

BBNJ IGC-2 Highlights: Friday, 29 March 2019

The second Intergovernmental Conference (IGC-2) on the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction (BBNJ) convened on Friday, 29 March 2019 in an informal working group setting, to consider area-based management tools (ABMTs), including marine protected areas (MPAs), and environmental impact assessments (EIAs).

Area-Based Management Tools

Objectives: Many supported a non-exhaustive list of objectives, with NEW ZEALAND and CANADA calling to streamline them.

Argentina, for the LIKE-MINDED LATIN AMERICAN COUNTRIES, called for the establishment of a comprehensive system of ABMTs. The EU, the CARIBBEAN COMMUNITY (CARICOM), VANUATU, and MONACO supported establishing a connected network of MPAs, while the US queried the meaning of “equitably managed” areas. SINGAPORE, CHINA, and BANGLADESH emphasized that regulations should not impede the duties of states parties under existing instruments.

CARICOM and NORWAY called for outcome-oriented objectives. The EU underscored the precautionary principle and ecosystem approach, and said that enhancing cooperation and coordination is a tool to deliver objectives. PACIFIC SMALL ISLAND DEVELOPING STATES (P-SIDS) proposed including the protection of cultural values.

Relationship to measures under relevant instruments, frameworks and bodies: On the *promotion of coherence and complementarity*, CUBA called for incorporating the concept of synergies. CHINA stressed that the new instrument should neither establish a hierarchical structure nor function as an evaluation body. NORWAY suggested promoting coherence through the application of measures developed within existing relevant legal instruments and frameworks. JAPAN, with the RUSSIAN FEDERATION, suggested that parties work “through consultation, cooperation, and sharing knowledge and experience.”

AUSTRALIA, with JAPAN and the REPUBLIC OF KOREA, favored a representative network of MPAs which does not undermine existing instruments.

MONACO supported the idea of a global overarching framework that supplements existing frameworks, outlining, supported by the HIGH SEAS ALLIANCE, a process of: ABMTs establishment by the internationally legally binding instrument (ILBI); acknowledgement of ABMTs already set up by existing global, regional, and sectoral bodies; and a combination of the two to create a global ABMTs network.

AUSTRALIA, with the RUSSIAN FEDERATION, did not support the formal notion of “recognition” in the text.

The INTERNATIONAL COUNCIL OF ENVIRONMENTAL LAW (ICEL) highlighted different processes for ABMTs establishment: global MPAs; regional MPAs; sectoral ABMTs; and other ABMTs.

On **enhanced cooperation**, JAPAN, TUVALU, and the RUSSIAN FEDERATION stated that the ILBI should not undermine existing instruments. CHINA emphasized that the new instrument should not preempt the mechanism for cooperation and coordination. NORWAY suggested establishing a structure to ensure coordination. ICELAND favored coordination mechanisms established at the regional level, pointing to the role of regional seas organizations. MONACO opined that cooperation and coordination should be enhanced through the consultation process.

The UN ENVIRONMENT PROGRAMME (UNEP) shared information on studies related to cooperation and coordination. The INTERNATIONAL MARITIME ORGANIZATION noted the effectiveness of regulating specific activities such as international shipping.

On the **respect for the rights of coastal states**, AUSTRALIA and ICELAND suggested that language be contained in a general provision. CHINA added that when jurisdiction is unclear, ABMTs should not be applied. JAPAN proposed that an ABMT be amendable if it impedes the rights of coastal states. The RUSSIAN FEDERATION called for consulting coastal states when MPAs affect economic activities.

On the **relationship between measures**, CHINA noted that focusing on compatibility is not essential, suggesting that, when establishing ABMTs, all relevant countries, not only coastal states, be consulted. AUSTRALIA and JAPAN expressed reservations about “compatibility.” NORWAY and the HIGH SEAS ALLIANCE stressed that measures adopted in areas beyond national jurisdiction should not undermine measures taken in areas under national jurisdiction.

PAPUA NEW GUINEA (PNG) recommended a provision for prior notification of adjacent coastal states in order to ensure inclusive consultations. ICELAND called for due regard to the rights and legitimate interests of coastal states.

Implementation: Many supported that implementation resides with states parties in the future instrument. The EU, with SWITZERLAND, proposed referring to ABMT decisions, rather than measures, and strengthening language on assessing the effectiveness of measures; and, with CARICOM, suggested that states be able to adopt stricter measures. P-SIDS called for avoiding disproportionate burdens on coastal states, especially SIDS.

The US, NEW ZEALAND, the REPUBLIC OF KOREA, JAPAN, NORWAY, and the RUSSIAN FEDERATION underscored the implementation role of existing global, regional, and sectoral bodies. AUSTRALIA supported the ILBI acting as a “catalyst for action in other bodies.”

JAPAN proposed including a duty for non-parties to cooperate. MEXICO called for clarifying the interactions between different parts of the system’s architecture before deciding on the implementation roles. HOLY SEE emphasized the notion of states’ due diligence.

Monitoring and Review: The LIKE-MINDED LATIN AMERICAN COUNTRIES and VANUATU stressed that the ILBI should be responsible for monitoring and review. CARICOM, TURKEY, SINGAPORE, and CHINA noted that the scientific/technical body should perform this role, while the LIKE-MINDED LATIN AMERICAN COUNTRIES, with VANUATU and MONACO, opined it could be done in collaboration with an ILBI monitoring and compliance committee. P-SIDS proposed referring to scientific information and knowledge, including traditional knowledge. CHINA recommended that project-proponent states take leadership in monitoring.

Favoring the “no text” option, the US, JAPAN, and ICELAND suggested that monitoring and review are the responsibility of relevant global, regional, or sectoral bodies. The RUSSIAN FEDERATION and the REPUBLIC OF KOREA cited the potential complexity and expense of monitoring ABMTs under a global regime.

The EU, supported by SWITZERLAND, said that: states parties should be able to report individually or collectively on implementation measures; reports should be publicly available; and a follow-up mechanism should be incorporated to monitor the implementation of conservation objectives.

JAPAN supported a regular review, with ICELAND suggesting that this be conducted by a review conference.

NEW ZEALAND, with CANADA and COOK ISLANDS, noted that the ILBI should differentiate between monitoring and reviewing ABMTs’ effectiveness, and its implementation.

Environmental Impact Assessments

Negotiating Process: René Lefeber (the Netherlands) facilitated discussions, inviting delegates to highlight gaps and elaborate reasons for objecting to various options.

General Statements: G-77/CHINA did not support postponing the development of the EIA process. The AFRICAN GROUP, the EU, Solomon Islands, for P-SIDS, Uruguay, for the LIKE-MINDED LATIN AMERICAN COUNTRIES, CARICOM, and CANADA favored outlining the steps for conducting an EIA. CHINA underscored that the relevant options should be streamlined and the entire process should be non-compulsory, offering relevant text in this respect.

The EU did not support compliance, enforcement, and auditing as part of the process, supported simplifying the public notification process, and stated with CARICOM that the proponent should bear the costs of the EIA.

LIKE-MINDED LATIN AMERICAN COUNTRIES outlined a process for EIAs that would include determination of whether an EIA is needed; delineation of scope; and clarification regarding responsibilities. He emphasized that general provisions should include text on: mitigation of impacts; identification of alternatives and possible compensation for adverse impacts; notification and public consultation; public issuance of the evaluation outcome; a process for adoption; and decision-making.

The US stressed that the state party with jurisdiction and control over the planned activity shall be the decision-making body, without overview by an overarching framework. He further outlined a process, including: scoping; development of an EIA document for public review, including description of activity, consideration of potential direct, indirect, and cumulative impacts, consideration of mitigation and monitoring, and reasonable alternatives to all of the above; time-bound opportunity for comments; a requirement to consider substantive comments and respond; and production of a written decision document for public release.

The REPUBLIC OF KOREA and the RUSSIAN FEDERATION expressed a preference for allowing details to be developed by a scientific/technical body at a later stage, with the RUSSIAN FEDERATION recommending a series of non-binding principles for states to adopt within national legislation. SINGAPORE cautioned against creating an overly descriptive, burdensome instrument.

Process: On *screening*, the US and NEW ZEALAND preferred that states parties be responsible for determining whether an EIA is required or not. P-SIDS and CAMEROON supported states seeking the approval of the scientific/technical body to determine that an EIA is not required. AUSTRALIA called for a practical, state-driven, tiered process involving screening, with proponents responsible for preparing assessment documentation.

On *scoping*, P-SIDS, AUSTRALIA, and others noted that cumulative impacts, best available scientific information and knowledge, including traditional knowledge should be included.

On *impact prediction and evaluation*, P-SIDS said that states parties with jurisdiction and control over the planned activity should be responsible for the conduct of EIAs, including the possibility to require the proponent to conduct the EIA or conducting it via an independent consultant. P-SIDS supported joint submission of EIAs for SIDS and the creation of a pool of experts, with the US subjecting its support on the pool of experts to potential budgetary implications. The US reiterated that the obligation to conduct EIAs lies with states parties, stressing that EIAs conducted by a third party must be submitted to states parties for review and decision-making. CANADA did not support EIAs being conducted by an independent consultant and, with the US, reiterated that traditional knowledge is different from scientific information and should be included as other source of information.

CARICOM proposed including social, economic, cultural and other relevant considerations.

On *public notification and consultation*, P-SIDS stressed it should: be transparent and inclusive, with the US and others; and take place in each stage of the EIA process with adjacent coastal states, indigenous peoples and local communities (IPLCs), with relevant traditional knowledge, relevant global, regional, and sectoral bodies and those with existing interests in a specific area. The US underscored that substantive comments received during the consultation process should be considered and responded to, but noted that further relevant provisions go beyond the scope of the instrument. CANADA suggested adding access to information. JAPAN recommended that EIA proposals be shared publicly for comments with all member states, including adjacent coastal states, so long as it does not impose excessive burdens on the proponents of activities.

On *decision-making*, P-SIDS suggested that the ILBI be responsible for determining whether an activity may proceed in accordance to relevant recommendations by the scientific/technical body, following public consultations. CAMEROON preferred that decisions be made by a scientific/technical body. The US reiterated that responsibility for decision-making lies with states parties. He further noted that details on the process for conducting EIAs may be developed under a body set under the instrument, but that further guidance should impose no further requirements for parties. AUSTRALIA did not support a formal process for reviewing reports.

In the Corridors

Delegates finalized their consideration of ABMTs on Friday right on schedule before tackling one of the bulkiest parts of the President’s Aid: environmental impact assessments. Once again, faced with options-within-options, and unyielding complexity, delegates struggled to make their preferences clear – and, more so, to explain the rationale behind their choices. Still, many delegates agreed that progress has been made, including the identification of negotiating red lines of different states parties.

A seasoned delegate exiting the room after a dense afternoon plenary, seemed cautiously optimistic: “The level of detail in the different options might seem chaotic, but once we ride out the option-storm, we’ll hopefully be able to see the big picture and start negotiating on our different positions.” Another participant looked weary: “we definitely have a lot to process,” he mused. “I hope the various workshops on Saturday help streamline our thoughts. The weekend could not have come too soon.”