

## **BBNJ IGC-1 Highlights: Thursday, 6 September 2018**

Delegates at 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 views in an informal working group on capacity building and technology transfer (CB&TT), focusing on:

- modalities;
- a clearinghouse;
- monitoring and review; and
- finance mechanism.

### **Plenary**

Following a secret ballot, the Bahamas, Brazil, and Mexico were elected to the Bureau as IGC Vice-Presidents for GRULAC.

### **Informal Working Group**

**Legal Nature:** Bangladesh, for LDCs, underscored clear mandatory and non-mandatory provisions in the ILBI; a networking mechanism; and multi-stakeholder partnerships. The FSM noted that technology transfer could include voluntary elements, but should be mandatory in nature; and invited incorporating traditional knowledge when discussing area-based management tools (ABMTs). PARAGUAY advocated focusing on the needs of land-locked developing countries, emphasizing mandatory cooperation obligations. The HOLY SEE highlighted: bioinformatics and data mining as key to marine genetic resources (MGRs); the need for better operationalization of mutual sharing of benefits under the Intergovernmental Oceanographic Commission (IOC) Criteria and Guidelines on the Transfer of Marine Technology; and “keepwell agreements” as a middle ground between voluntary and mandatory measures, by providing “binding comfort” and clarifying the due regard obligation vis-à-vis the interests of other states. The US indicated that any benefit-sharing regime should focus on capacity building consistent with UNCLOS provisions that are already binding.

**Modalities:** Egypt, for the G-77/CHINA, supported the development of a list of modalities for inclusion in the ILBI concerning enhancing technological capacities in marine scientific research (MSR), infrastructure, and equipment. He cautioned against undermining or duplicating UNCLOS provisions or initiatives under the International Seabed Authority (ISA), and the IOC, recommending coordinated efforts.

Maldives, for AOSIS, favored the inclusion of: a broad and non-exhaustive list of modalities; a definition of CB&TT drawing from the IOC Guidelines, UNCLOS, the Nagoya Protocol, ISA

guidelines, and mechanisms under the UN Framework Convention on Climate Change; SIDS’ full participation in environmental impact assessments (EIAs) and ABMTs; and CB&TT requirements for access and benefit-sharing (ABS) from MGRs. FIJI proposed public-private partnerships for CB&TT, using the International Convention for the Prevention of Pollution from Ships (MARPOL) as a model.

Algeria, for the AFRICAN GROUP, argued that statements about the ILBI facilitating international cooperation on a voluntary basis and under mutually agreed terms (MATs) promote business-as-usual scenarios, and called for adding value to UNCLOS provisions on CB&TT. MAURITIUS suggested: a mechanism for states to identify their own needs; training on how to use donated equipment; training of trainers; and affordable online masters programmes on marine science and the law of the sea.

Favoring a voluntary approach based on MATs, the EU stressed that all CB&TT measures should be related to facilities and equipment, human resources and institutional strengthening, and knowledge dissemination. MEXICO called for: regional training workshops, participation in fieldwork, and scholarships, similarly to those offered by the ISA. CANADA cautioned against rigid treaty text that would be difficult to amend. NORWAY suggested following the approach of the Port State Measures Agreement to mandate a working group to elaborate a flexible list that is easy to update. JAMAICA referred to the Cartagena Protocol on Biosafety where subsequent decisions were left to the governing body.

AUSTRALIA, with PALAU, noted that CB&TT should be needs-driven, emphasizing that regional coordination and needs should also be considered. The US indicated that: if a list is included, it should contain broad categories and be non-legally binding; CB&TT related to EIAs and ABMTs should focus on information-sharing; and a capacity-building process should be responsive to needs and build upon existing efforts. CHINA noted that the ILBI should draw on existing CB&TT provisions, including those from the IOC; and encouraged promoting research and innovation.

The RUSSIAN FEDERATION disagreed with: limiting access to MGRs under whatever conditions, such as payment to a fund or other mandatory provisions, and references to CBD, arguing that this Convention is only applicable to areas within national jurisdiction. The REPUBLIC OF KOREA expressed reservations on including an indicative list, especially if intended to infer CB&TT obligations, arguing for voluntary CB&TT.

CARICOM supported updating the list based on evolving needs and advances in technology. PALAU suggested updating the list periodically and responsively. The PHILIPPINES supported regularly updating the list through consultation, building on existing mechanisms. The INTERNATIONAL COUNCIL OF ENVIRONMENTAL LAW noted that the list can be updated based on advancement in science and also changes in ecosystems.

NORWAY recommended building on existing structures, underscoring, with CANADA, the potential role of the IOC. JAMAICA called for a clear and enhanced CB&TT framework, taking into account lessons learned in, and building on, existing mechanisms, including the ISA. TONGA referred to the capacity to translate science into effective policies and the example of mandatory capacity-building activities under the ISA. The PHILIPPINES envisaged: joint research projects, and national and regional centers of excellence; a long-term, sustainable and country-driven response to CB&TT; and building on existing modalities, such as the IOC and ISA.

**Intellectual Property Rights (IPRs):** The AFRICAN GROUP emphasized that the ILBI should cover biotechnological aspects associated with technology; and balance protection of IPRs and technology dissemination. AUSTRALIA and the US favored encouraging technology transfer based on MATs, respecting IPRs, and in accordance with UNCLOS. SINGAPORE noted that the ILBI should not undermine discussions in other fora such as at the World Trade Organization (WTO) and the World Intellectual Property Organization (WIPO). CHINA recommended respecting IPRs on the basis of MATs between suppliers and recipients.

**Clearinghouse:** The G-77/CHINA supported developing a clearinghouse mechanism and a capacity-building network platform to access and disseminate information. AOSIS favored an information-sharing mechanism through a central clearinghouse linked to existing ones. LDCs favored a clearinghouse for visibility, needs articulation, and awareness of opportunities. The EU pointed to the IOC Guidelines, including for developing the clearinghouse.

CARICOM noted that the clearinghouse should be a one-stop-shop, linked to regional or sectoral networks of existing mechanisms, broad in scope, and managed at the global level, with support by the EU, the IOC having a coordinating role. MEXICO favored transfer of software and knowhow through a clearinghouse or repository, and a one-stop-shop for technology transfer. P-SIDS proposed a website and subregional and regional networks.

The FSM suggested opening the clearinghouse to states and other actors, supported by NORWAY, and incorporating traditional knowledge. CANADA highlighted the clearinghouse as a repository of information, as well as, with AUSTRALIA, a tool for matching needs and support, and facilitating cooperation. CHINA advocated for an open and transparent clearinghouse aimed at integrating resources, including information from existing information-exchange platforms, such as the IOC.

The US favored a clearinghouse or repository linked to other databases facilitating knowledge-sharing and capacity on EIAs, and exclusion of non-public information contained in EIAs due to IPRs or national security concerns.

**Financial mechanism:** The G-77/CHINA and AOSIS reiterated the necessity for adequate, predictable, and sustainable voluntary and mandatory funding. AOSIS emphasized: the establishment of a separate capacity-building fund; ISA's Endowment Fund as a useful model; contributions from states, the private sector, and international organizations; and mandatory contributions as conditions for access to MGRs in ABNJ or as fees and penalties in cases of non-compliance.

P-SIDS prioritized SIDS and traditional knowledge holders as beneficiaries, and called for: an operational fund; an endowment fund from monetary benefit-sharing from MGRs; and a contingency or rehabilitation fund, to finance ecological restoration of BBNJ in case of pollution or adverse impacts. CARICOM and COLOMBIA stressed the need for a dedicated funding mechanism from a range of sources. FIJI called for a trust fund to be established for monetary benefit-sharing, noting that voluntary funding could also

be included. NIGERIA supported both mandatory and voluntary sources. MAURITIUS highlighted that the shipping, insurance, and MGR-related industries could contribute to the fund.

The EU argued against mandatory funding, suggesting a voluntary trust fund from various sources, including official development assistance, the Global Environment Facility, and innovative sources. He underscored the role of the ILBI in improving coherence and accessibility of existing funding mechanisms, including through a clearinghouse.

The US opposed a mandatory trust fund and argued that paying for access to the high seas would be inconsistent with UNCLOS and would disincentivize states from joining the ILBI. The RUSSIAN FEDERATION opposed a mandatory or compensation fund, opining MGRs extraction does not create significant impacts and other sectors are already regulated.

**Monitoring and Review (M&R):** The G-77/CHINA proposed regular M&R of capacity-building needs and priorities by an advisory body reporting to a decision-making body. FIJI favored a capacity-building framework linked to monitoring and technology transfer. CARICOM proposed a review conference to oversee implementation of CB&TT. FIJI called for a robust monitoring, evaluation, and reporting framework for CB&TT. P-SIDS proposed regular reviews and updates of CB&TT, with a committee for regional coordination and review of implementation. PALAU called for regular reviews to be undertaken comprehensively by the ILBI governing body.

CANADA suggested discussing CB&TT review provisions under the ILBI's overall M&R framework. The US cautioned against imposing undue burdens, such as reporting requirements. The RUSSIAN FEDERATION questioned the need for a review mechanism for the ILBI as a whole. CHINA, supported by JAPAN, preferred that states report to a conference of parties, which would provide guidance.

AOSIS suggested: a global, streamlined M&R mechanism of support provided and gaps in provision, for review by a conference of parties; and voluntary reports to be publicly available. The BAHAMAS suggested an auditing team comprised of experts from states that could make recommendations. The FSM requested at least a general provision on the need for M&R, with states involved through an advisory or a decision-making body. The PHILIPPINES suggested M&R against a defined set of performance indicators, in consultation with parties at the national, regional, and global levels.

The EU suggested that a treaty organ could undertake M&R, assessing the success of CB&TT in achieving the ILBI objectives and periodically assessing needs, without follow-up procedures. The US considered discussion on M&R premature before defining CB&TT obligations. CHILE recommended transparent, exhaustive, simplified, and regular M&R reports. MEXICO suggested discussing the nature and frequency of ILBI meetings to clarify M&R of CB&TT.

### *In the Corridors*

On the third day of the IGC, the toil of conceptualizing a new instrument without textual proposals began to weigh on the minds of some delegates. "It is more difficult to focus on those elements that need to be reflected in treaty text, as opposed to those that could be left to the future decision-making instruments under an ILBI," commented a negotiator. Another participant joked, "Nobody else from my organization volunteered to attend this meeting, as they expected that it would be a repeat of the PrepCom." A more optimistic participant pointed to specific suggestions on the clearinghouse, which "may well set the stage for a meaningful discussion on the other elements of the package."