

BBNJ IGC-3 Highlights:

Tuesday, 27 August 2019

The third session of the Intergovernmental Conference (IGC) on the Conservation and Sustainable Use of Marine Biodiversity of Areas Beyond National Jurisdiction (BBNJ) met in an informal working group on area-based management tools (ABMTs), including marine protected areas (MPAs), facilitated by Alice Revell (New Zealand). Delegates also met behind closed doors to consider environmental impact assessments (EIAs), marine genetic resources (MGRs), and cross-cutting issues.

Report from Closed Informal-Informals

Revell noted that discussions had focused on international cooperation and coordination (Article 15), decision making (Article 19), monitoring and review (Article 21), and objectives (Article 14). Regarding international cooperation and coordination, delegates exchanged opinions and submitted proposals on: collaboration mechanisms and consultation processes; the concept of “not undermining” other relevant frameworks and bodies; the relationship with measures adopted by coastal states, including the idea of compatibility; and situations where an ABMT subsequently falls under national jurisdiction.

On decision making, Revell noted, *inter alia*: general support for clearly outlining the possible decision-making functions of the conference of the parties (COP); diverging views on whether decision making should be only by consensus, or a fallback voting mechanism should be contemplated in cases where consensus cannot be reached; and suggestions to refer to a timely publishing of COP decisions and to a broader principle of transparency, along with discussions on the need for explicit notification of adjacent coastal states.

Regarding monitoring and review, Revell indicated strong support for a structure consisting of states parties reporting on implementation, monitoring, and review by a scientific and technical body, and decision making by the COP. Delegates also suggested reflecting the role of other relevant frameworks and bodies for monitoring and review of areas they have established. On objectives, delegates expressed willingness to streamline the list of objectives, including ideas about focusing on outcome-oriented, rather than process-oriented objectives. Views differed on the potential respective roles of a scientific and technical body and the COP in relation to ABMTs.

Informal Working Group on ABMTs, including MPAs

Proposals: The G-77/CHINA, the LIKE-MINDED LATIN AMERICAN COUNTRIES, CARICOM, and many individual delegations suggested that states parties submit proposals for “the establishment” rather than “the designation of” ABMTs to the secretariat. The RUSSIAN FEDERATION proposed deleting the provision. CARICOM suggested adding the “application of measures of conservation and sustainable use.” The US noted the primary focus lies on the identification of areas requiring further protection and supported the submission of proposals being limited

to states, including states parties and states entitled to become parties. ECUADOR suggested that two or more member states submit joint proposals, with at least one of them neighboring the proposed area. ICELAND reiterated that the mandates of relevant frameworks and bodies should not be undermined, calling for not establishing ABMTs in cases where such bodies exist.

Collaboration with stakeholders: The EU, supported by SENEGAL and others, proposed including relevant global, regional, and sectoral bodies as well as civil society. INDIA emphasized collaboration with regional bodies and frameworks. NORWAY, JAPAN, MONACO, the RUSSIAN FEDERATION, and TURKEY queried whether it is necessary to indicate opportunities to collaborate, noting it is obvious that states parties can collaborate at their discretion.

On inclusion of reference to stakeholders, the INTERNATIONAL CABLE PROTECTION COMMITTEE (ICPC) called for specification of civil society and inclusion in the proposals of “the coordinates of existing and planned submarine cables.” The INTERNATIONAL MARITIME ORGANIZATION supported holding consultations early in the process.

Basic principles: The EU, CARICOM, P-SIDS, ERITREA, CUBA, SRI LANKA, the PHILIPPINES, ISRAEL, and CAMEROON favored reference to the precautionary principle and the ecosystem approach, while NORWAY, CHINA, ICELAND, the US, JAPAN, the MALDIVES, TURKEY, the REPUBLIC OF KOREA, and the RUSSIAN FEDERATION preferred the precautionary approach. CARICOM, with P-SIDS, ERITREA, the PHILIPPINES, and NEW ZEALAND, stressed that proposals should be based on relevant traditional knowledge rather than simply taking it into account, with the RUSSIAN FEDERATION asking to take into account traditional knowledge “where relevant.” CHINA, opposed by P-SIDS, reiterated that traditional knowledge can be held by other entities, in addition to indigenous peoples and local communities. The REPUBLIC OF KOREA emphasized best available science, with the RUSSIAN FEDERATION highlighting best scientific data. CANADA noted these provisions would be better placed under general principles and approaches (Article 5).

Proposal elements: The LIKE-MINDED LATIN AMERICAN COUNTRIES, supported by P-SIDS, the RUSSIAN FEDERATION, NICARAGUA, and the PHILIPPINES, proposed that the list of elements to be included in the proposals outline “minimum” requirements. The REPUBLIC OF KOREA requested deleting specific proposal elements, preferring their development as guidelines by the scientific and technical body. JAPAN, with the RUSSIAN FEDERATION, requested including scientific data. CHINA, with NEW ZEALAND, proposed requiring a description of the area, including, with P-SIDS and CUBA, its cultural, social, and economic values. The US added historical value. MAURITIUS emphasized the importance of including the objective of an ABMT.

The EU suggested adding a description of the characteristics and biodiversity values of the area, and the sensitivity of the species and/or habitats concerned, as well as, where relevant, the potential for restoration of the proposed area. The EU also proposed: referring to

“specific” conservation objectives; describing “priority elements” for a management plan; and including information on consultations with all states, supported by SINGAPORE, “including the most potentially affected states, any states with a continental shelf subjacent or maritime area adjacent to any proposed MPA and states that carry out human activities including economic activities in the area, and/or relevant global, regional, and sectoral bodies that have a role and activities in the proposed area.” CANADA and MONACO proposed referring to “current and expected” human activities and broaden the provision to uses by adjacent coastal states, not only by local communities. CHINA requested deleting the provision.

NORWAY proposed “information on” the state of marine environment and biodiversity in the identified area, while ERITREA and the MALDIVES suggested “values and functions of the marine environment and biodiversity in the identified area.”

The LIKE-MINDED LATIN AMERICAN COUNTRIES and CARICOM favored reference to a “management plan” rather than “conservation and management measures.” CHINA also favored a management plan, proposing this be guided by the principle of cost-effectiveness and inclusion of, *inter alia*: baseline data; measurable, relevant and, with the RUSSIAN FEDERATION, time-bound management objectives; and descriptions of pressures and the status and trends of marine biological diversity and habitats. CARICOM preferred an indicative list of minimum requirements in an annex, emphasizing, with the MALDIVES, ERITREA, and the ICPC, the need to include socio-economic benefits. P-SIDS queried the meaning of “standards,” supported by the US, CANADA, MAURITIUS, ICELAND, and TURKEY; suggested, with the US, JAPAN, MONACO, MAURITIUS, and NEW ZEALAND, referring to a “description of the current state of the marine environment,” rather than “elements” of it; and called for reference to “conservation and sustainable use” measures, in addition to management measures. JAPAN, with INDONESIA, supported the reference to a description of the proposed conservation and management measures.

NORWAY noted management measures do not need to be included, based on the understanding that the COP, in relation to management bodies, would identify these measures. The US suggested referring to a “recommended” monitoring, research, and review plan, and, supported by NEW ZEALAND, deleting the reference to “priority elements.” TURKEY proposed language to differentiate between ABMTs and MPAs, noting that plans relate only to MPAs. AUSTRALIA proposed that the provision should require specifying the activities to be restricted, prohibited, and managed. The HIGH SEAS ALLIANCE and others proposed including both measures and plans.

AUSTRALIA proposed states parties “consult with adjacent coastal states, relevant legal instruments and frameworks, and relevant global, regional, and sectoral bodies likely to be impacted by the proposal, take into account their views, and provide them with an opportunity to participate in the development of the proposal.” CANADA said information should be provided on consultations undertaken “so far” and also include information on measures already in place under other bodies. MAURITIUS, SRI LANKA, and others, opposed by CHINA, urged retaining reference to consultations with adjacent coastal states.

JAPAN suggested adding a reference to “scientific data supporting the proposals and the information on the contact person responsible for the data.” SINGAPORE requested information to be provided on the criteria for the identification of areas requiring protection, which are delineated in Article 16 (identification of areas).

The G-77/CHINA, the LIKE-MINDED LATIN AMERICAN COUNTRIES, AUSTRALIA, and others favored that further requirements regarding the content of proposals shall be elaborated by a scientific and technical body for consideration and “adoption” by the COP. The EU proposed further elaboration by the scientific and technical body and consideration by the COP. P-SIDS suggested that a scientific, technical, and technological body elaborate the proposals. The US said further “guidance,” not requirements, “may” be elaborated.

The INTERNATIONAL UNION FOR CONSERVATION OF NATURE (IUCN) emphasized the need to distinguish between MPAs and other ABMTs as well as the existence of multiple categories of MPAs, suggesting delineation of zones in the proposed areas and the development of a management plan for each zone. The UN ENVIRONMENT PROGRAMME (UNEP) underscored that ABMTs have already been designated by existing regional programmes. The FOOD AND AGRICULTURE ORGANIZATION OF THE UN (FAO) called to attribute entities that have established ABMTs and suggested including reference to “control and surveillance.” The HIGH SEAS ALLIANCE made an urgent call for action, encouraging the creation of a global network of “truly protected” MPAs.

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Informal Working Group on Cross-Cutting Issues

Clearing-house mechanism (CHM): Governance: The LIKE-MINDED LATIN AMERICAN COUNTRIES, P-SIDS, and SWITZERLAND expressed preference for the CHM to be managed by the secretariat, with the LIKE-MINDED LATIN AMERICAN COUNTRIES proposing “without prejudice to possible cooperation with other entities, if so decided by the COP.” INDONESIA preferred the CHM be managed by the Secretariat of the Intergovernmental Oceanographic Commission (IOC-UNESCO). The EU considered it premature to consider this question, noting, with the RUSSIAN FEDERATION and NEW ZEALAND, the pending discussions on what entity would perform the ILBI’s secretariat functions. CANADA, AUSTRALIA, and the RUSSIAN FEDERATION cautioned that the ILBI cannot impose obligations on another body.

Confidentiality: ISRAEL called for stronger language, referring to the provision on public notification and consultation (Article 34) related to not undermining intellectual property rights. The US and the RUSSIAN FEDERATION emphasized that the agreement should not require revealing any information that would be withheld under domestic law. CANADA, the RUSSIAN FEDERATION, and NEW ZEALAND noted this provision might be better placed under general provisions. NAURU cautioned that references to confidentiality and copyright should not defeat the intent of the ILBI.

In the Corridors

On Tuesday, delegates debated whether ABMTs should be time-limited or not, building on views exchanged during previous meetings. While several delegations viewed the issue of time-boundedness in relation to the strengthening of protection measures, one delegate more plainly stated that, if the measures are “eternal” there would be “absolutely no incentive” for further scientific or financial investments in these areas, which “would just be something that exists on a map.”

Another issue that split delegates down familiar lines was the reference to the precautionary principle versus reference to the precautionary approach, where one earnest delegate requested the use of “agreed language.” This had an observer quip that “we are not sure what she means by that,” adding that “both are agreed, but one serves to enshrine conservation and care, and the other does not.”

As the clock ticks down to the end of IGC 3, some were concerned that “we are so wrapped up in the text, we have forgotten why we are doing this,” leading one delegate to recall that the Global Assessment Report of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services showed the dire state of marine biodiversity. “Look up,” urged a concerned observer, calling on the Conference to “respond to the call for action and higher ambition” on the conservation and restoration of marine biodiversity in the High Seas.