

BBNJ IGC-2 Highlights: Tuesday, 2 April 2019

The second Intergovernmental Conference (IGC-2) on the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction (BBNJ) convened on Tuesday in an informal working group setting to discuss environmental impact assessments (EIAs), and capacity building and the transfer of marine technology (CB&TT).

Environmental Impact Assessments

Activities Requiring an EIA: The International Cable Protection Committee (ICPC) supported an indicative, non-exhaustive list of activities that require an EIA or not.

The HIGH SEAS ALLIANCE supported the application of thresholds, noting that even a non-exhaustive list would be cumbersome to negotiate; highlighted the need to reflect cumulative impacts, including their definition; and cautioned against setting different standards for conducting EIAs.

WWF stressed that all activities should be subject to an EIA regime, underscoring that requirements would depend on the likelihood and severity of impacts. She highlighted the need to consider whether there is a potential impact that requires further assessment and the level of assessment required.

Obligation to Conduct an EIA: CARICOM, P-SIDS, CANADA, ICELAND, JAPAN, the PHILIPPINES, and INDONESIA favored states parties assessing the potential effects of planned activities within their jurisdiction or control in ABNJ under UNCLOS obligations. ICELAND, JAPAN, the REPUBLIC OF KOREA, INDONESIA, and others requested deleting reference to “applicable customary international law.”

The LIKE-MINDED LATIN AMERICAN COUNTRIES and the RUSSIAN FEDERATION supported states conducting an EIA when they have reasonable grounds to believe that planned activities may cause substantial pollution.

CARICOM, CANADA, and INDONESIA said that states parties need to take measures to implement UNCLOS provisions regarding conducting an EIA. The AFRICAN GROUP, the EU, SINGAPORE, the PHILIPPINES, NORWAY, and ICELAND preferred that states parties should require any proponent of an activity to conduct an EIA when the threshold requirement is met.

The RUSSIAN FEDERATION requested further drafting on states parties’ responsibilities.

The AFRICAN GROUP, with the EU, CANADA, SWITZERLAND, INDONESIA, NEW ZEALAND, ICELAND, and SINGAPORE, added that the requirement for EIAs only applies to activities conducted in ABNJ.

P-SIDS, CARICOM, the PHILIPPINES, and the HIGH SEAS ALLIANCE called for EIAs for all activities with impacts in ABNJ.

The HOLY SEE offered provisions to redefine jurisdiction beyond licensing or funding, supported by the EU; and operationalize the “polluter pays principle” by including financial obligations with respect to anticipated activities.

Relationship to EIA Processes under Relevant Instruments: The EU, JAPAN, IRAN, the REPUBLIC OF KOREA, and others argued against references to customary international law. CAMEROON, IUCN, and the HIGH SEAS ALLIANCE supported reference to customary international law, including rules and standards developed by other bodies.

The AFRICAN GROUP requested clarification on the relationship between UNCLOS, customary international law, and the conduct of EIAs. The LIKE-MINDED LATIN AMERICAN COUNTRIES said that issues of relationship should be discussed in a general provision.

Many agreed that the EIA process should “not undermine” existing instruments, with AUSTRALIA and NEW ZEALAND calling to elaborate this provision. The G-77/CHINA, the EU, CARICOM, SWITZERLAND, and the AFRICAN GROUP suggested that the ILBI “respect and support” other relevant instruments.

P-SIDS, CANADA, and others supported the ILBI consulting and coordinating with relevant bodies. SWITZERLAND, ICELAND, and others insisted on the importance of eliminating duplication or hierarchy between bodies. The RUSSIAN FEDERATION did not support consultation.

CARICOM and P-SIDS preferred working with minimum global standards and/or guidelines developed through consultation or collaboration with global, regional, and sectoral bodies. INDIA stressed specificity when developing standards. ICELAND suggested that guidelines be developed with relevant bodies in cooperation with states parties. The RUSSIAN FEDERATION recommended that EIA guidelines be contained in an annex.

CANADA and NORWAY supported that the ILBI provisions should constitute global standards and minimum requirements for EIAs for ABNJ. The AFRICAN GROUP, the LIKE-MINDED LATIN AMERICAN COUNTRIES, and others suggested that all other instruments and bodies conform to these standards. The EU and the US requested clarification on minimum global standards and guidelines, cautioning, with SINGAPORE and others, against “imposing obligations on other bodies.”

In cases where an activity in ABNJ is already covered by existing frameworks/bodies, the RUSSIAN FEDERATION, JAPAN, and the REPUBLIC OF KOREA suggested that no EIA be required if an activity is in accordance with regulations of such bodies. ICELAND said that EIAs would not be necessary where relevant bodies with mandates for EIAs in ABNJ exist. The AFRICAN GROUP and the PHILIPPINES emphasized that the EIAs should be “functionally equivalent.” INDONESIA embraced the threshold mechanism to

trigger EIAs. The EU proposed that the threshold for the conduct of EIAs be met or exceeded, and that states parties ensure that EIAs are conducted for activities regulated under other existing bodies.

The INTERNATIONAL MARITIME ORGANIZATION (IMO) highlighted that potential impacts from shipping activities, including dumping, are regulated under the London Convention and the London Protocol. The NORTH EAST ATLANTIC FISHERIES COMMISSION (NEAFC) underscored relevant provisions on vulnerable marine ecosystems, including on bottom fisheries.

Capacity Building and Transfer of Marine Technology

Types and Modalities: On *types* of CB&TT, the AFRICAN GROUP, the EU, NORWAY, CHINA, and others said that the proposed list was too long, with the EU calling to streamline the types of activities in two parts: first broadly setting out CB&TT provisions, including identification of needs and formulation of requests; then mandating a body to provide guidance on CB&TT. NEW ZEALAND, with the INTERNATIONAL COUNCIL OF ENVIRONMENTAL LAW (ICEL), suggested grouping CB&TT types into categories. AUSTRALIA supported broadly outlining types of CB&TT and then providing illustrative guidelines. The RUSSIAN FEDERATION did not support addressing the types of CB&TT.

The G-77/CHINA, CARICOM, AOSIS, the LIKE-MINDED LATIN AMERICAN COUNTRIES, NEW ZEALAND, and INDIA supported including a list of CB&TT activities in the body of the ILBI. JAPAN preferred an annexed, indicative, periodically revised list. The AFRICAN GROUP, NEW ZEALAND, the LIKE-MINDED AMERICAN COUNTRIES, and INDIA favored the list being reviewed, assessed, and adjusted periodically.

P-SIDS, AOSIS, and NORWAY favored including the list and also providing for its further development by a subsidiary or decision-making body, supported by the REPUBLIC OF KOREA, or *ad hoc* working group, or by regional bodies. The US maintained that it was unclear which subsidiary bodies would be created, and thus unwise to mandate such a body to perform this function.

On *modalities*, the G-77/CHINA, CARICOM, the LIKE-MINDED LATIN AMERICAN COUNTRIES, JAMAICA, NIGERIA, and P-SIDS preferred an option outlining the modalities for CB&TT. AOSIS and AUSTRALIA said that modalities, procedures, and guidelines should be needs-based and country-driven. The US noted that the text was too detailed.

INDIA, JAPAN, and the US pointed to the Intergovernmental Oceanographic Commission of UNESCO (IOC-UNESCO) Criteria and Guidelines on Transfer of Marine Technology as an example of operationalizing CB&TT, and NORWAY to the FAO Port State Measures Agreement. AOSIS drew attention to UNCLOS provisions on technology transfer.

CARICOM preferred that CB&TT be carried out through a needs-identification mechanism. P-SIDS supported regional needs-assessment mechanisms coordinating with a global body. The LIKE-MINDED LATIN AMERICAN COUNTRIES favored a case-by-case needs review through a specific CB&TT mechanism.

CANADA and the LIKE-MINDED LATIN AMERICAN COUNTRIES preferred excluding provisions related to a needs-assessment review body.

The G-77/CHINA called for stronger language on technology transfer. The US, NORWAY, JAPAN, and others, opposed by P-SIDS, supported technology transfer according to mutually agreed terms. The LIKE-MINDED LATIN AMERICAN COUNTRIES preferred CB&TT be carried out in a fair and reasonable manner through favorable terms and conditions.

P-SIDS did not support the terms of technology transfer being freely negotiated between the supplier and the recipient, and called for clarification on the terms “voluntariness,” “reasonableness,” and “reciprocity.”

AOSIS stressed that ease of access should be a guiding principle in CB&TT, and that the process should address the interests of indigenous peoples and local communities.

The LIKE-MINDED LATIN AMERICAN COUNTRIES and the AFRICAN GROUP preferred that IPRs do not preclude technology transfer under the agreement. The RUSSIAN FEDERATION favored that states shall respect the protection of IPRs, with NEW ZEALAND suggesting that such language remains consistent with the CBD and the International Treaty on Plant Genetic Resources for Food and Agriculture. AUSTRALIA said reference to respecting IPRs should be contained in the general part of the agreement. The EU, SENEGAL, and NORWAY opposed text on IPRs, as they are discussed under the World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO). SINGAPORE said IPRs should enable, rather than obstruct, technology transfer.

On the *clearinghouse mechanism*, the G-77/CHINA, CARICOM, P-SIDS, AOSIS, the LIKE-MINDED LATIN AMERICAN COUNTRIES, the EU, and INDIA supported setting out the functions of a clearinghouse mechanism, with the EU suggesting outlining its goals and, supported by AUSTRALIA, the main functions. The LIKE-MINDED LATIN AMERICAN COUNTRIES noted that this issue is cross-cutting.

SINGAPORE observed that developing a protocol, code of conduct, or guidelines for environmental protection are not the functions of a knowledge repository, and JAPAN maintained that the clearinghouse should not carry out rule-making functions.

IOC-UNESCO said a hybrid clearinghouse mechanism should be proactive, cost-effective, and avoid duplication.

ICEL recommended that a clearinghouse mechanism adapt to scientific developments and that states not solely bear the burden of updating databases.

Funding: On funding *types*, the AFRICAN GROUP, the G-77/CHINA, the EU, CARICOM, the LIKE-MINDED LATIN AMERICAN COUNTRIES, and P-SIDS agreed that funding should be both voluntary and mandatory, with the EU underlining that mandatory funding be restricted to institutional and clearinghouse mechanism costs. ERITREA noted that funding should be adequate, accessible, sustainable, and predictable. SWITZERLAND and NORWAY preferred voluntary funding.

On *sources*, the EU called for including national funding sources, and P-SIDS welcomed the inclusion of innovative funding sources. SINGAPORE sought clarity on the source of funding for an endowment fund, and CHINA on the recovery and liability funds. ERITREA pointed out that an endowment fund would be prone to unpredictable funding and preferred a “sinking fund.”

On the funding *mechanism*, the AFRICAN GROUP underscored the cross-cutting nature of the mechanism and recommended, with CARICOM, that it be dealt with under institutional arrangements. ERITREA proposed establishing a centralized financing mechanism.

On *access*, the AFRICAN GROUP supported access to developing country “parties,” with P-SIDS also favoring granting priority access to SIDS. The EU did not support listing potential beneficiaries.

In the Corridors

As delegates dived into the expansive river of capacity building and the transfer of marine technologies on Tuesday, Facilitator Olai Uludong prompted delegates to “paddle the CB&TT canoe together,” which resulted in a spirited discussion. “Capacity building needs to foster cooperation and speak to the needs and priorities of recipients, so we all have to be onboard,” quipped one delegate.

Yet it was difficult to ignore the fact that positions were still poles apart, with the usual, predictable lines drawn between a cohort preferring only voluntary funding options, and those on the receiving end, holding out for a mix of voluntary and mandatory financing. The plethora of proposed funds on offer also led to calls for clarification. When some requested that aspects of the funding provisions to be discussed under cross-cutting issues, others resolved that, clearly, “the real negotiations are going to come down to the wire with three days left and counting.”