

## **BBNJ IGC-1 Highlights: Friday, 14 September 2018**

On Friday, 14 September, the plenary of the first 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 (ABNJ) heard reports from Informal Working Groups on:

- capacity building and technology transfer (CB&TT);
- area-based management tools (ABMTs);
- environmental impact assessments (EIAs); and
- marine genetic resources (MGRs), including questions on benefit-sharing.

Plenary also discussed the way forward.

### **Report of the Informal Working Group on CB&TT**

Informal Working Group Facilitator Olai Uludong, Palau, reported on:

- options to incorporate multiple CB&TT-focused objectives or a single objective linked to the ILBI overarching objective;
- convergence on an indicative, non-exhaustive, and flexible list of CB&TT types and modalities that can be updated;
- disagreement on mandatory and/or voluntary CB&TT provisions;
- the requirement for needs assessment to address regional characteristics, also on a case-by-case basis;
- the opportunity to draw on UNCLOS Part XIV (technology transfer) and the Intergovernmental Oceanographic Commission (IOC) Criteria and Guidelines on the Transfer of Marine Technology;
- different options for addressing intellectual property rights;
- the need for an adequate, predictable, and sustainable funding mechanism, with options on establishing a new one or using an existing mechanism, like the Global Environment Facility;
- options on roles and modalities for monitoring and review; and
- the need for a clearinghouse mechanism, drawing inspiration from other processes.

### **Report of the Informal Working Group on ABMTs**

Informal Working Group Facilitator Alice Revell, New Zealand, identified a “spectrum of options” across global, hybrid, and regional proposals including:

- establishing a coherent process for ABMT establishment, implementation, and enforcement, applicable to all states to address fragmentation, envisaging participation by competent organizations;
- relying more extensively on existing processes and frameworks, with some global-level decision making aimed at cooperation and coordination;

- strengthening existing regional bodies for enhanced cooperation and coordination between these and other relevant bodies, on the basis of model cooperation agreements that could be annexed to the ILBI; and
- outlining general principles and approaches under the ILBI, without oversight from a global mechanism and with states considering to establish competent organizations where they do not exist.

She outlined options for a global body to:

- make binding decisions on establishing ABMTs, including multi-purposes marine protected areas, and ensure monitoring and compliance, in consultation with stakeholders and competent bodies; or
- set standards, objectives, and priority areas, providing a process for cooperation and coordination, administering a global database and reviewing implementation, with regional and sectoral bodies adopting relevant measures.

She also noted options on establishing ABMTs of a limited duration or subjecting them to regular reviews.

### **Report of the Informal Working Group on EIAs**

Informal Working Group Facilitator René Lefebvre, the Netherlands, reported on:

- convergence on an obligation to conduct an EIA for planned activities under states’ jurisdiction and control that can cause pollution or result in adverse changes to the marine environment, avoiding duplication with existing EIA procedures;
- different views on an indicative, regularly updated, and non-exhaustive list of activities, and a tiered-threshold approach;
- options on establishing under the ILBI: an EIA threshold as a minimum standard; EIA requirements applying to activities carried out in accordance with rules and guidelines established by existing regional and sectoral bodies, irrespective of whether EIAs are required under those rules or guidelines; and functional equivalence of EIAs undertaken under other frameworks that meet ILBI requirements;
- options on how to consider cumulative impacts, particularly for land-based activities like climate change;
- convergence on protecting ecologically or biologically significant or vulnerable areas and potentially requiring EIAs for all activities in them;
- options on modalities and degree of internationalization for decision-making, public consultation, monitoring and review, and compliance and enforcement;
- options on internationalization, with global institutional arrangements managing at least part of the decision-making and/or monitoring and review process, to ensure global coherence;
- convergence on EIA reports to indicate sources of information, the environmental record of the proponent, and an environmental management plan;

- options on considering transboundary impacts, based on activities or impacts;
- options on notification requirements for adjacent coastal states; and
- options on scope, level, and responsibility for strategic environmental assessments (SEAs), with some preferring to exclude SEAs from the ILBI due to complexity, cost, and length of time required for completion.

### Report of the Informal Working Group on MGRs

Informal Working Group Facilitator Janine Coye-Felson, Belize, reported on:

- some convergence on distinguishing fish used as a commodity and as genetic resources, with the ILBI covering only the latter and including provisions on change of use;
- divergence on including *ex situ* and *in silico* MGRs, and derivatives;
- opinions on access, including: regulating it and/or subjecting it to a licensing, permit or notification regime, without hampering marine scientific research (MSR); differentiating provisions on access concerning vulnerable marine ecosystems (VMEs), ecologically or biologically significant marine areas (EBSAs), and specially protected areas; and not addressing access at all;
- opinions on including monetary benefit-sharing and establishing a trust fund, or creating adaptable benefit-sharing packages and models, taking into account existing frameworks;
- options on intellectual property rights, including a *sui generis* system, mandatory disclosure of origin, or leaving the matter to other bodies, such as the World Trade Organization and the World Intellectual Property Organization;
- options on if and how to monitor MGR utilization; and
- convergence on establishing an easily accessible, non-cumbersome clearinghouse, with guidance from existing frameworks.

### Way Forward

The G-77/CHINA supported preparing a zero draft for ensuring more focused and substantive discussions, overcoming challenges and further elaborating on consensus areas, to be circulated prior to IGC-2 and to reflect a balanced legal text containing options when needed. The AFRICAN GROUP called for an ambitious text striking a balance between the elements of the package. MOROCCO highlighted the need to respect sovereign rights over exclusive economic zones, continental shelves, and extended continental shelves.

AOSIS called for a structured text to be circulated as early as possible, to enable coordination and consultations. P-SIDS suggested following the structure of the PrepCom report in the zero draft and the President's aid to discussions for IGC-1. The PACIFIC ISLAND FORUM reiterated that the ILBI should provide for: SIDS' special case; a strong international framework supporting effective MPAs, taking into account regional expertise and capacity; broad and consistent use of EIAs; and reference to traditional knowledge of indigenous peoples and local communities in ILBI operationalization. SAMOA emphasized inter- and intra-generational equity, due regard to SIDS' special case, capacity building, and special consideration for existing bodies. INDIA recommended developing a draft text to give additional focus and direction to the IGC process.

COSTA RICA, also on behalf of ARGENTINA, BRAZIL, CHILE, COLOMBIA, the DOMINICAN REPUBLIC, ECUADOR, EL SALVADOR, GUATEMALA, HONDURAS, MEXICO, PANAMA, PARAGUAY, PERU, and URUGUAY, suggested preparing an informal, comprehensive but not exhaustive, preliminary draft as a basis for negotiations, using the basic structure of the PrepCom 4 report, with inputs from IGC-1 Informal Working Groups. She called for turning the working groups into negotiating groups. VENEZUELA requested that the zero draft take into account UNCLOS non-parties. COLOMBIA, on behalf of EL SALVADOR,

ERITREA, IRAN, and TURKEY, recommended: clarifying that participation in the IGC or its outcome cannot affect the status of UNCLOS non-parties; and reflecting CBD Article 22 (relationship with other conventions) and UN Fish Stocks Agreement provisions on participation of UNCLOS non-parties. INDONESIA called for a zero draft including different options to "move forward and discuss the balance of interests."

Favoring a state-driven process, CHINA proposed a three-step way forward: drafting a non-paper outlining options to be circulated before IGC-2; proposing improvements to the non-paper during IGC-2; and possibly tasking the IGC President to draft a zero draft for IGC-3. ICELAND called upon IGC President Lee to produce an initial text, leading to the development of a zero draft by states.

The EU urged starting text-based negotiations, calling for a zero draft through a step-wise formulation that will focus on substantive provisions with options, without necessarily containing procedures, definitions or final clauses. He called for identifying areas of commonality and focusing on key deliverables and options for each element of the package. SWITZERLAND supported a zero draft with options. MONACO and TOGO urged preparing a substantive text, whether denominated as a zero draft, a non-paper or a negotiating text.

CANADA supported a document allowing further negotiations and progress, whether it is named a zero draft or otherwise. NORWAY favored producing a text similar to IGC-1 aid to discussions to "get us in a negotiating mode," emphasizing the inclusion of different options and retaining the same structure. Supporting a balanced, universal, and practical ILBI, JAPAN favored a document based on progress achieved so far, to identify areas of convergence and divergence. The RUSSIAN FEDERATION cautioned against referring to "convergence" as the view of the majority; considered a transition to text-based negotiations beneficial to analyze and react to proposals; and opposed a zero draft, preferring a more focused President's document, including elements of a text. The US supported "something less than a full zero draft" for IGC-2, reflecting diversity of views.

IUCN and the HIGH SEAS ALLIANCE welcomed the development of a zero draft, expressing hope for a concrete outcome by 2020.

President Lee proposed issuing a document by 25 February 2019, for consideration at IGC-2, with treaty language, reflecting different options, to lead to focused discussions and the identification of areas of convergence, as well as areas requiring further discussion. She clarified that the document will not be "a full treaty text, from preamble to final clauses," and will probably not be called zero draft. Noting that the document will include IGC-2 organizational modalities, she emphasized that the process leading to a zero draft will be state-driven.

### In the Corridors

As IGC-1 concluded its substantive deliberations, a spirit of optimism infused plenary. Many delegates acknowledged the flexibility that prevailed during the two weeks' discussions, recognizing that mutual understanding of "problematic" issues has increased. Others were more restrained, with one delegate stressing that "pointing out divergent positions, especially when these positions run counter to each other, does not go a long way towards bridging them."

Whatever the level of optimism, delegates unanimously welcomed the production of a text with treaty language by President Lee, hoping that this would definitively switch IGC-2 into negotiating mode. As a long-standing participant pointed out: "it does not matter whether you call it a 'zero' or 'sub-zero' draft, it's the content that counts."

The *Earth Negotiations Bulletin* summary and analysis of the first session of the IGC will be available on Thursday, 20 September 2018 at <http://enb.iisd.org/oceans/bbnj/igc1/>