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Department of Political Science

MARIPOLDATA Reading Group

Monitoring, Control and Surveillance

16.12.2020

Guest Speaker: Klaudija Cremers, Research Fellow International Marine Policy at the Institute for Sustainable Development and International Relations (IDDRI), Paris. Klaudija Cremers has worked on the topic of monitoring, control and surveillance (MCS) on the high seas for IDDRI on a number of publications such as in the recent STRONG High Seas [report](#) and with a geographic focus on the [South-East Pacific](#). She has also contributed to a number of [webinars](#) on this topic. In the MARIPOLDATA Reading Group on December 16th, she presented IDDRI's recent article "Strengthening monitoring, control and surveillance of human activities in marine areas beyond national jurisdiction: Challenges and opportunities for an international legally binding instrument" (Cremers, Wright & Rochette, 2020).

Context:

Successful efforts to conserve, manage and protect marine species and habitats depend upon the ability to monitor and control the oceans. Monitoring, control and surveillance mechanisms which safeguard its implementation and enforcement will also be a crucial part of the upcoming BBNJ treaty. Current MCS efforts in areas beyond national jurisdictions (ABNJ) suffer from a number of specific challenges such as the fragmented governance framework and the reliance on flag states to ensure control over vessels (Cremers, Wright & Rochette, 2020). The difficulties to effectively control the high seas is particularly visible in the fisheries sector where illegal, unreported and unregulated (IUU) fishing has led to overfishing of target stocks and declines in biodiversity (Dunn et al., 2018). This has caused international organizations such as Regional Fisheries Management Organizations (RFMOs) to increasingly use newly available technologies based on satellite vessel tracking systems and cooperate with industry, academia and civil society organizations (Dunn et al., 2018). The new BBNJ treaty should create strong MCS instruments by reinforcing MCS principles in the general section of the treaty as well as for each package item and by giving a strong controlling role to the clearing-house mechanism that is to be established (Cremers, Wright & Rochette, 2020). It can also greatly benefit from making full use of electronic monitoring tools as well as government–industry–civil society partnerships (Dunn et al., 2018). The two readings for this session approached the topic of MCS in ABNJ from a policy and legal (Cremers, Wright & Rochette, 2020) as well as from a technical (Dunn et al., 2018) perspective.

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Readings for this session:

1. Cremers, K., et al. (2020). "Strengthening monitoring, control and surveillance of human activities in marine areas beyond national jurisdiction: Challenges and opportunities for an international legally binding instrument." *Marine Policy*: 103976.
2. Dunn, D. C., et al. (2018). "Empowering high seas governance with satellite vessel tracking data." *Fish and Fisheries* 19(4): 729-739.

The following discussion centered around a number of key issues that were identified as crucial for a successful MCS strategy for the BBNJ treaty:

1. Addressing current gaps in ocean governance:

The BBNJ treaty can play an overarching role in future ocean governance. Nevertheless, it is bound by Article 4 of its current draft text that requires it not to “undermine” any existing institutions. If other international organizations compete with the mandate of the BBNJ treaty in future, the specific wording that regulates its relations to other instrument will be of key importance. It was noted that it makes a significant difference whether it says that the BBNJ “shall or may” not undermine existing instruments. While the BBNJ treaty may set overarching MCS targets and principles, IDDRI consciously does not envision that it becomes a “global police” or a “super-authority” for the High Seas, given that this idea is unfeasible under the current interests of states and the international system. It was highlighted that any MCS regulation must set easy and feasible targets for reporting that all developing countries can achieve as well, so that reporting does not become an unreasonable burden to state parties. Further, the BBNJ treaty needs to make sure that states cannot capitalize from legal inconsistencies between different instruments. For example, do we observe that fishing nations try to limit the competences of the BBNJ treaty as much as possible to retain the authority in their respective RFMO. On the other hand, RFMOs have often been criticized for being able to regulate only the activity of their limited members, although, in principle any nation that wants to fish in an RFMO is required to become a member. The BBNJ treaty should try include as many state parties as possible to overcome the limited and overlapping membership issues.

2. Building a strong and competent data sharing platform

The clearing-house mechanism (CHM) of the BBNJ treaty will likely be the main data-sharing platform that facilitates MCS. Therefore, participants identified the design and the competences of the CHM as crucial factors to ensure compliance with the provisions of the BBNJ treaty. It was noted however, that there is still no clarity in the treaty draft text to what exactly the CHM should be as it remains a major undecided issue. One question is, how the institution will be organized and different existing organizations such as the International Oceanographic Commission (IOC) but also the UN secretariat for the Oceans and the Law of the Sea (DOALOS) remain on the table as a possible host to the CHM.

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Another question is, in how far will it remain an inactive database / homepage or will it become an active institution? IDDRI and other participants agreed that an active body could strengthen MCS in ABNJ more significantly than a mere website that serves as a database. Particularly, given the experience that there are already many different initiatives for data sharing that experience a rather oblivious existence online, a pro-active body seems preferable. It also remains open in relation to which package items the CHM will function. Currently the provisions on area based management tools (ABMTs) and marine protected areas (MPAs), although requiring a strong overseeing body, remain excluded from the functioning of the CHM which was lamented by the participants.

3. Enabling global MCS through capacity building and broad cooperation

In order to make full use of the amplitude of tools and data-sources for MCS, member states and implementing organizations and bodies will need to facilitate broad and global capacity building efforts. There are different types of capacities that the BBNJ treaty could strengthen: financial, institutional and human. Particular focus should be put on the human dimension as it is not only important to collect relevant data but also to build the capacity to analyze it. Further, it is crucial that capacity building measures increase the trust between relevant organizations and actors. One important tool to increase this capacity are local or regional networking events where organizations and states share experiences and build mutual trust.

It is also important that the BBNJ treaty facilitates the transfer of technology between countries and organizations such as RFMOs to make the full use of existing electronic monitoring systems as automatic identification system data (AIS). In order to ensure this, the BBNJ treaty should welcome the increasing establishment of government–industry–civil society partnerships to ensure critically important technology transfer and capacity building. Civil society plays an increasingly important role for MCS activities and many civil society partnerships have developed tools that utilize AIS data to increase transparency of fishing activity worldwide (e.g. Global Fishing Watch, FISH-I-Africa and Project Eyes on the Seas).

In conclusion, the discussion left a few suggestions, to improve the MCS capacities of the BBNJ treaty:

- Establish overarching MCS principles
- Creating a strong and competent CHM that can take autonomous action to require states to provide MCS data
- Flexibility to make full use of technical tools for MCS as well as facilitating diverse cooperation between various stakeholders to strengthen MCS capacities globally

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