicates the risk of serious harm to the marine environment (Article 162(2)(x)). In addition, the establishment of impact reference zones and preservation reference zones is required under the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area as well as in the draft regulations on prospecting and exploration for polymetallic sulphides and for cobalt-rich crusts in order to assess the effect of each contractor's activities on the Area's marine environment.³⁵

UNCLOS also requires States to conserve and manage marine living resources within and beyond areas of national jurisdiction. On the high seas, UNCLOS requires States to cooperate, including in relation to straddling fish stocks and highly migratory fish stocks (Article 118). Conservation measures must be designed, based on the best scientific evidence available, to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, and to maintain and restore populations of associated or dependent species (Article 119). These measures

³⁴ See UN Division for Ocean Affairs and the Law of the Sea, *Commission on the Limits of the Continental Shelf* (CLCS, undated), available at <http://www.un.org/Depts/los/clcs_new/clcs_home.htm>.

³⁵ Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area, in *Mining Code* (International Seabed Authority, undated), available at <<http://www.isa.org.jm/files/documents/EN/Regs/MiningCode.pdf>>; and see Draft Regulations on Prospecting and Exploration for Polymetallic Sulphides in the Area (ISBA/16/A/L.5, 6 May 2010); and Draft Regulations on Prospecting and Exploration for Cobalt-Rich Ferromanganese Crusts in the Area (ISBA/16/C/5, 25 February 2010).

include the establishment of closed areas or areas where gear restrictions apply.

Other Instruments In addition to the overall global legal framework for marine environmental protection, including the implementation of MPAs, provided by UNCLOS, the CBD requires, in its Article 8, that each party establish a system of protected areas or areas where special measures need to be taken to conserve biological diversity and develop, where necessary, guidelines for the selection, establishment and management of protected areas or areas where special measures need to be taken to conserve biological diversity.

A number of sectoral instruments that provide for special protection or management measures for species or areas also specifically foresee the development of area-based management tools, including MPAs. These include the Convention on Migratory Species of Wild Fauna and Flora (migration corridors),³⁶ the Convention on Wetlands of International Importance, especially as Waterfowl Habitat,³⁷ the Convention Concerning the Protection of the World Cultural and Natural Heritage,³⁸ UNESCO's Man and the Biosphere Programme (biosphere reserves),³⁹ the 1995 UN Fish Stocks Agreement,⁴⁰ instruments of the FAO (fisheries closures and MPAs), the International Convention on the Regulation of Whaling (sanctuaries),⁴¹ and instruments of the International Maritime Organization (IMO) (special areas and particularly sensitive sea areas).⁴²

At the regional level, the geographical scope of a number of regional seas conventions extends beyond areas of national jurisdiction, such as the Convention for the Protection of the Mediterranean Sea Against

Pollution,⁴³ the Convention for the Protection of the Natural Resources and Environment of the South Pacific Region⁴⁴ and the Convention for the Protection of the Marine Environment of the North-East Atlantic.⁴⁵ Those instruments either provide for the establishment of MPAs or such establishment has been foreseen by subsequent protocols and decisions of their parties. In some cases, it is stated that the establishment of protected areas shall not affect the rights of other parties or third States under international law.⁴⁶ Measures such as fisheries closures are also foreseen in the decisions of a number of RFMOs.

CURRENT PROPOSALS FOR MPAS IN AREAS BEYOND NATIONAL JURISDICTION

To date, most MPAs are within areas of national jurisdiction. Approximately 43% of all MPAs lie in the tropics (between 30°N and 30°S), with most of the remainder in the northern hemisphere. Intermediate latitudes (20°N to 50°N) and the southern temperate and polar latitudes are the least well represented. Estimates show that coral reefs and mangroves seem to be the best protected ecosystems, with an estimated 15–22% of the world's reefs protected, 17% of mangroves, 10% of seagrasses and 2% of seamounts.⁴⁷ Deep sea and open ocean habitats are generally under-represented in MPAs.⁴⁸

At the regional level, a number of initiatives have been developed to create and link national MPAs with a view to implementing ecosystem approaches and progress towards networks of MPAs. These include the Micronesia Challenge,⁴⁹ the Eastern Tropical Seascape Project,⁵⁰ the Caribbean Challenge⁵¹ and the Coral Triangle Initiative.⁵² The General Assembly has acknowledged those initiatives, and reaffirmed the need for

³⁶ Convention on the Conservation of Migratory Species of Wild Animals (Bonn, 23 June 1979).

³⁷ Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar, 2 February 1971).

³⁸ Convention for the Protection of the World Cultural and Natural Heritage (Paris, 23 November 1972).

³⁹ See UNESCO, Natural Sciences: UNESCO's Man and the Biosphere Programme (MAB) (UNESCO, undated), available at <http://portal.unesco.org/science/en/ev.php-URL_ID=6393&URL_DO=DO_TOPIC&URL_SECTION=201.html>.

⁴⁰ Agreement for the Implementation of the Provisions of the United Nations Convention of the Law of the Sea of 10 December 1982, Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (New York, 4 December 1995).

⁴¹ International Convention on the Regulation of Whaling (Washington, 2 December 1946).

⁴² International Convention for the Prevention of Pollution from Ships (London, 2 November 1973) (MARPOL), as modified by the Protocol of 1978 relating thereto (IMO document TSPP/CONF/11 and 11/Add1, 16 February 1978); and Revised Guidelines for the Identification and Designation of Particularly Sensitive Sea Areas (Resolution A.982(24), 1 December 2005).

⁴³ Convention for the Protection of the Mediterranean Sea Against Pollution (Barcelona, 16 February 1976).

⁴⁴ Convention for the Protection of the Natural Resources and Environment of the South Pacific Region (Noumea, 24 November 1986).

⁴⁵ Convention for the Protection of the Marine Environment of the North-East Atlantic (Paris, 22 September 1992) (OSPAR).

⁴⁶ See *Oceans and the Law of the Sea: Report of the Secretary-General, Addendum (A/62/66/Add.2)*, n. 2 above.

⁴⁷ See *Note by the Executive Secretary*, n. 5 above.

⁴⁸ Ibid.

⁴⁹ The participating States and entities are the Federated States of Micronesia, Marshall Islands, Palau, Guam, and Commonwealth of the Northern Marianas Islands.

⁵⁰ The participating States are Colombia, Costa Rica, Ecuador and Panama.

⁵¹ The participating States are the Bahamas, Jamaica, Dominican Republic, Grenada, St Vincent and the Grenadines, St Lucia, Antigua and Barbuda and St Kitts and Nevis.

⁵² The participating States are Indonesia, Philippines, Malaysia, Timor Leste, Papua New Guinea and Solomon Islands.

further international cooperation, coordination and collaboration in support of such initiatives.⁵³

However, few MPAs still exist beyond areas of national jurisdiction even if work is underway to identify potential sites and develop the scientific background to support site selection. Existing MPAs, which are either fully or partially beyond areas of national jurisdiction, include the Pelagos Sanctuary for Mediterranean Marine Mammals; the Indian Ocean and Southern Ocean Sanctuaries established by the International Whaling Commission; the Antarctic and Southern Ocean (south of latitude 60 degrees south) and Mediterranean special areas designated by the IMO; and measures taken by some RFMOs, such as the Northwest Atlantic Fisheries Organization, the North East Atlantic Fisheries Commission (NEAFC), and the Commission for the Conservation of Antarctic Marine Living Resources. The need to protect areas that fall beyond national jurisdiction is also contemplated as part of some Large Marine Ecosystems (LME), including the Agulhas and Somali Current Large Marine Ecosystems project, where the need to manage the LME in its entirety has been recognized by the project.⁵⁴

Work on MPAs beyond areas of national jurisdiction has advanced mostly in the North-East Atlantic in the context of the Convention for the Protection of the Marine Environment of the North-East Atlantic⁵⁵ and its Commission (OSPAR). In 2003, OSPAR decided on the establishment of an ecologically coherent network of well-managed MPAs in the region by the end of 2010.⁵⁶

In particular, following a proposal from a number of parties to the OSPAR Convention,⁵⁷ OSPAR agreed in 2008 to take forward work to establish an MPA for the Charlie Gibbs Fracture Zone (CGFZ MPA) on the Mid-Atlantic Ridge, presumably located beyond areas of national jurisdiction. The proposed MPA would include 3500 metre high peaks, east–west trenches down to 4500 metres allowing species to migrate or disperse from one side of the Atlantic Ocean to the other, and the sub-polar front where cool Labrador Current water meets warmer water, resulting in higher biomass from plankton up the food chain. The area is also rich in baleen, toothed whales, sharks, seabirds, cold-water coral reefs, coral gardens, deepwater sponge fields, sea-

mount ecosystems, and vulnerable stocks of long-lived, slow-growing, deep-water bony fish such as orange roughly and deepwater sharks.⁵⁸ At its meeting in 2009, OSPAR concluded that there was substantial political commitment towards the establishment of the MPA, welcomed the recommendation by NEAFC in April 2009 to close a large portion of the proposed CGFZ MPA to bottom fisheries until 2015, and agreed that more thought should be given to aligning the proposed MPA with the new NEAFC closures. The meeting also acknowledged that there was a need for further work on the development of measures by OSPAR, as well as by other competent authorities, especially the ISA and the IMO, to build a framework for prolonged cooperation on the protection of the MPA.

Most significantly in relation to the law of the sea, the meeting recognized that the submission by Iceland on the outer limits of its continental shelf to the CLCS raised issues which needed to be further addressed in the process of establishing the MPA, since that submission encompassed an area of the seabed also included in the proposed CGFZ MPA. In that regard, a way forward towards the establishment of the MPA needed to be found that would be without prejudice to the recommendations of the CLCS on the Icelandic submission.⁵⁹ Parties were requested to undertake national consultations on the implications of a number of options for establishing the MPA, with a view to reaching agreement at the 2010 OSPAR Ministerial Meeting. These options are as follows:

- establish an MPA covering the seabed and superjacent waters in the part of the proposed area where the seabed is not subject to the submission by Iceland (an option seen by several parties as more pragmatic and realistic, while others consider it unacceptable as it would miss key aspects of the CGFZ MPA rationale, by leaving out some key features);⁶⁰
- establish an MPA covering the seabed and superjacent waters of the whole area agreed as a potential MPA by OSPAR in 2008 (an option favoured by a minority of States);
- establish an MPA covering the seabed which is not subject to the submission by Iceland and the waters superjacent to the whole MPA (an option that several States consider as raising complex legal issues⁶¹).⁶²

⁵³ See General Assembly Resolution 64/71, n. 4 above, para. 157.

⁵⁴ See *Note by the Executive Secretary*, n. 5 above.

⁵⁵ The parties are Belgium, Denmark, Finland, France, Germany, Iceland, Ireland, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, the UK and the European Community.

⁵⁶ OSPAR Recommendation 2003/3 on a Network of Marine Protected Areas (OSPAR 03/17/1-E, 2003), Annex 9, available at <<http://www.ospar.org/documents/dbase/decrecs/recommendations/or03-03e.doc>>.

⁵⁷ These are France, Germany, the Netherlands and Portugal. The proposal originated from the World Wildlife Fund.

⁵⁸ *Summary Record of the Meeting of the OSPAR Commission, Brest, 23–27 June 2008* (OSPAR 08/24/1-E, 2008).

⁵⁹ *Summary Record of the Meeting of the OSPAR Commission, Brussels, 22–26 June 2009* (OSPAR 09/22/1-E, 2009).

⁶⁰ *Report of the Meeting of the Ad Hoc Working Group on the Charlie Gibbs Fracture Zone, London, 15 February 2010* (WG-Charlie 10/6/1-E, 15 February 2010).

⁶¹ *Ibid.*

⁶² 'Legal and Political Way Forward towards Establishing the Charlie Gibbs Fracture Zone – MPA', printed in *Summary Record*, n. 60 above, Annex 7.

With regard to these options, the OSPAR Working Group on Marine Protected Areas, Species and Habitats has preliminarily concluded, at its 2009 meeting, that the management issues would largely be the same regardless of which of the three legal and institutional options was pursued.⁶³

At the February 2010 meeting of the OSPAR *Ad Hoc* Working Group on the Charlie Gibbs Fracture Zone, a fourth option was put forward as a means of resolving the differing views. The option foresees that the area of the proposed MPA would remain whole; in 2010 only the southern part of the proposed MPA, excluding the area subject to the Icelandic submission to the CLCS and the high seas above it, would be designated as an MPA ('Charlie Gibbs South'); management measures would be developed and adopted for Charlie Gibbs South in 2010; with respect to the waters superjacent to the area subject to the Icelandic submission ('Charlie Gibbs North'), a roadmap would be established for working through the legal issues surrounding the application of management measures, and the parties would make a political commitment at the 2010 Ministerial Meeting to apply due diligence when exercising any possible sovereign rights, and to engage actively with parties conducting activities in this area to ensure they took the same approach; and the Danish reservation in relation to Greenland and the Faroe Islands would continue to apply, subject to any modification or withdrawal by Denmark.⁶⁴ That meeting also concluded that the CLCS submissions had changed the political (and, in the view of several participants, also the legal) situation from that considered by OSPAR in 2008, and that the establishment of the CGFZ MPA would be without prejudice to the outcome of the CLCS submissions and would be subject to review, if appropriate, once the outer limits of the extended continental shelf were established in accordance with Article 76 and Annex II of UNCLOS.⁶⁵

Additional proposals for MPAs in areas beyond national jurisdiction are also being considered by OSPAR. With the CGFZ MPA, these sites represent 4–5% of the OSPAR maritime area. The vulnerability of those sites was recognized, in view of the potential for significant loss of ecological value and slow recovery rates. As in the case of the CGFZ MPA, some of these areas, which were thought to be located beyond national jurisdiction, are actually located on areas of the extended continental shelves of Iceland and Portugal, as included in their submissions to the CLCS on 29 April and 11 May 2009, respectively.⁶⁶

The OSPAR meeting in 2009 concluded, among others, that the focus towards the Ministerial Meeting in 2010 should be on finalizing the proposal to establish the CGFZ MPA and that only one of the other areas, the Milne Seamount complex, lay completely outside any area covered by a submission to the CLCS.⁶⁷ It therefore approved, in principle, the Milne Seamount complex as a potential MPA.⁶⁸ It also agreed that the five other areas (Reykjanes Ridge, Southern Mid-Atlantic Ridge (north of the Azores), Altair Seamount, Antialtair Seamount, Josephine Seamount) should be approved, in principle, as potential components of the OSPAR network of MPAs.⁶⁹

A meeting of 'key stakeholders'⁷⁰ was convened under the auspices of OSPAR in March 2010 to consider the implications of submissions by some OSPAR parties to the CLCS that overlap with the proposed boundaries of the proposed CGFZ MPA and other proposed MPAs beyond areas of national jurisdiction; clarify the potential scope of management measures to be suggested for the proposed CGFZ MPA and other potential MPAs beyond areas of national jurisdiction; and prepare a working document outlining OSPAR's view on options for the management of the proposed CGFZ MPA and other potential MPAs beyond areas of national jurisdiction.⁷¹ The report of the meeting was not available at the time of writing this article but, in the context of that meeting, Portuguese authorities announced the establishment of four MPAs on the extended continental shelf of the Azores and mainland Portugal, on the southern Mid-Atlantic Ridge, Altair Seamount, Antialtair Seamount and Josephine Bank. These sites cover 120,000 km² rich in vulnerable deepwater communities, including cold-water coral reefs, sponge fields, coral gardens, and deep-sea bony fish, sharks and rays.⁷²

org/Depts/los/clcs_new/submissions_files/submission_isl_27_2009.htm>; and CLCS, *Submissions to the Commission: Submission by the Portuguese Republic* (CLCS, undated), available at <http://www.un.org/Depts/los/clcs_new/submissions_files/submission_prt_44_2009.htm>.

⁶⁷ See *Summary Record*, n. 60 above.

⁶⁸ Denmark placed a study reservation on this proposal.

⁶⁹ Denmark and Iceland placed a study reservation on these proposals.

⁷⁰ The meeting included representatives from the OSPAR parties that are sponsoring the CGFZ MPA proposal and those that have made submissions to the CLCS; members of the Intersessional Correspondence Group on MPAs; and the OSPAR Secretariat. In addition, invitations were sent to representatives from competent authorities, including NEAFC, ISA, IMO, the regional (fisheries) advisory councils and other concerned organizations. It must be noted that the Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs of the United Nations, which is the Secretariat of UNCLOS, was not considered by OSPAR as either a 'competent authority' or a 'concerned organization'.

⁷¹ Terms of Reference for an Informal Meeting with Key Stakeholders on Options for the Management of the proposed Charlie-Gibbs Marine Protected Area, printed in *Summary Record*, n. 60 above, Annex 9.

⁷² WWF, *Portugal Shows the Way on High Seas Protected Areas* (WWF, 24 March 2010), available at <<http://www.panda.org/?uNewsID=191604>>.

⁶³ See *Report of the Meeting of the Ad Hoc Working Group*, n. 61 above.

⁶⁴ See nn. 54 and 55 above.

⁶⁵ Ibid.

⁶⁶ See CLCS, *Submissions to the Commission: Submission by the Republic of Iceland* (CLCS, undated), available at <http://www.un.org/Depts/los/clcs_new/submissions_files/submission_isl_27_2009.htm>.

The proposals to establish MPAs beyond areas of national jurisdiction in the North-East Atlantic raise a number of issues in light of the ongoing work of the CLCS. By and large, these proposals and the way they are going to be addressed illustrate some of the tensions that formed part of the negotiating package that ultimately led to UNCLOS. In particular, it puts to the test the commitment of its parties towards the protection and preservation of the marine environment as called for under Part XII, while seeking to affirm their rights over large portions of the ocean floor. It also highlights the necessity of upholding a fundamental premise of the law of the sea, that of cooperation among its parties, either directly or through competent organizations, in the achievement of its objectives.

As noted by the OSPAR Commission itself in 2009, all waters superjacent to the seabed of the proposed CGFZ MPA are high seas. However, part of the seabed within the proposed CGFZ MPA is covered by the Icelandic submission to the CLCS, and most of the seabed approved in principle for other MPA sites is included in the Portuguese submission to the CLCS. Furthermore, the parts of seabed which are not covered by CLCS submissions nevertheless form part of the Area,⁷³ where the ISA has competence to take measures for the protection of the marine environment from activities of exploration for and exploitation of the mineral resources of the Area. In addition, the high seas status of the water column superjacent to the extended shelf involves rights of third States that cannot be overlooked.

The process for the establishment of the limits of the extended continental shelf draws attention to the dichotomy that exists between the legal boundaries established in the oceans and the biological and ecosystem boundaries of the marine realm which may require protective measures that straddle the legal boundaries. Most of all, the process raises a number of questions of an institutional nature, both horizontally (respective rights and competence of the coastal State, the ISA and any other competent sectoral organization to take measures for the protection of the environment of the seabed and ocean floor and subsoil thereof within and beyond national jurisdiction) and vertically (respective rights of the coastal State and competent organizations to take measures for the protection of the environment of the high seas and the continental shelf). The obligation of States to take the necessary measures to protect and preserve the marine environment, including biodiversity, both within and beyond areas of national jurisdiction is well established under UNCLOS and other instruments as outlined above. The sovereign rights of the coastal States to its continental shelf are also well established as noted above. Problems arise, however,

when the authority and sovereignty to take such measures over a specific ecosystem is possibly within the competence of several entities as a result of its location either entirely or partially within national jurisdiction. This is exactly the problem faced in the context of OSPAR in light of several coastal States' submissions to the CLCS.

Until the CLCS has made its recommendations and a State has established the limits of its outer continental shelf, and notwithstanding the inherent right of coastal States over its continental shelf, the protection of vulnerable marine ecosystems will require great cooperation among coastal States and competent international and regional organizations. This is a point that the Group of Jurists/Linguists of the OSPAR Commission failed to take into account in its otherwise comprehensive advice on the competence of OSPAR to designate MPAs in areas beyond national jurisdiction,⁷⁴ and a point that Iceland, Denmark and Portugal legitimately raised.⁷⁵

In light of the tremendous workload of the CLCS,⁷⁶ and based on the current queuing system whereby submissions are considered by the CLCS in the order in which they are received, it is unlikely that the relevant submissions will be considered before many years. The question is then, what can be done, in the meantime, to ensure that an area deemed particularly sensitive and requiring protective measures is adequately protected, keeping in mind that UNCLOS also recognizes that the exercise of the rights of the coastal State over its continental shelf must not infringe or result in any unjustifiable interference with navigation, fishing and other rights and freedoms of other States as provided for in the convention (Article 78)?

The announcement by Portugal of the four MPAs, as well as its previous establishment of the Rainbow vent field as an MPA, indicate that Portugal, while its submission to the CLCS is still pending, has all the intentions to exercise its rights and jurisdiction over its extended continental shelf, including to protect the marine environment and biodiversity. The relevant international bodies (e.g. OSPAR, NEAFC, IMO) will adopt conservation measures for marine biodiversity in the high seas overlaying the shelf.⁷⁷ This cooperative arrangement provides an interesting solution to the

⁷³ See 'Legal and Political Way Forward towards Establishing the Charlie Gibbs Fracture Zone – MPA', n. 63 above.

⁷⁴ OSPAR's Regulatory Regime for establishing Marine Protected Areas (MPAs) in Areas Beyond National Jurisdiction (ABNJ) of the OSPAR Maritime Area, printed in *Summary Record*, n. 60 above, Annex 6.

⁷⁵ See n. 67 above.

⁷⁶ See *Issues related to the Workload of the Commission on the Limits of the Continental Shelf – Note by the Secretariat* (SPLOS/157, 30 April 2007, and SPLOS/208, 5 April 2010), available at <http://www.un.org/Depts/los/meeting_states_parties/SPLOS_documents.htm>.

⁷⁷ See WWF, n. 73 above.

complex jurisdictional overlap for ecosystems found on the extended continental shelf beyond 200 nautical miles and the overlying high seas. This arrangement is one of the most realistic and pragmatic from a legal point of view. It remains to be seen how that cooperation is going to be effectuated and work to its intended benefit, i.e. the protection of a vulnerable ecosystem that does not know legal boundaries.

CONCLUSION

Establishing and implementing effective MPAs that achieve their intended goals and contribute to the implementation of international commitments relating to the protection of the marine environment and its resources requires an understanding of the relevant international and regional legal and policy framework. In particular, MPAs beyond national jurisdiction need to be established in the context of the particular legal and institutional framework for those areas.

Recent work aimed at establishing MPAs which include ecosystems located on the continental shelf beyond 200 nautical miles shows that cooperative arrangements between the relevant coastal States and international bodies will be crucial to overcome the complex jurisdictional and management situation of those ecosystems. Particularly interesting will be to see how the coastal States concerned will exercise their sovereign rights and jurisdiction on the continental shelf, and balance those rights with their obligation to protect and preserve the marine environment.

In this context, the myths briefly outlined in this article about MPAs beyond areas of national jurisdiction should be balanced with the understanding that MPAs can be established for a number of different objectives and management goals and can be used as tools to balance user rights with conservation objectives. In this light, MPAs could be seen as a useful tool to enhance coordination among the measures of relevant management bodies (RFMOs, ISA, IMO, etc.) for specific geographical areas in need of protection, while also supporting compatible conservation objectives. Such

an approach is in line with the recommendations agreed upon by the third meeting of the General Assembly *Ad Hoc* Open-Ended Informal Working Group, which emphasized the need for a coordinated approach to the measures discussed and adopted in the context of competent organizations.⁷⁸ In particular, with respect to area-based management tools, including MPAs, the Working Group agreed that States should work through competent international organizations towards the development of a common methodology for the identification and selection of marine areas that may benefit from protection, based on existing criteria. In the future, developing a common methodology for the identification of conservation objectives, taking into account the complex jurisdictional situation of certain ecosystems, such as that of the Charlie Gibbs Fracture Zone, could also be applied.

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The views expressed herein are those of the authors and do not necessarily reflect the views of the United Nations.

⁷⁸ Letter dated 16 March 2010 from the Co-Chairpersons of the *Ad Hoc* Open-Ended Informal Working Group to the President of the General Assembly (A/65/68, 17 March 2010).