

## BBNJ IGC-2 Highlights: Monday, 25 March 2019

The second 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, March 25, 2019. Delegates heard general statements before discussing Marine Genetic Resources (MGRs), based on the President's Aid to Negotiations (hereafter "The President's Aid").

### Opening

IGC President Rena Lee (Singapore) opened the session, inviting participants to observe a moment of silence to mark the passing of Amb. Virachai Plasai, Permanent Representative of Thailand to the UN and other recent tragedies. Lee urged delegates to build on the "excellent" start at ICG-1, highlighting that 2019 marks UNCLOS' 25th anniversary.

Miguel de Serpa Soares, Secretary-General of the IGC, Under-Secretary-General for Legal Affairs and UN Legal Counsel, drew attention to relevant developments in different fora, including the:

- work on Ecologically or Biologically Significant Marine Areas (EBSAs) under the Convention on Biological Diversity (CBD);
- forthcoming global assessment on biodiversity and ecosystem services by the Intergovernmental Panel on Biodiversity and Ecosystem Services (IPBES); and
- forthcoming report on the Ocean and Cryosphere in a Changing Climate from the Intergovernmental Panel on Climate Change (IPCC).

**Administrative Matters:** Delegates approved the provisional agenda (A/CONF.232/2010/L.1) and the programme of work (A/CONF.232/2019/L.2). President Lee informed delegates that package elements would be discussed in informal working groups: MGRs, facilitated by Janine Coye-Felson, Belize; area-based management tools (ABMTs), facilitated by Alice Revell, New Zealand; environmental impact assessments (EIAs), facilitated by René Lefeber, the Netherlands; and capacity building and transfer of marine technology (CB&TT), facilitated by Olai Uludong, Palau.

### General Statements

Many delegations welcomed the President's Aid, noting that it provided a sound basis for discussions. Palestine, for the G-77/CHINA, stressed the need for the elaboration of a zero draft of an ILBI for consideration by IGC-3. Algeria, for the AFRICAN GROUP, highlighted the importance of balanced progress on all package elements. Belize, for the Alliance of Small Island States (AOSIS), underlined the need for an ILBI to consider the capacity of Small Island Developing States (SIDS) to contribute and benefit from conservation and sustainable use of BBNJ. The EU echoed

calls for a viable framework for conservation and sustainable use of BBNJ, and suggested that IGC-2 concentrate on processes and mechanisms to deliver treaty functions.

Nauru, for the PACIFIC ISLAND FORUM (PIF), called for the ILBI to include the role of traditional knowledge (TK) and indigenous peoples in the conservation and sustainable use of BBNJ.

Barbados, for the Caribbean Community (CARICOM), proposed identifying areas of convergence to ensure a more concise text. Fiji, for the PACIFIC SIDS (P-SIDS), noted that the President's Aid could contain more options related to the reversal of the effects of climate change.

Chile, for LIKE-MINDED LATIN AMERICAN COUNTRIES (Argentina, Brazil, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Panama, Paraguay, Peru, Dominican Republic, and Uruguay) called on all delegations to provide the rationale for specific approaches during IGC-2, with a view to move onto a zero draft at IGC-3.

Stressing the need for a universal agreement to promote full implementation, COLOMBIA, on behalf of El Salvador, Eritrea, Iran, and Turkey, reiterated that their participation does not affect their legal status as non-parties to UNCLOS, calling for this position to be reflected as a non-optional text in the President's Aid.

THAILAND prioritized the common heritage of humankind (CHM) as the underlying principle, and, with Paraguay, for LANDLOCKED DEVELOPING COUNTRIES (LLDCs), highlighted the importance of instruments like the Convention on Biological Diversity's (CBD) Nagoya Protocol and the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) for MGRs in the Area.

TURKEY said the ILBI should be consistent with relevant CBD decisions on the conservation and sustainable use of biodiversity and MGRs.

MYANMAR called for the ILBI to complement existing treaties and frameworks and to respect UNCLOS principles on freedom of navigation and CHM; and, with MOROCCO, underscored the sovereign rights of adjacent coastal states.

ICELAND cautioned against entrenched discussions on options in the President's Aid, and proposed taking an early decision on the ILBI's decision-making process.

Drawing attention to marine litter, ECUADOR proposed that MGR exploitation should consider the effects on ocean dynamics. PIF drew attention to the challenges presented by ocean plastics, with INDONESIA noting that transboundary issues, such as pollution, are becoming an increasing concern.

GUATEMALA cautioned that without capacity building and transfer of marine technology, states would not be in a position to implement the future instrument in a balanced way.

The HOLY SEE identified five legal gaps in the process: a foundational gap; a jurisdictional gap; a legal applicability gap; an economic gap; and a gap between the notions of CHM and the freedom of the high seas.

IRAN emphasized that all countries should benefit from BBNJ and that a new ILBI should not undermine existing instruments. BANGLADESH expressed support for the inclusion of both monetary and non-monetary benefit-sharing mechanisms.

ERITREA stressed that a new treaty should be “future-proof,” addressing challenges related to climate change and technological advancement.

CHINA called for: a balance between conservation and sustainable use; a fair agreement, taking into account the common interests of humankind; and universal participation in the ILBI to enhance implementation.

NORWAY prioritized a regime that is:

- functional, pragmatic, and promotes innovation and cost effectiveness in relation to MGRs;
- establishes procedures and promotes transparency, openness, and accountability for ABMTs;
- establishes principles and procedures to streamline how states can implement EIAs; and
- establishes a more efficient system for CB&TT.

The FEDERATED STATES OF MICRONESIA (FSM) called for the President’s Aid to acknowledge the connectivity of TK and its holders to marine species, and further called for elaborating capacity building, and, with MALI, transfer of marine technology.

CANADA noted BBNJ issues cannot be resolved in isolation, noting the need for appropriate solutions, conservation tools, mitigation activities, and collaboration to meet common objectives.

The REPUBLIC OF KOREA cautioned against premature consensus building, preferring to build on progress from previous sessions. JAPAN noted that the President’s Aid reflects differences in the interpretation of UNCLOS and underlined the need to seek a mutually satisfactory way to move forward, preferring not to spend too much time on details but rather focus on substantive issues aimed at bringing parties together.

The US underlined the need for an agreement that meets the legitimate interests of all states, adding that the only way to achieve a strong, broadly supported agreement is to negotiate text in a meeting format conducive to this.

## ILBI

**Negotiating Process:** President Lee outlined her intentions for structuring the negotiations, emphasizing the importance of the concrete, operational, and practical details of the instrument—the “how” and “who.” She clarified that this session would not see delegates engaging in line-by-line negotiations, saying that while context is essential, this was an iterative process, which now needed to consider concrete options.

## Informal Working Group on MGRs

**BENEFITS AND BENEFIT-SHARING MODALITIES:** Facilitator Coye-Felson called on delegates to focus on questions related to what can be shared; by whom; with whom; how; and when.

On **objectives**, AOSIS highlighted the need to consider the special case of SIDS. Brazil, on behalf of LIKE-MINDED LATIN AMERICAN COUNTRIES, preferred a general section including CHM, with the REPUBLIC OF KOREA supporting an overarching section also including principles and approaches. JAPAN underscored cooperation through CB&TT that contributes to the conservation and sustainable use of BBNJ. He further recalled that UNCLOS Article 133 excludes living resources and refers to “all solid, liquid, or gaseous mineral resources *in situ* in the Area”; and Article 166 contains provisions on transfer of marine technology that the new instrument should reflect. LLDCs preferred the option

recognizing their role, while the RUSSIAN FEDERATION and the US preferred the “no text” option. P-SIDS noted that benefits should be tied to, or be a precondition for access.

On **principles and approaches**, P-SIDS, with the AFRICAN GROUP, supported CHM. The US, SWITZERLAND, and the RUSSIAN FEDERATION did not support outlining principles and approaches in this section.

On the **benefits to be shared**, the AFRICAN GROUP, CARICOM, P-SIDS, LLDCs and LIKE-MINDED LATIN AMERICAN COUNTRIES, preferred an option including both monetary and non-monetary benefits. LIKE-MINDED LATIN AMERICAN COUNTRIES noted that an option on voluntary sharing of benefits was “not workable.” The US, the RUSSIAN FEDERATION, and SWITZERLAND supported only sharing non-monetary benefits.

CARICOM, the AFRICAN GROUP, and the LIKE-MINDED LATIN AMERICAN COUNTRIES supported the development of a non-exhaustive list of benefits, as opposed to a list of benefits to be reviewed and further developed at a later stage. P-SIDS expressed flexibility on this issue.

On **benefit-sharing modalities**, the AFRICAN GROUP, LLDCs, CARICOM, and AOSIS favored benefit-sharing arising from the utilization of MGRs in the ABNJ in accordance with modalities adopted by the body with P-SIDS proposing combining two options in order for both parties and proponents to be required to share benefits. The RUSSIAN FEDERATION and the US favored voluntary benefit-sharing. The REPUBLIC OF KOREA stressed, with JAPAN, that benefit-sharing should be limited to non-monetary benefits on a voluntary basis.

The EU focused on operationalizing sharing of information, scientific data, and knowledge, as well as strengthening the scientific research capabilities on MGRs. He clustered relevant activities around: pre-research information; post-cruise notification; and databases, including genetic sequence data. He stressed that, following the research efforts, state parties should: make available, in public repositories or databases, environmental metadata, taxonomic information, and genetic sequence data; facilitate access to MGRs collected according to the provisions of the new instrument and held under their jurisdiction; and facilitate access to databases under their jurisdiction that contain relevant data.

On the **beneficiaries**, P-SIDS preferred including developing state parties as well as non-governmental entities, such as academic or research institutions or coastal communities. LIKE-MINDED LATIN AMERICAN COUNTRIES preferred that only state parties receive benefits, with special regard to developing countries.

## In the Corridors

As delegates returned to New York for the second session of the IGC, the extensive exchange of general statements in the morning brought on a pervading sense of *déjà vu*: many delegations rehashed what are by now well-known positions and interests. “Nothing new here,” sighed one participant, expressing her concern that the negotiations “may never take off if we keep repeating ourselves.” However, many participants agreed that the President’s Aid was inclusive and helpful in driving the negotiations forward. While some expressed concern about gaps in the options laid out in the document, there was consensus on its general utility. As the day progressed, though, it was clear that the ILBI ship “will not always be easy to navigate,” with many pointing to the slightly confusing manner of addressing the issues by expressing preference for “options, within options, within options.”

A hidden, but palpable dissonance stemmed from the pace of negotiations: while some delegates prioritized a thoroughly negotiated text that “brings everyone on board and covers existing gaps,” others pushed for moving towards treaty text as soon as possible, stressing the urgency of the challenges facing the oceans.