

BBNJ IGC-2 Highlights: Thursday, 28 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 Thursday, 28 March 2019 in an informal working group on area-based management tools (ABMTs), including marine protected areas (MPAs).

Area-Based Management Tools

Process in Relation to ABMTs, including MPAs: CANADA suggested broadening the title to “Designation and planning process.” Argentina, for the LIKE-MINDED LATIN AMERICAN COUNTRIES, and CANADA stressed that this section refers to all ABMTs, including MPAs. SWITZERLAND and SEYCHELLES called for balance between ABMTs and MPAs in the document. The REPUBLIC OF KOREA stressed that the new instrument should supplement, support, and inform existing regional bodies, rather than replace them.

On the *designation process*, delegates considered proposals, consultations on and assessment of these proposals, and decision-making.

Proposals: Discussing submission, many delegations supported state parties submitting proposals to the Secretariat. CHINA said proposals should only be submitted by state parties to the scientific/technical body via the decision-making body. The CARIBBEAN COMMUNITY (CARICOM) preferred that the ILBI facilitate joint submissions and proposals from indigenous peoples and local communities (IPLCs).

The REPUBLIC OF KOREA suggested proposals be made by state parties with direct interest and responsibilities under the regional mechanism, expressing flexibility on involvement of other state parties.

PACIFIC SMALL ISLAND DEVELOPING STATES (P-SIDS) preferred that submissions be made to a scientific/technical body via the Secretariat. CARICOM preferred submission to a decision-making body. Merging options, ERITREA preferred that proposals shall be submitted to the decision-making body or the Secretariat, informed by the scientific/technical body.

On principles governing the designation process, the EU, TOGO, and SWITZERLAND supported the application of the precautionary principle. The US, SINGAPORE, AUSTRALIA, CANADA, and JAPAN favored the precautionary approach. ERITREA suggested addressing principles in a general section, and called for reference to relevant traditional knowledge of IPLCs. HIGH SEAS ALLIANCE supported the application of the precautionary principle, an ecosystem approach, and use of traditional knowledge.

OCEANCARE pressed that an ABMT’s “geographic/spatial description” reflects the dynamic nature of the marine environment.

On content, the EU, MONACO, and SWITZERLAND suggested adding descriptions of “what we want to protect” to the required proposal elements. P-SIDS, supported by SINGAPORE and the HIGH SEAS ALLIANCE, suggested that proposals focus on: where it is; what you want to do; what is happening now; and how you are going to do it. The LIKE-MINDED LATIN AMERICAN COUNTRIES favored the adoption of an indicative list of elements, with the inclusion of “among others.” NEW ZEALAND and TOGO argued that the list of required elements should be amendable.

JAPAN favored the format of proposals being elaborated by the ILBI rather than adopted in an indicative list, calling for prior consultation, as under the UN Fish Stocks Agreement (UNFSA).

CANADA reiterated the need to address the level of detail included in the body of the agreement, suggesting considering strategic impact assessments and marine spatial planning. SWITZERLAND suggested adding biodiversity value and sensitivity. CHINA proposed including a basic description of proposed areas and specific protection measures, goals, and objectives.

ERITREA proposed: drawing from the framework of the Intergovernmental Panel on Biodiversity and Ecosystem Services (IPBES) regarding values; including information on connectivity to neighboring areas; and clarifying the notion of adjacency.

On the duration, NEW ZEALAND, TOGO, and others favored the “no text” option. SINGAPORE preferred linking duration to conservation and sustainable use objectives. ERITREA proposed deciding on duration based on periodic review of the area under consideration.

The INTERNATIONAL CABLE PROTECTION COMMITTEE (ICPC) recommended that the presence of existing or planned submarine cable routes be listed as a human activity to be considered within proposals.

Consultations on and assessments of the proposal: The AFRICAN GROUP supported the option outlining inclusive, transparent, and open consultation, with SWITZERLAND and others; but, with ICELAND, the US, and TOGO, did not support text outlining relevant stakeholders.

JAPAN said the relevant stakeholders list should be developed by the decision-making body. P-SIDS said the listing should be updated as necessary and envisaged a pool of independent experts to conduct the scientific peer review. SINGAPORE and the PHILIPPINES noted the need to incorporate SIDS into the list of stakeholders. ICPC called for consulting owners and operators of submarine cables.

The EU suggested that states be encouraged to submit their views on proposals’ effects on their sovereign rights; that regional or sectoral organizations consider the complementarity and compatibility of proposals with existing measures; and that consultations re-open if significant issues emerge.

The EU, the AFRICAN GROUP, and others supported proposal review by a scientific/technical body. CHINA and the PHILIPPINES preferred review by the decision-making body.

The ALLIANCE FOR SMALL ISLAND STATES (AOSIS) underscored the special circumstances of SIDS in consultations.

CANADA suggested an initial consultation with a large number of stakeholders, and an additional, proactive consultation with key players, such as relevant bodies; and with SWITZERLAND and ERITREA, supported consulting adjacent coastal states.

Decision-making: TURKEY suggested merging the decision-making provisions on identification and designation process. The AFRICAN GROUP, the EU, CARICOM, and P-SIDS supported giving the decision-making body authority over managed areas. The AFRICAN GROUP, CHINA, the US, TURKEY, SWITZERLAND, the REPUBLIC OF KOREA, and JAPAN favored consensus-based decision-making, with the LIKE-MINDED LATIN AMERICAN COUNTRIES, NEW ZEALAND, and TOGO supporting other measures in cases of non-consensus. SWITZERLAND noted that the rules of procedure may deal with instances of non-consensus.

CANADA argued that consensus-based decision-making is a delicate matter, highlighting the risk, “on the one hand, of distant parties imposing measures on specific oceanic regions, and, on the other, of decisions being blocked by one or a few countries.”

The LIKE-MINDED LATIN AMERICAN COUNTRIES supported the decision-making body or forum making decisions on the designation of all ABMTs, while the US favored the body only designating MPAs. JAPAN, CHINA, the REPUBLIC OF KOREA, and the US did not consider it necessary to require the consent of adjacent coastal states, while CANADA noted that measures recognizing rights of adjacent coastal states might assist in consensus-based decision-making. SEYCHELLES stressed that adjacent coastal states must be part of the decision-making process.

CANADA and SWITZERLAND noted that decisions should be made at the global level, but also welcomed the recognition of the authority of relevant global, regional, and sectoral bodies. The HIGH SEAS ALLIANCE favored global-level decision-making. SWITZERLAND, with the HOLY SEE, called for further considering the hybrid models.

The REPUBLIC OF KOREA and the RUSSIAN FEDERATION supported that decisions be taken by relevant regional and sectoral bodies.

CANADA expressed preference for a case-by-case determination on whether to propose an ABMT at the global level.

CARICOM and others called for reference to science in the decision-making procedure. The INTERNATIONAL INDIAN TREATY COUNCIL highlighted the role of traditional and indigenous knowledge.

INTERNATIONAL UNION FOR CONSERVATION OF NATURE (IUCN) emphasized *inter alia*: potential diversity of protected areas that can lead to resilient MPA networks; ecosystem-based management; interim measures for areas under review in case a two-step designation process is selected; and the need for an open, transparent, participatory, and workable process.

Relationship to measures under relevant instruments, frameworks and bodies: On the *promotion of coherence and complementarity*, G-77/CHINA and the AFRICAN GROUP preferred an option on coherence and complementarity of ABMT measures. G-77/CHINA asserted that MPA-only options would be problematic; cooperation and coordination on ABMTs should be enhanced; and, with the AFRICAN GROUP, sought clarification on the meaning of compatibility.

CARICOM supported the promotion of coherence and complementarity where no competent global, regional, or sectoral body exist, also supporting complementarity with measures designated under existing instruments.

The LIKE-MINDED LATIN AMERICAN COUNTRIES, supported by NEW ZEALAND, CANADA, SINGAPORE, and the PHILIPPINES, favored a global overarching framework for the recognition and establishment of ABMTs to complement measures designated under existing regional and sectoral bodies. He further explained that the BBNJ instrument should not evaluate ABMTs by regional and sectoral bodies, but rather ensure their compatibility with other instruments.

The US said that a centralized model for ABMTs “goes beyond what we envisage.” He suggested encouraging coherence and complementarity between measures identified under the ILBI and measures from regional and sectoral bodies.

The EU, with NEW ZEALAND, highlighted the need for mainstreaming; providing a platform for cooperation, communication, and collaboration; and establishing general standards or guidelines.

On **enhanced cooperation**, the LIKE-MINDED LATIN AMERICAN COUNTRIES stressed that cooperation and coordination should be enhanced through the consultation process. NEW ZEALAND and the PHILIPPINES supported a coordination mechanism. CANADA, with SINGAPORE, supported enhancing cooperation and coordination between relevant legal frameworks and bodies. SAMOA proposed combining options to include a coordination mechanism and a consultation process, including those at a regional level.

P-SIDS did not favor the establishment of a scientific working group. The US did not support the establishment of a formal coordination mechanism between different independent bodies.

On the **respect for the rights of coastal states**, the EU noted that the ILBI should be without prejudice to the rights and duties of states under the UN Convention on the Law of the Sea (UNCLOS) and respect rights of coastal states, even in cases where an exclusive economic zone (EEZ) has not been established. The PHILIPPINES and INDIA favored the ILBI being without prejudice to the rights jurisdiction, freedoms, and duties of states under the Convention, including those of coastal of states.

The LIKE-MINDED LATIN AMERICAN COUNTRIES, NEW ZEALAND, and TURKEY noted that general language on the sovereign rights of coastal states should be reflected under general principles.

TURKEY queried whether language on MPAs falling under the national jurisdiction of a coastal state in the future refers to extended continental shelf claims.

On the **relationship between measures**, the EU called for reflecting that state parties should cooperate to promote compatibility of ABMT measures. P-SIDS preferred consultations with adjacent coastal states, including IPLCs with relevant traditional knowledge.

The LIKE-MINDED LATIN AMERICAN COUNTRIES supported consultation with concerned states, including adjacent coastal states. INDIA called for due regard to the rights and legitimate interests of coastal states.

The US stressed that the notion of “established measures” presupposes a model for ABMTs and MPAs, suggesting more general language and requesting further clarifying the notion of adjacency. CANADA stressed that language around “compatibility” in the ILBI should align with the UNFSA.

PALAU supported ensuring compatibility of measures under the ILBI and national jurisdiction. The PHILIPPINES stressed that consultations under such an option should be time-bound.

NEW ZEALAND suggested this issue be addressed in detail under the cross-cutting items.

In the Corridors

On Thursday, delegates moved through the text to elaborate their preferred options related to ABMTs. Whether the text reflected options that included ABMTs other than MPAs remained uncertain; some delegates felt strongly that other measures had been left out. “As far as I can remember, in all the years of discussions that have built up to this document, we have not really considered other ABMTs in detail,” sighed one observer, noting that the NGO community had circulated suggestions in this regard in the past. The session left many wondering how to bridge the perennial gap between those preferring global mechanisms and those preferring regional and sectoral mechanisms, given some countries’ lack of confidence in the latter.