

BBNJ IGC-3 Highlights: Monday, 19 August 2019

The third 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 on Monday, 19 August 2019. Delegates heard general statements before beginning discussions on cross-cutting issues.

Opening

IGC President Rena Lee (Singapore) opened the session, calling on delegates to provide inputs to the draft text of an agreement under UNCLOS on BBNJ (A/CONF.232/2019/6) to ensure a fair, balanced, and effective outcome. Pointing to the Global Assessment Report on Biodiversity and Ecosystem Services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES), Lee noted that the IGC is “on the right track” to contribute to the transformative change necessary to reverse marine biodiversity loss. Concurring, Miguel de Serpa Soares, Secretary-General of the IGC, Under-Secretary-General for Legal Affairs and UN Legal Counsel, underlined that climate change and the ocean are inextricably linked, pointing to the upcoming special report of the Intergovernmental Panel on Climate Change (IPCC) on the ocean and cryosphere in a changing climate.

Adoption of the Agenda and Programme of Work

Delegates approved the agenda (A/CONF.232/2019/L.3) and the Programme of Work (A/CONF.232/2019/L.4). President Lee informed delegates that IGC-3 would proceed in a new working format, involving informal-informals open to states, specialized agencies, and a limited number of observers, intergovernmental organizations (IGOs), and non-governmental organizations (NGOs), but closed to press and the *Earth Negotiations Bulletin*.

General Exchange of Views

Many delegations welcomed the draft text as a solid basis for textual negotiations, thanking President Lee for its timely release and pointing to the work ahead to craft a balanced agreement.

Palestine, for the G-77/CHINA, emphasized the importance of capacity building and transfer of marine technology (CB&TT), and, with Algeria, for the AFRICAN GROUP, Malawi, for the LEAST DEVELOPED COUNTRIES (LDCs), THAILAND, and others, called for the common heritage of humankind principle to be reflected as an overarching principle and fully operationalized throughout the ILBI. Belize, for the ALLIANCE OF SMALL ISLAND STATES (AOSIS), and Fiji, for the PACIFIC SMALL ISLAND DEVELOPING STATES (P-SIDS), urged recognition of the special circumstances of SIDS. AOSIS and Uruguay, on behalf of LIKE-MINDED LATIN AMERICAN COUNTRIES, called for a compilation of textual proposals to be made available during the meeting. The AFRICAN GROUP noted the need for close collaboration with the International Seabed Authority (ISA). The

LDCs, with NIGERIA and CAMEROON, called for mechanisms for the transfer of marine technology and for monetary and in-kind benefit sharing.

The EU underlined the importance of intersessional work, and noted the need to reach agreement on key functions of the ILBI before settling questions on definitions, principles, institutional set-up, and funding.

Tuvalu, for the PACIFIC ISLANDS FORUM (PIF), and P-SIDS urged that the ILBI reflect, *inter alia*: increased ambition to reduce loss of marine biodiversity; the incorporation of indigenous peoples and local communities’ (IPLCs) traditional knowledge alongside best available science; and taking into account cumulative impacts.

Barbados, on behalf of the CARIBBEAN COMMUNITY (CARICOM), advocated for recognition of SIDS, identification of modalities and mechanisms for effective CB&TT, and balanced consideration of conservation and sustainable use of marine resources.

The LIKE-MINDED LATIN AMERICAN COUNTRIES, with the PHILIPPINES, the FEDERATED STATES OF MICRONESIA (FSM) and others, highlighted the importance of not undermining existing processes, instruments, and bodies.

COLOMBIA, on behalf of UNCLOS non-parties (El Salvador, Eritrea, Iran, and Turkey), and with the LIKE-MINDED LATIN AMERICAN COUNTRIES, reiterated that neither the participation of non-UNCLOS members in the BBNJ process nor the final outcome can affect their legal status, calling for a universal, sound, and internationally legitimate instrument. COSTA RICA called for a robust, holistic framework that closes normative gaps, stressing that the ILBI “must not lose sight of the need for conservation and sustainable use of unexplored resources.”

THAILAND highlighted: the need to focus on the establishment of both marine protected areas (MPAs) and an effective network of area-based management tools (ABMTs); the importance of public participation and consultation for environmental impact assessments (EIAs); and needs-based CB&TT. SUDAN underscored the importance of consistency with UNCLOS. INDONESIA emphasized the special circumstances of archipelagic states, calling, with FSM and the PHILIPPINES, for respecting the sovereign rights and jurisdiction of coastal states; and for an equitable, responsible benefit-sharing scheme.

ERITREA stressed that “developing countries are not destined to be eternally poor,” underlining the need to establish a strong benefit-sharing mechanism. ECUADOR noted that the balance between conservation and sustainable use is an irrevocable premise. SENEGAL expressed that the freedom of the high seas is insufficient for marine conservation. EGYPT emphasized the importance of CB&TT in a manner that meets the legitimate interests of developing countries. MYANMAR underscored that effective implementation rests on CB&TT.

ICELAND suggested investing the “necessary time” to iron out the fundamental differences that still remain, with the REPUBLIC OF KOREA calling for working together to develop a widely accepted agreement. SINGAPORE and NORWAY emphasized the need to develop a concrete treaty with near universal, if not

universal, participation. The RUSSIAN FEDERATION emphasized the quality of work over the self-imposed 2020 deadline, stressing the importance of consensus to ensure universal participation. INDIA cautioned that further delaying the agreement is not in the interest of conservation.

CHINA underscored, *inter alia*, that the ILBI be positioned within existing legal frameworks and be consistent with UNCLOS, and that socio-economic development and marine protection be mutually reinforcing. BANGLADESH emphasized that a combination of voluntary and mandatory measures for an effective benefit-sharing mechanism is essential. MAURITIUS underscored that with the current draft “tangible progress can be expected.” CAMEROON stressed the importance of participatory, inclusive, and transparent governance of ABNJ.

The US highlighted, with JAPAN, the need to enhance cooperation among regional and sectoral bodies, without undermining or duplicating their respective mandates, and being consistent with the “existing law of the sea regime.” JAPAN underscored that without common understanding on “what we are trying to do,” it will be difficult to progress discussions on mechanisms or institutional arrangements.

The INTERNATIONAL COUNCIL FOR THE EXPLORATION OF THE SEA (ICES) stressed that biodiversity is also critical for ecosystem functioning. The INTERNATIONAL UNION FOR CONSERVATION OF NATURE (IUCN) called for enabling broad participation at all stages of the process. The INTERGOVERNMENTAL OCEANOGRAPHIC COMMISSION (IOC-UNESCO) outlined relevant decisions adopted by its Assembly in July 2019, particularly on CB&TT.

The FOOD AND AGRICULTURE ORGANIZATION OF THE UN (FAO) highlighted its Biodiversity Mainstreaming Platform and guidelines on an ecosystem approach to fisheries. The UN ENVIRONMENT PROGRAMME (UNEP) welcomed the attention to modalities for coordination and complementarity. The HIGH SEAS ALLIANCE (HSA), with the INTERNATIONAL COUNCIL OF ENVIRONMENTAL LAW (ICEL), thanked delegates for allowing access to the informal-informals.

Informal Working Group

Cross-Cutting Issues

Objective: On the objective of the agreement (Article 2), G-77/CHINA, supported by AUSTRALIA, MONACO, DOMINICAN REPUBLIC, MALDIVES, and others, proposed amending the title to “General Objective,” with the LIKE-MINDED LATIN AMERICAN COUNTRIES noting there are other parts of the draft agreement with more specific objectives.

G-77/CHINA, supported by many, proposed deleting the reference to “long-term” conservation, with JAMAICA emphasizing the importance of short-term measures. MONACO and the EU opposed the deletion, with NEW ZEALAND noting a long-term conservation objective does not preclude short-term measures.

TURKEY, supported by the PHILIPPINES, but opposed by CHINA and the EU, proposed pointing to “environmentally” relevant UNCLOS provisions. The AFRICAN GROUP noted there are other relevant provisions beyond environmental ones.

The LIKE-MINDED LATIN AMERICAN COUNTRIES offered a proposal to specify cooperation “among state parties,” opposed by the PHILIPPINES, MALDIVES, and the EU. SINGAPORE and SWITZERLAND, supported by the AFRICAN GROUP, made proposals to emphasize the importance of enhancing cooperation among relevant global, regional, and sectoral bodies. The US, CANADA, and NEW ZEALAND cautioned against these specifications, noting the need for a concise objective. The RUSSIAN FEDERATION pointed out that cooperation is the means through which to achieve the objective, not the objective itself. The HSA proposed deleting reference to “further international cooperation and coordination.”

CUBA, supported by EL SALVADOR, suggested including text on benefit sharing.

The INTERNATIONAL CABLE PROTECTION COMMITTEE (ICPC) urged that sustainable use of marine biodiversity be fully operationalized, while not overriding conservation.

Application: Delegates considered Article 3 which states, in part, that the provisions of this agreement apply to ABNJ. ECUADOR suggested adding that the application should be “exclusively” in ABNJ, “without overlooking regulations on sustainable use, such as fisheries, maritime transport, and the exploration of the seabed.” G-77/CHINA proposed simplified language stating that “this agreement applies to ABNJ.” COLOMBIA suggested adding that the scope excludes enclosed and semi-enclosed seas. TURKEY reiterated the need to clarify that nothing in this agreement can be interpreted as applying to maritime areas within 200 nautical miles. The REPUBLIC OF KOREA proposed that the provisions should apply to activities under a state’s jurisdiction in ABNJ.

CARICOM, the US, ICELAND, NORWAY, AUSTRALIA, NEW ZEALAND, SWITZERLAND, and the INTERNATIONAL MARITIME ORGANIZATION (IMO) expressed preference for the original text, with the RUSSIAN FEDERATION and the REPUBLIC OF KOREA; and supported the simplified G-77/China suggestion.

The EU reserved its position, noting the importance of considering whether there is a need for a geographical scope in the document as the negotiations evolve, noting that some of the provisions, such as on CB&TT, will also be applicable to areas under national jurisdiction.

In relation to text on the application of the ILBI to state-owned or operated warships, naval auxiliary or other vessels, Palestine, on behalf of “a majority of the G-77,” and with the AFRICAN GROUP and SRI LANKA, expressed concern that the provision may give rise to a loophole that could permit marine scientific research (MSR) to be conducted on state vessels, potentially conflicting with the access of all to MGRs. PALESTINE proposed re-formulating the paragraph, while the AFRICAN GROUP, with SRI LANKA, proposed deleting it. The LIKE-MINDED LATIN AMERICAN COUNTRIES observed that the text is a direct reference to UNCLOS Article 236 (sovereign immunity), and proposed, supported by the EU, AUSTRALIA, the RUSSIAN FEDERATION, the US, CHINA, CANADA, INDONESIA and JAPAN, a new article titled “Sovereign Immunity.” NORWAY queried the need for a provision on sovereign immunity in the ILBI given its inclusion in UNCLOS Article 236. JAPAN proposed including additional language to reflect the principle of non-retroactivity in the application of the ILBI. Chair Lee noted convergence on retaining the original language under a new title in a separate article.

In the Corridors

Delegates returned to New York for the 2019 summer session of the IGC ready to negotiate. In a packed room, delegation after delegation welcomed and praised the draft treaty text prepared by IGC President Rena Lee during the intersessional period. With a hat tip to the IPBES Global Assessment Report, several wished to ensure the BBNJ agreement is part of the solution to turn the tide on biodiversity loss.

Before delving into the document, however, several were quick to point out that fundamental gaps in understanding still remain. For instance, the Russian Federation pointed out that the understanding over the need to have an ILBI “as soon as possible” does not necessarily mean that the instrument should be agreed in 2020. This reminded some observers of the recently concluded discussions under the ISA, where delegates were keen to affirm that “self-imposed deadlines” should not overtake the need for a quality agreement. Several others expressed their willingness to invest the requisite time to craft a strong agreement, with whispers in the corridors that there may be a growing consensus on the need to hold, in addition to the four IGC sessions already mandated, “at least two more meetings in order to secure the fate of the oceans.”

With the document before them, and the chance to engage in structured informal settings to hammer out both fundamental and minute details, the overall feeling on Day One was: “We are ready to go! Let us walk the talk.”