

BBNJ IGC-1 Highlights: Wednesday, 5 September 2018

The morning plenary 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) continued to exchange general statements. In the afternoon, delegates convened in an informal working group on capacity building and technology transfer (CB&TT), focusing on:

- legal nature;
- objectives;
- modalities; and
- institutional aspects.

Plenary

Negotiating Process: INDONESIA, MEXICO, TONGA, and others considered the President's aid for discussions a solid basis for the zero draft. HONDURAS stressed that the ILBI negotiations should be based on consensus to ensure universal participation and the highest level of commitment for BBNJ conservation and sustainable use, while avoiding duplication.

TANZANIA, NIGERIA, and ERITREA called for a zero draft before IGC-2. The US supported moving towards text-based negotiations, with SRI LANKA adding "as soon as possible" and the HIGH SEAS ALLIANCE clarifying "as soon as possible before IGC-2."

ILBI: INDONESIA stressed that the ILBI should respect coastal states' sovereign rights and be balanced, supporting a *sui generis* regime. COLOMBIA emphasized the ILBI's universality and a global approach, noting, with INDIA and the US, that it should not undermine existing frameworks. CAMEROON emphasized complementing existing instruments. EL SALVADOR, TURKEY, and COLOMBIA reiterated that the ILBI should not affect UNCLOS non-parties' legal status. SUDAN stressed that the ILBI aims to fulfil a number of UNCLOS provisions, without changing the existing legal framework.

EL SALVADOR emphasized common heritage and fair benefit-sharing. MOZAMBIQUE supported a robust framework for integrated ocean management of areas beyond national jurisdiction (ABNJ) and the ecosystem approach, underscoring CB&TT to enable developing countries to maximize benefits from the ocean. MEXICO: stated that the ILBI should be consistent with UNCLOS, while building a comprehensive governance regime; and emphasized, with COLOMBIA, the common heritage as a cross-cutting issue. HONDURAS favored a viable and practical ILBI for all, especially developing countries. NIGERIA called for a comprehensive, global ILBI promoting coherence with existing frameworks and sectoral bodies. INDIA emphasized the need for the ILBI to clarify access to ABNJ resources in a transparent manner.

ERITREA emphasized that: benefit-sharing discussions should focus on how benefits will be shared equitably; area-based management tools (ABMTs) should take into account socioeconomic parameters and benefit distribution; environmental impact assessments (EIAs) should be mandatory for any activity that can cause harm to BBNJ; and the ILBI must safeguard, clarify, and strengthen existing CB&TT standards, addressing power imbalances. SUDAN emphasized synergies and cooperation, underscoring that BBNJ management cannot be left to unilateral measures and organizations with limited membership. SRI LANKA called for a practical and workable technology transfer mechanism, and, with GUINEA, for effective CB&TT.

The US stressed that the ILBI should be science-based and meaningful for conservation and sustainable use, promoting research and development benefiting all, consistent with UNCLOS. He queried how: ABMTs and EIAs could be designed meaningfully without undermining existing instruments; and a benefit-sharing regime could be successfully negotiated, considering certain views on common heritage, without impeding science and innovation or undermining intellectual property rights (IPRs). Cautioning against creating economic disincentives with regard to marine genetic resources (MGRs), JAPAN suggested establishing and managing ABMTs in cooperation with existing frameworks; and promoting CB&TT, clarifying the roles of existing frameworks.

Noting evolving effectiveness of regional fisheries management organizations (RFMOs), FAO recommended strengthening existing management frameworks. The International Maritime Organization (IMO) suggested that the ILBI recognize IMO instruments and guidelines. The International Seabed Authority (ISA) emphasized his exclusive mandate to regulate access to the Area in line with UNCLOS environmental requirements, and cautioned against undermining UNCLOS provisions on the common heritage. The UN Educational, Scientific and Cultural Organization's Intergovernmental Oceanographic Commission (UNESCO-IOC) reported on progress concerning: a data-sharing platform and clearinghouse mechanism; expanded observation programmes; and high-resolution mapping of the ocean seabed.

The UN Environment Programme (UNEP) noted UN Environment Assembly resolution 2/10 encouraging consideration of expanding regional seas organizations' coverage, which concern issues related to ABMTs, EIAs, and CB&TT. The North-East Atlantic Fisheries Commission (NEAFC) recalled legally binding measures on deep-sea sharks and vulnerable marine ecosystems (VMEs); and supported enhanced regional and cross-sectoral cooperation through the ILBI.

The CBD emphasized: the ecosystem approach; ecologically or biologically significant marine areas (EBSAs); and the Nagoya Protocol, including considerations regarding digital sequence information on genetic resources. The CMS highlighted ecologically coherent networks and habitat connectivity, noting that ABMTs are critical to maintain ecosystems' functioning and integrity.

The INTERNATIONAL COASTAL AND OCEAN ORGANIZATION pointed to international CB&TT prescriptions, noting limited implementation, and to options for financing mechanisms. The INTERNATIONAL COUNCIL OF ENVIRONMENTAL LAW highlighted the importance of the rule of law as a tool to “find ways to coexist in our interconnected planet.” IUCN proposed: facilitating developing countries’ access to MGRs; a long-term strategic plan with science-based priorities for marine protected areas (MPAs); a broad and inclusive network of different types of MPAs; strategic environmental assessments for cumulative impacts; a global scientific and technological body; and a clearinghouse approach to facilitate coordination and cooperation. OCEANCARE called for specific provisions on underwater noise pollution in the ILBI.

Informal Working Group

Facilitator Olai Uludong (Palau) invited focused and interactive discussions on CB&TT.

Legal Nature: Egypt, for the G-77/CHINA, noted that the ILBI should define general obligations to promote cooperation for CB&TT, recognizing the importance of marine scientific research (MSR) and the special cases of LLDCs, SIDS, LDCs, coastal African states, and developing middle-income states. ARGENTINA requested concrete CB&TT obligations. The REPUBLIC OF KOREA emphasized that UNCLOS hortatory language on promoting capacity development supports a voluntary approach. The RUSSIAN FEDERATION concurred on a voluntary approach. MOROCCO noted the need to clarify UNCLOS provisions on CB&TT with regard to ABNJ, to strengthen international cooperation, and to ensure sustainable and predictable funding. THAILAND pointed to obligations to cooperate, provide assistance, and promote capacity building for developing countries’ economic development and their contribution to conservation and sustainable use. TOGO supported ambitious CB&TT obligations. NIGERIA suggested that the ILBI oblige countries to provide CB&TT. MAURITIUS proposed strengthening UNCLOS language on CB&TT. CHILE noted that CB&TT provisions should be based on UNCLOS and other international agreements.

Objectives and Principles: AOSIS favored needs-based and nationally determined CB&TT, and proposed: a non-exhaustive list of objectives and principles with special regard to developing countries’ requirements; reference to the SIDS Accelerated Modalities of Action (SAMOA) Pathway; priority to SIDS; support not only for implementation, but also for effective participation in activities under the ILBI; and preferential and simplified access for SIDS to a future financial mechanism. P-SIDS referred to CB&TT as a means of implementing the ILBI objectives, and called for: specific provisions addressing SIDS’ special needs; and CB&TT needs assessment, supported by TOGO and NEW ZEALAND. SENEGAL called upon developed countries to support developing states so that “no-one is left behind.”

The EU proposed: a general provision setting out CB&TT objectives under the ILBI, supported by the FEDERATED STATES OF MICRONESIA (FSM), the US, and CANADA; reference to developing states’ special requirements; and needs-driven and responsive CB&TT, which was supported by the FSM. SWITZERLAND supported demand-driven CB&TT. TOGO queried whether criteria will be used to assess requests. NIGERIA called for identifying gaps, needs, and ways to address them at subnational, national, and regional levels.

The HOLY SEE recommended focusing on ocean health. JAPAN argued that CB&TT objectives should relate to BBNJ conservation and sustainable use. TONGA proposed: objectives related to capacity building to implement the ILBI and to engage in marine scientific research (MSR), and an adaptation of Article 25 of the UN Fish Stocks Agreement (forms of cooperation with developing states). PAPUA NEW GUINEA (PNG) recommended reference to due regard to “the needs of developing states, which have not been

able either to establish or develop their own technological capacity in MSR and in the exploration and exploitation of marine resources or to develop the infrastructure of such technology.”

CHINA considered as objectives to promote BBNJ exploration, understanding, conservation, and sustainable use, enhancing international cooperation and taking into account developing countries’ special needs. IRAN prioritized developing countries’ needs and priorities, especially on access and benefit-sharing, favoring, with URUGUAY, preferential treatment and availability of funds. The PHILIPPINES suggested an objective to cooperate directly and through international institutions, providing flexibility and legal conditions for fair and reasonable technology transfer.

NORWAY underscored the link with the ILBI’s implementation, supported by NEW ZEALAND, as well as with MGRs. Emphasizing the need for sustainable funding, ECUADOR proposed to recognize developing countries’ special requirements and to guarantee that all states have the ability to access MGRs.

The US said CB&TT should apply to BBNJ conservation and sustainable use, not to activities covered by UNCLOS; and opposed language according preferential treatment to developing countries. INDONESIA noted that CB&TT objectives should be based on preserving BBNJ. COLOMBIA, SENEGAL, and PNG underlined that CB&TT objectives need to be defined on the basis of the overall ILBI objectives.

Modalities: CARICOM highlighted: scientific and technical capacity building, education, training, data, and specialized knowledge; CB&TT duties, including to coordinate and collaborate; and preferential treatment, considering SIDS’ special circumstances. MEXICO called for: supported by COLOMBIA, strengthening capacity to access and research MGRs *in situ*, *ex situ* and *in silico*, including addressing IPRs; and, supported by TONGA, strengthening capacity to use information shared. IRAN cautioned against IPRs posing an obstacle to technology dissemination. CANADA noted the need to respect IPRs.

The FSM referred to: scholarships; workshops; training opportunities; participation in BBNJ-related activities such as research cruises, other MSR excursions and training; attendance of BBNJ-related meetings to operationalize the ILBI; as well as access to information generated in the BBNJ context. BRAZIL referred to marine equipment and sharing infrastructure. ECUADOR suggested considering “who will provide CB&TT and under which terms and conditions.”

Institutional Issues: AOSIS called for an easily accessible clearinghouse to match needs with available support. ARGENTINA, with the FSM, noted the need for a funding mechanism. NIGERIA called for enhancing institutional arrangements. BRAZIL suggested developing a virtual platform to assess priorities and needs among states.

UNEP shared capacity-building experiences in BBNJ conservation and sustainable use, noting that a regional approach enhanced effectiveness. The HIGH SEAS ALLIANCE emphasized: a strong capacity-building programme for EIAs and MPAs; SDG 14 target on CB&TT; and a combination of learning from other agreements and innovative thinking, including new funding sources.

In the Corridors

While views on capacity building and technology transfer were exchanged in the first informal working group of the IGC, some participants experienced a sense of déjà vu, as well-known ground was revisited. Meanwhile, in the corridors, delegations geared up for potentially more innovative discussions on the relationship between the ILBI and existing frameworks, and the issue of “not-undermining” them, with regard to area-based management. Some opined that a top-down approach would be unrealistic, while others hoped that more clarity will emerge to differentiate global from hybrid options. As participants headed to a civil society evening reception, an expert speculated that after discussions on ABMTs, proposals on capacity and technology may acquire more depth.