

## **BBNJ IGC-1 Highlights: Friday, 7 September 2018**

The informal working group on capacity building and technology transfer (CB&TT) concluded its work in the morning. The informal working group on area-based management tools (ABMTs) focused on:

- objectives;
- process; and
- relationship with other instruments.

### **Informal Working Group on CB&TT**

**General Provisions:** The G-77/CHINA supported establishing a trust fund for benefit-sharing. AOSIS stressed that needs-based and country-driven capacity building should be applied across the ILBI. P-SIDS underscored inter- and intra-generational equity, duty to collaborate, information-sharing, transparency, and accountability. The EU highlighted UNCLOS Article 266 (promoting technology development and transfer), calling for a general provision setting the objectives of CB&TT in line with the overall international legally binding instrument (ILBI) objectives, as well as taking into account developing countries' needs. CANADA supported linking CB&TT to the needs of states, good governance and transparency. CHINA underscored the principles of pertinence, effectiveness, equality, voluntariness, win-win cooperation, protection of legitimate rights and interests, including intellectual property rights, and preferential treatment for developing countries.

**Legal Nature:** AOSIS called for a binding mechanism, including mandatory and non-mandatory CB&TT provisions. TOGO sought clarifications from delegations that argued for a non-binding list of CB&TT modalities and against the establishment of a capacity building funding mechanism. GUINEA favored a mandatory and regularly updated list, with specific needs identified upon states' requests. FIJI proposed referring to CB&TT "requirements," instead of "requests."

**Definitions:** The G-77/CHINA and the EU drew attention to the definition of marine technology included in the Intergovernmental Oceanographic Commission (IOC) Guidelines. AOSIS also pointed to UNCLOS, UNFCCC, the International Seabed Authority (ISA), and the Nagoya Protocol. Noting that technologies can evolve over time, the EU emphasized that the term "marine technology" is extensively used in UNCLOS without being defined. IRAQ called for a definition of biodiversity. The PHILIPPINES favored drawing definitions from the CBD and IOC. The AFRICAN GROUP pointed to the need to define CB&TT in the future. CANADA cautioned against defining too many terms.

**Institutional Arrangements:** P-SIDS emphasized: a global decision-making body to follow up on implementation and progress, as well as a scientific body, highlighting existing regional committees. MAURITIUS noted the IOC's existing contribution to capacity building. CANADA supported making use of existing

mechanisms. NORWAY noted the need for an ILBI secretariat, with UNDOALOS serving that role; and called for views from recipients of capacity building on proposals concerning the IOC's role.

The PHILIPPINES suggested drawing from global institutions, and being guided by transparency and efficiency. NEPAL proposed assigning additional responsibility to the ISA to support CB&TT for BBNJ. LDCs considered that the ISA has demonstrated support for capacity building. IUCN proposed a high seas biodiversity fund to support the ILBI's implementation.

**Clearinghouse:** SWITZERLAND supported a central clearinghouse. The G-77/CHINA called for a central repository for baseline data, including online compilations of best practices and environmental impact assessment (EIA) reports, and requests for CB&TT on a case-by-case basis. The PHILIPPINES supported a network model fostering cooperation and collaboration with other organizations.

### **Informal Working Group on ABMTs**

**Objectives:** CARICOM favored objectives operationalizing the balance between the ILBI general objectives of conservation and sustainable use. MAURITIUS pointed to Aichi Target 11 (protected areas) and SDG 14, opposed by the RUSSIAN FEDERATION that opined that these apply within national jurisdiction. TONGA highlighted: ensuring food security, scientific reference areas, and aesthetic and wilderness values; and allowing for the creation of representative and well-connected networks of marine protected areas (MPAs).

Expressing concern about a global MPA network or fisheries regulation under the ILBI, the RUSSIAN FEDERATION favored including principles allowing competent organizations to take decisions on science-based, time-bound ABMTs. The FSM proposed distinguishing: prohibitions or restrictions for an indefinite time period, subject to regular reviews, for the preservation of areas providing ecosystem services to other areas open to sustainable use; and time-bound recovery for damaged marine areas, depending on speed of recovery.

VIET NAM called for: establishing ABMTs, including MPAs, to protect marine genetic resources (MGRs). COLOMBIA suggested: developing objectives for each ABMT to be reviewed periodically and adapted based on best available science, in addition to minimum common objectives aiming at conservation and sustainable use; and taking into account in all decisions oceanographic characteristics and species' migratory patterns.

COSTA RICA highlighted the protection, maintenance, and restoration of ocean health through a global MPA network, addressing vulnerability to climate change, ocean acidification, extractive and contaminating activities, and cumulative effects. NORWAY recommended specifying ABMTs objectives upon their establishment. FIJI favored specific objectives for ABMTs, MPAs, and marine spatial planning (MSP), in the ILBI or in a future annex.

IUCN emphasized that MPAs primarily focus on long-term biodiversity protection under a long-term strategic plan reflecting science-based priorities. GREENPEACE underlined that the ILBI should facilitate the SDG and CBD targets to protect at least 10% of marine and coastal waters by 2020. ICELAND cautioned against establishing MPAs at specific percentage levels as this may be “superficial and unscientific.” Stressing that fisheries should be considered in the ILBI, SENEGAL called for clearly defined protection levels regarding ABMTs, reflecting resilience to different stressors. FIJI stressed that ABMTs should provide targets to achieve objectives.

**Relationship with Other Instruments:** The G-77/CHINA proposed a “recognition process” for existing ABMTs, with parties identifying specific measures to meet conservation objectives, with ARGENTINA and MAURITIUS stressing that a global MPA network requires recognizing ABMTs adopted by other competent organizations. The PHILIPPINES drew attention to ongoing work on other effective area-based conservation measures (OECMs) under the CBD, emphasizing the need for a coordination mechanism. SEYCHELLES emphasized the ecologically or biologically significant marine areas (EBSAs) process under the CBD, highlighting technical guidelines on MSP from the IOC and the CBD. FIJI underscored that nothing should prevent regional or sectoral bodies from establishing ABMTs, including MPAs. CHINA recommended: striking a balance between conservation and sustainable use; including among ABMTs regulatory management methods, not only MPAs; and prioritizing existing approaches that already provide for conservation and sustainable use.

Noting that the ILBI should set out high-level objectives for ABMTs to measure progress, NEW ZEALAND suggested: stipulating the circumstances for an MPA to be considered a more appropriate tool than others; clearly defining roles and responsibilities; and establishing a participatory ABMT designation process, including cooperation and coordination. AUSTRALIA proposed promoting ABMT establishment by regional bodies, and greater coordination and coherence, including through global standards and principles. The EU noted that most competent bodies are working in silos, and recommended establishing criteria for coastal states to propose changes to MPA designation that undermines rights under UNCLOS. SWITZERLAND supported well connected and effectively managed MPAs, especially along critical migration routes.

The US noted that the ILBI could identify areas for additional protection, but regional and sectoral bodies should have primary authority for establishing, and enforcing compliance with, management measures. SINGAPORE and AUSTRALIA cautioned against creating a hierarchy, with the RUSSIAN FEDERATION questioning if a new body under the ILBI would be more competent than existing regional and sectoral organizations. NORWAY proposed automatic recognition of ABMTs established according to certain procedures and requirements. ICELAND suggested a coordinating role for regional seas organizations. AUSTRALIA proposed recognizing bodies competent to establish and monitor ABMTs on the basis of global principles and best-practice standards. CANADA recommended elaborating ABMT plans under the ILBI in consultation with relevant organizations for their consideration and implementation.

The HIGH SEAS ALLIANCE called for a strong consultation process with other global, regional, and sectoral bodies to increase effectiveness and fill regulatory gaps, as well as global recognition of existing MPAs that meet ILBI criteria.

**Compatibility:** AOSIS called for: supported by NEW ZEALAND, inclusive and transparent consultation with adjacent states, including indigenous peoples and local communities, and traditional knowledge holders, when determining boundaries, monitoring plans, and evaluating ABMTs; the possibility for scientific organizations and civil society to provide scientific information and input; and adjacent coastal states’ consent. P-SIDS called for mandatory consultation with adjacent coastal states, stressing that ABMTs in ABNJ should not be of a lower standard

than those within national jurisdiction. CHILE, with AOSIS, pointed to Fish Stocks Agreement Article 7 (compatible measures), and suggested a consultation and information-sharing mechanism for establishing MPAs, ensuring consideration of resilience, biodiversity restoration, and climate change effects.

INDONESIA called for assurances that practices in ABNJ will not adversely impact coastal states. JAPAN cautioned against undermining existing instruments, suggesting consultation and cooperation with competent organizations. MOROCCO, NORWAY, AUSTRALIA, and the EU supported consulting coastal states, with ICELAND also favoring information sharing, and consent for ABMTs in the water column above the extended continental shelf. AUSTRALIA, with the FSM, TOGO, CANADA, and PNG, suggested respecting the rights of coastal states on continental shelves.

CHINA emphasized UNCLOS due regard rule for addressing adjacent coastal states, and recommended, supported by URUGUAY, taking into account adjacent coastal states’ views. The RUSSIAN FEDERATION underscored the need for adjacent coastal states’ agreement, with MPA proponents bearing the burden of proving that coastal states’ rights would not be violated. SRI LANKA suggested: considering linkages between MPAs and EIAs without prejudicing coastal states’ rights and legitimate interests, or undermining extended continental shelf claims. CANADA proposed consulting and exchanging information with adjacent coastal states, recognizing their particular interest in decision-making.

**Process:** The G-77/CHINA favored: a global framework for designating, deciding on, implementing, and monitoring and reviewing ABMTs; grounds for identifying areas such as uniqueness, variability, fragility, sensitivity, and biological productivity and diversity; ecosystem and precautionary approaches, transparency, science-based, and accountability; and submitting state proposals for ABMTs designation to a global institution, for decisions based on the spatial boundaries of the areas, and appropriate conservation and management measures. MEXICO called for a clear process for applying sanctions in cases of non-compliance. VIET NAM recommended a designation process reflecting the status of MGRs as common heritage. AOSIS proposed an indicative set of international criteria for ABMT designation, to be agreed by the scientific/technical body and approved by a decision-making organ, with parties making proposals, also collectively.

The EU proposed combining regional and global elements, with: the scientific/technical body assessing proposals and reviewing effectiveness of MPAs; a time-bound consultation process taking into account existing procedures in competent organizations; and the conference of parties establishing MPAs with a proposed management plan. He suggested providing general criteria for areas requiring protection, and regularly reviewing MPAs that should not be time-limited, with regional and sectoral bodies proposing potential measures, and adjacent coastal states providing inputs and identifying circumstances for the decision-making body’s consideration.

### *In the Corridors*

A lively exchange of views emerged on ABMTs and their potential effects on existing frameworks, notably concerning fisheries, as well as the interests of adjacent coastal states. As the proposal of time-bound MPAs was reiterated in plenary, an experienced negotiator commented in the corridors: “we do have one example of a time-bound MPA, in the Ross Sea in Antarctica, but it was made clear during its negotiations that this should not set a precedent for other MPAs.” Another observer noted with interest a brand-new counterproposal that emerged in plenary comprising both permanent measures for conservation that would be subject to regular scientific reviews, and temporary tools to restore depleted ecosystems. “This may set our ship in a good direction,” commented another delegate, after attending a side-event showcasing the latest scientific findings and vivid visual representations of the inter-connectedness of the ocean for migratory species.