

## BBNJ IGC-2 Highlights: Wednesday, 27 March 2019

The second Intergovernmental Conference (IGC-2) on the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction (BBNJ) continued on Wednesday, 27 March 2019 in an informal working group setting.

Delegates finalized their initial consideration of marine genetic resources (MGRs), including questions on benefit-sharing. They then began discussions on area-based management tools (ABMTs), including marine protected areas (MPAs), facilitated by Alice Revell (New Zealand).

### MGRs

**Preamble:** CHINA, with JAPAN and NORWAY, proposed deleting reference to language stating that the provisions of this section would prevail over the UN Convention on the Law of the Sea (UNCLOS) in the event of inconsistency. JAPAN and NEW ZEALAND suggested drawing on Article 4 of the UN Fish Stocks Agreement (UNFSA) for guidance. The AFRICAN GROUP argued that the preambular text relating to MGRs should be maintained to address the gaps not covered by UNCLOS.

**Scope:** On *geographical scope*, SWITZERLAND, CANADA, ICELAND, and JAPAN called for a general ILBI provision on geographical scope.

SINGAPORE suggested that consultations with interested states in cases where MGRs of ABNJ are also found in areas within national jurisdiction, should include a trigger related to the anticipated level of impact of the activity to the marine environment. CHILE, with INDONESIA and PAPUA NEW GUINEA (PNG), supported consultation with coastal states that have made a submission to the Commission on the Limits of the Continental Shelf (CLCS).

TONGA highlighted the need to protect the rights of coastal states, noting that interaction between those states, the instrument's institutions, and those conducting activities in ABNJ would clarify how consent from the coastal state could be obtained.

The US said that the reference to coastal states is problematic and underlined that a system of prior consent is not acceptable, calling for further clarity on the meaning of "consultations."

THAILAND, IRAN, the FEDERATED STATES OF MICRONESIA (FSM), and ERITREA stated that the instrument should apply to high seas and the Area. AUSTRALIA, COLOMBIA, and NORWAY supported the instrument's application to MGRs in ABNJ.

INDONESIA and MAURITIUS called for clarifying the legal status of MGRs in the water column. PNG emphasized that the notion of compatibility between ABNJ measures and those adopted in areas within national jurisdiction needs "clear, detailed, and precise drafting."

The FSM, with MAURITIUS and SEYCHELLES, noted the instrument should not include the continental shelf.

On *material scope*, INDIA, COLOMBIA, INDONESIA, and PNG stressed that the instrument should apply to digital sequence information as well as to MGRs collected *in situ*, accessed *ex situ*, and *in silico*, including derivatives. ARGENTINA proposed referring to "genetic information" rather than "digital sequence information." The AFRICAN GROUP maintained that the use of *in silico* is sufficiently covered by genetic sequence data. The DEEP OCEAN STEWARDSHIP INITIATIVE (DOSI) proposed working with scientists to clarify key terms, such as *in silico*.

JAPAN preferred excluding digital sequence information and, with CHINA, derivatives.

CHINA, JAPAN, CANADA, ICELAND, the US, and CHILE did not support including fish or other biological resources as commodities. ERITREA underscored the need to include fish or other biological resources as commodities, with SEYCHELLES; and called for a safeguarding mechanism to ensure responsible extraction under marine scientific research (MSR). ICELAND noted that fisheries are outside the scope of the BBNJ instrument. HOLY SEE proposed two general provisions: a general "carve-out" of all activities not regulated by the ILBI; and an MSR "carve-out."

CANADA and ICELAND preferred that MGRs refer to those collected *in situ*.

The HIGH SEAS ALLIANCE called for the broader scope discussion, such as interaction with regional fisheries management organizations (RFMOs), to be addressed in one provision to prevent fragmentation.

On the *temporal scope*, CHILE, CANADA, ICELAND, and the US supported the instrument applying to MGRs collected after entry into force. ARGENTINA expressed concern that the proposed text did not cover MGRs collected before entry into force. SWITZERLAND stressed that the ILBI guard against retroactive action.

**Access and Benefit-Sharing:** AUSTRALIA and HOLY SEE noted that this is a cross-cutting issue, opting for a general provision. INDIA supported recognizing the special requirements of developing countries for capacity building and transfer of marine technology (CB&TT), with the FSM adding the special circumstances of SIDS.

AUSTRALIA and NORWAY noted a link between material scope and benefit-sharing and called for a balanced approach.

**Access:** P-SIDS recommended that language on indigenous peoples and local communities (IPLCs) be consistent across the ILBI; and called for more stringent access mechanisms for monetary benefit-sharing from permit and licensing schemes. SINGAPORE queried how to operationalize language on traditional knowledge, including questions on which IPLCs should be approached to obtain prior informed consent or approval. TONGA suggested drawing

inspiration from the International Seabed Authority (ISA). TURKEY supported provisions applying to all activities related to MGRs of ABNJ, adding that access *in situ* should require a permit.

CHINA did not support notification requirements, or free and open *ex situ* access. NEW ZEALAND questioned how the access notification system would operate.

JAPAN stressed that access to MGRs in ABNJ should not be restricted. He further emphasized that environmental impact assessments (EIAs) should not be required for small samples as the relevant thresholds of UNCLOS Article 206 (assessment of potential effects of activities) would not be met. Responding to this, P-SIDS emphasized important informational and functional content of small samples.

AUSTRALIA questioned whether access requires a separate provision, favoring governance by UNCLOS.

HOLY SEE recommended that the regulation focus on exploitation of MGRs rather than exploration; that there be additional requirements for vulnerable marine ecosystems; and that MSR be defined to distinguish scientific use from commercial intentions.

PNG highlighted the importance of traceability and disclosure of origin, regardless of the medium of access. He further emphasized that patent applications based on information from databases and not dependent on physical access should also be subject to traceability and benefit-sharing requirements.

ICELAND cautioned against impeding access to MGRs and hampering MSR, maintaining that UNCLOS provides for free access. He noted that any notification mechanism should not be a condition for access. CUBA suggested facilitating MSR in an organized manner.

The INTERNATIONAL COUNCIL OF ENVIRONMENTAL LAW (ICEL) pointed to the opportunity for market-based solutions and certifications to incentivize companies.

### ABMTs

**Negotiating Process:** Facilitator Alice Revell requested that delegates focus on how ABMTs would be established; by whom; and what provisions will be included in the ILBI.

**Process in Relation to ABMTs, including MPAs:** PARAGUAY, speaking on behalf of ARMENIA, RWANDA, BURKINA FASO, and ESWATINI, stressed the special needs and circumstances of landlocked developing countries (LLDCs). Noting that ABMTs are broader than MPAs, AUSTRALIA recommended that the ILBI set out a process that promotes coherence between MPAs, ABMTs, and other pre-existing frameworks.

On the *identification of areas*, G-77/CHINA, CARICOM, SRI LANKA, the AFRICAN GROUP, SINGAPORE, and LIKE-MINDED LATIN AMERICAN COUNTRIES supported: a non-exhaustive list of standards and criteria for the identification of areas in the ILBI, with the HIGH SEAS ALLIANCE; identifying areas in proposals submitted in accordance with the ILBI; and deciding on area identification at the ILBI's decision-making body. INDIA proposed regularly revising the list. CHINA called for flexibility, noting that standards and criteria will be subject to further development.

CHINA said that identification of areas should be based on best available scientific "evidence."

The EU, CHINA, the RUSSIAN FEDERATION, and FSM supported developing a list of standards and criteria under the ILBI and, with CAMEROON and NORWAY, supported merging some of the current criteria.

The RUSSIAN FEDERATION, with AUSTRALIA, SINGAPORE, and JAPAN, disagreed with the criteria on the adverse impacts of climate change and ocean acidification, and cumulative and transboundary impacts.

CARICOM, FSM, CHINA, NORWAY, BANGLADESH, the HIGH SEAS ALLIANCE, and CANADA, opposed by AUSTRALIA, suggested including "economic and social factors" in the list of standards and criteria. SWITZERLAND and the EU said this language should not be reflected at the identification level. The AFRICAN GROUP requested clarification on this criterion.

The EU, JAPAN, the RUSSIAN FEDERATION, CHINA, and FSM requested clarification on the meaning of "internationally accepted scientific standards and criteria" related to identification of areas, with AUSTRALIA opposing the term.

The EU, FSM, CAMEROON, NEW ZEALAND, and the HIGH SEAS ALLIANCE favored reference to traditional knowledge as an additional source of information. The REPUBLIC OF KOREA, TOGO, and the RUSSIAN FEDERATION queried the role of traditional knowledge in the identification process. To highlight the relevance of traditional knowledge to ABMTs, the FSM, for SIDS, presented three components related to marine species, environmental management practices and marine features.

On *decision-making*, CHINA supported the ILBI's decision-making body taking decisions on identification of areas, noting that this should be without prejudice to the work and mandates of existing international bodies and organizations.

NEW ZEALAND envisaged that a global body would have a role in identifying priority areas for the establishment of ABMTs and coordinate with relevant existing bodies. Supported by CAMEROON, she added that criteria relating to ecologically or biologically significant marine areas (EBSAs) and MPAs from the Convention on Biological Diversity (CBD) could be considered.

The US outlined a general process whereby regional and sectoral organizations would propose areas to be identified as MPAs through scientific justification. ICELAND and the RUSSIAN FEDERATION noted with concern that most options on identification and designation assign decision-making authority at the global level, expressing their preference for additional focus on regional and sectoral bodies. The RUSSIAN FEDERATION proposed that the competence of existing bodies could be extended, if necessary.

MONACO and the REPUBLIC OF KOREA suggested that standards and criteria could be developed later, possibly by a scientific body under the ILBI. The EU noted that decision-making should be dealt with elsewhere in the ILBI text.

ICEL elaborated on categorizations including: global MPAs; sectoral ABMTs; and regional MPAs.

### In the Corridors

As discussions entered their third day, delegates broached testy issues related to scope, access to MGRs, and ABMTs. Some delegates seemed pleased with the dense interventions that went on at great length to explain states' preferences on the different options included in the President's Aid. Others, however, remained skeptical. "Reiterating our position on whether or not derivatives should be included in the ILBI could be done in a more efficient way than picking, for instance, paragraph 3, sub-paragraph 4, option A or B," a veteran complained. "Thinking about how to bridge our different perspectives is the hot potato here, and we haven't touched it yet."

The lines in the sand around linking access to MGRs and the sharing of their benefits were drawn, revealing the long-standing positions of certain regional groups. Some developing countries felt slighted by calls to ignore the intent of MSR. "A tiny bucket of seawater can yield millions of benefits, monetary and otherwise," claimed one, noting that technological developments need broad coverage if the ILBI is to succeed in promoting the fair and equitable sharing of benefits arising from MGRs in ABNJ.