

## BBNJ IGC-1 Highlights: Tuesday 4 September 2018

The first session of the Intergovernmental Conference (IGC) on an international legally binding instrument (ILBI) under the UN Convention on the Law of the Sea (UNCLOS) on the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction (BBNJ) opened with general statements, focusing on:

- key features of the ILBI;
- priority issues to be addressed in the ILBI; and
- the process towards developing a zero draft.

### Opening

IGC President Rena Lee (Singapore) stressed that despite “the enormity of tasks, complexity of issues, and variety of views held,” the IGC represents an opportunity to “make a difference on how we manage the oceans while we still can.” She recommended working openly, transparently, and inclusively. Miguel de Serpa Soares, Secretary-General of the IGC, Under-Secretary-General for Legal Affairs and UN Legal Counsel, stated, on behalf of UN Secretary-General António Guterres, that “the path to this day has been long but fruitful”; emphasized the collegial atmosphere during the IGC organizational meeting; and stressed that the spirit of cooperation must prevail in recognition of the vital importance of the conservation and sustainable use of BBNJ.

**Administrative Matters:** Delegates approved the provisional agenda (A/CONF.232/2018/L.3) without amendments, and the programme of work (A/CONF.232/2018/L.4), after IGC President Lee proposed discussing the elements of the package in informal working groups on: MGRs, facilitated by Janine Coye-Felson, Belize; area-based management tools (ABMTs), facilitated by Alice Revell, New Zealand; environmental impact assessments (EIAs), facilitated by René Lefebvre, the Netherlands; and capacity building and technology transfer, facilitated by Olai Uludong, Palau.

### General Statements

**Negotiating Process:** Egypt, for the G-77/CHINA, welcomed, with others, the President’s aid to discussions (A/CONF.232/2018/3), and recommended “switching gears” to elaborate the ILBI text and addressing the way forward to IGC-2, including the preparation of a zero draft. Acknowledging divergent views, Algeria, on behalf of the AFRICAN GROUP, proposed that negotiations be based on a zero draft starting from IGC-2, clarifying that elements contained in the draft should not be considered as representing consensus. Maldives, for the Alliance of Small Islands States (AOSIS), called for a clear way forward. Bangladesh, on behalf of Least Developed Countries (LDCs), recommended circulating a zero draft well before IGC-2. TOGO recommended circulating a zero draft, addressing

all the elements of the package, to allow for consultations before IGC-2. Palau, for Pacific Small Islands Developing States (P-SIDS), cautioned against backsliding from the PrepCom, and suggested engaging respectfully in negotiations geared towards, but not constrained by, reaching consensus.

THAILAND indicated that the President’s aid to discussions will guide the preparation and the structure of a zero draft. AUSTRALIA highlighted that IGC-1 should pave the way to a zero draft. SEYCHELLES suggested focusing on areas of convergence first. ECUADOR considered the President’s aid to discussions a good springboard for the next two years. MOROCCO welcomed inclusive consultations prior to the IGC and the President’s aid to discussions, which facilitates focus on the essential issues towards developing a zero draft. The FSM recommended differentiating discussions on practical aspects of the treaty text and issues that will be discussed by the ILBI’s political or scientific organ. VENEZUELA opined that neither participation in, nor the outcomes of, the IGC can affect UNCLOS non-parties’ legal status.

The European Union (EU) favored a stepwise approach, building on the options identified at the PrepCom to reach a consensus agreement by 2020, by clarifying the ILBI’s key functions and regulatory options, before drafting treaty language. He stressed that not all issues in the President’s aid to discussions should be addressed in detail in the ILBI. CANADA prioritized completing the transition to actual negotiation mode at IGC-1, setting the stage for producing a zero draft. MONACO stressed the need to “begin to sketch out” the ILBI outline. ICELAND prioritized: deciding on a global, regional or hybrid approach, favoring a regional one that results in an economically efficient and pragmatic tool based on existing structures; and ensuring universal application for the ILBI, considering consensus “the ultimate goal.”

The RUSSIAN FEDERATION lamented that “we are still far from consensus” on crucial elements of the ILBI, noting that despite its mandate, the PrepCom did not fully attempt to seek consensus solutions. He stressed the need to define conceptual issues before preparing a zero draft, such as a global, regional or hybrid approach, suggesting focus on existing bodies and instruments.

**ILBI:** The EU emphasized that the ILBI should: operationalize and strengthen UNCLOS rights, duties, and obligations; complement and strengthen cooperation among existing organizations and instruments, respecting their mandates and not duplicating their work; build on mutually supportive global and regional approaches; and enhance marine scientific research (MSR), capacity building, and knowledge dissemination. Paraguay, for Land-Locked Developing Countries (LLDCs), prioritized: improving access to areas beyond national jurisdiction (ABNJ) and participation for

LLDCs; establishing a just and equitable benefit-sharing system; and recognizing the special needs of developing countries, especially LLDCs, with regard to capacity building and technology transfer (CB&TT). MONACO highlighted the need to: take into account long-term effects of human activities on BBNJ; respect UNCLOS provisions; and complement existing instruments.

P-SIDS called for developing an ambitious, equitable, forward-looking, and effective ILBI. She prioritized financing, compliance, and enforcement, as well as SIDS' special case, traditional knowledge, disproportionate burden, and adjacency. Barbados, for the Caribbean Community (CARICOM), recommended that the ILBI should: aim for near-universal participation, expressing commitment to also address the concerns of states that will not be in a position to ratify; and allow for scientific and technological advances. ARGENTINA cautioned against limiting the ILBI to calling for coordination and complementarity between existing regional organizations with limited membership. CHILE highlighted the challenge to strike a balance between the ILBI and existing instruments, closing legal gaps in certain areas.

AOSIS emphasized the need for an inclusive, universal ILBI with global support. SEYCHELLES underscored: ABMTs, including MPAs and marine spatial planning (MSP), for the conservation and sustainable use of BBNJ; SIDS' special case; access and benefit-sharing (ABS) from MGRs through regional and international cooperation; and obligations and guidelines for EIAs in the ILBI. PAPUA NEW GUINEA pointed to challenges such as climate change and marine pollution, and to the need for cooperation. Underscoring the common heritage of humankind (CHM) principle for mineral and living resources, TUVVALU suggested including provisions on improving global coordination, cooperation, participation, and compliance; and considered capacity building and benefit-sharing as fundamental elements of the ILBI. FIJI looked forward to discussing the scope and developing the ILBI against the backdrop of existing UNCLOS provisions.

CANADA noted the need for an effective and practical regime including: a workable approach for benefit-sharing from MGRs, while respecting existing rights and obligations; a "right formula" for effective action at the global level on ABMTs, while taking advantage of the expertise, and respecting the mandate, of other entities; adding value and coherence to existing efforts on EIAs; and the need to be sensitive to developing countries' special situation through CB&TT. SINGAPORE underscored the need to strike a balance between all the interests in ABNJ and to complement other international mechanisms. AUSTRALIA favored an ambitious and universal ILBI, building upon UNCLOS, to "give life" to the collective obligation of environmental protection, recommending coherence with the existing legal architecture. NORWAY supported a more integrated approach to managing ABNJ by making better use of existing institutions and cross-sectoral cooperation, underscoring the importance of a benefit-sharing mechanism for MGRs and the opportunity to improve access to technology. NEW ZEALAND called for "filling in the gaps" by harnessing the work of existing organizations, creating a clear legal regime for MGRs, facilitating further research, ensuring equitable benefit-sharing, managing environmental impacts, and establishing multisectoral ABMTs for effective protection and restoration. The REPUBLIC OF KOREA underscored that an ILBI should: ensure free access to MGRs of ABNJ according to high seas freedoms and pragmatic benefit-sharing arrangements, without the need to address the CHM principle; respect existing rights and obligations when considering ABMTs; minimize adverse impacts on ABNJ, without imposing undue restraints on activities; and provide for voluntary CB&TT.

The PHILIPPINES underscored the need to: fill gaps in UNCLOS; develop a rule-based approach for ocean management, including sustainable management of BBNJ and equitable benefit-sharing according to the CHM principle; respect the rights of coastal states and territorial integrity; give equal attention to all the elements of the 2011 package; and ensure technology transfer. VENEZUELA stressed that the ILBI can also provide for dispute resolution through other means than those established under UNCLOS.

IRAN proposed that the ILBI should: take into account inter-and intra-generational equity; avoid overlap with existing instruments; and not apply to fisheries. Emphasizing the need to complement, and not replace, UNCLOS, MAURITIUS referred to ecosystem restoration based on best available science, and enhanced cooperation among and between states and intergovernmental organizations. URUGUAY underscored: respect for the balance reflected in UNCLOS; funding for technology transfer and access to marine resources; and avoidance of duplication of efforts with existing organizations.

COSTA RICA highlighted: the lack of governance oversight under UNCLOS; gaps pertaining to cross-sectoral mechanisms; and the need for a robust legal framework that closes governance gaps. PERU noted that the ILBI will contribute to a global economic order and the interests and needs of humankind, especially developing nations, without affecting UNCLOS non-parties' legal status. CHINA underlined that the ILBI should: supplement UNCLOS and not depart from it, including states' rights to navigation, research and fishing; and place equal emphasis on conservation and sustainable use for present and future generations, accommodating the need for future development.

The HOLY SEE highlighted: the need for a long-term strategy and broad scope for the ILBI to also include future commercial activities in ABNJ; a responsibility-based perspective; the need for conservation measures that may restrict existing rights; cooperative research and access to funding; the need to ensure cooperation and prevent environmental harm from access for MSR and shipping, and full regulation of other uses; and due diligence obligations to prevent, not only mitigate, risks.

**CHM:** The AFRICAN GROUP called for a frank and open-minded dialogue on the CHM principle. BRAZIL noted that all countries should access and use MGRs, which should be considered part of CHM, in a fair and equitable manner. ARGENTINA considered the current status quo, offering "unfettered access to MGRs only to a handful of countries," unacceptable, and prioritized the CHM regime and an equitable and transparent benefit-sharing mechanism, CB&TT, and guarantees for a functioning financing and coordination mechanism.

THAILAND suggested: applying the CHM principle to ABS for MGRs in the Area and in the high seas, as well as to high seas fisheries, whether used as commodity or for bioprospecting. VIET NAM recommended that the ILBI must not limit UNCLOS rights and obligations, underscoring that BBNJ should be considered as CHM with equitable benefit-sharing.

### *In the Corridors*

At the long-awaited opening of the Intergovernmental Conference, a sense of urgency was palpable in the crowded meeting room. "We really hope, actually expect, that IGC-1 will not play out as PrepCom-5," stated a veteran, wondering whether the numerous coordination meetings and capacity-building workshops, held around the world since PrepCom-4, have served to advance respective negotiating positions. "We will have to mandate the development of a zero draft by the end of IGC-1," offered another participant, who added that, "it wouldn't be a true IGC if we didn't start working on a negotiating text by IGC-2."