

BBNJ IGC-2 Highlights: Wednesday, 3 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 Wednesday in an informal working group setting, to continue discussions on capacity building and the transfer of marine technology (CB&TT), and to begin discussions on cross-cutting issues.

Capacity Building and Transfer of Marine Technology

Funding: On funding *types*, SRI LANKA and TOGO supported adequate, accessible, sustainable, and predictable funding, with CAMEROON, KENYA, and MOROCCO calling for both voluntary and mandatory funding. The INTERNATIONAL COUNCIL FOR ENVIRONMENTAL LAW (ICEL) highlighted that mandatory funding promotes stability and predictability. VANUATU noted that voluntary sources are neither sustainable nor predictable. KENYA stressed that opting for voluntary funding only would be “shooting ourselves in the foot.”

AUSTRALIA underlined that it is not practical to frame accessible and predictable funding as an absolute obligation, with CANADA stating that this implies mandatory, assessed contributions. The US underscored that funding should be voluntary across the board. The REPUBLIC OF KOREA preferred voluntary consultation between the supplier and recipient. JAPAN pointed out that it is difficult to discuss a funding mechanism without a common understanding of the future ILBI’s CB&TT regime.

On the funding *mechanism*, AOSIS proposed that states identify appropriate operational entities. AUSTRALIA suggested that the decision-making body determine the scope and reference for the voluntary funding mechanism and questioned the purpose of the proposed multiple funds. CAMEROON favored both a voluntary trust fund and a special fund. TOGO and KENYA supported the creation of a voluntary trust fund to facilitate developing countries participation. TUVALU said an endowment fund could be supplemented by a trust fund. The RUSSIAN FEDERATION did not support the creation of a funding mechanism.

On *access*, AOSIS proposed specific allocations for SIDS and least developed countries (LDCs), drawing on the Green Climate Fund as an example, and emphasized simplified, prioritized access and approval procedures as provided for under the Paris Agreement on climate change. INDONESIA called for providing archipelagic and coastal states with access to funding. AUSTRALIA expressed willingness to consider referring to SIDS. TOGO, KENYA, and SRI LANKA supported taking into account the needs of landlocked and geographically disadvantaged developing countries, SIDS, LDCs, coastal African States, and developing middle income countries. SRI LANKA suggested adding “environmentally challenged and vulnerable state” as well as a descriptive list.

Monitoring and Review: G-77/CHINA, the AFRICAN GROUP, AOSIS, CARICOM, and others supported including CB&TT monitoring and review provisions in the ILBI. The US and the RUSSIAN FEDERATION dissented. The RUSSIAN FEDERATION underscored that CB&TT should take place on the basis of mutually agreed terms and conditions.

The EU, supported by NORWAY, suggested that regular review of CB&TT activities should take place under the direction of the Conference of the Parties (COP), including on: needs and priorities; and progress in achieving CB&TT objectives and the effectiveness of related activities.

AUSTRALIA, CANADA, and the REPUBLIC OF KOREA emphasized that detailed provisions can be developed by a decision-making body, suggesting focusing on effectiveness.

FSM highlighted that the ability of SIDS to effectively participate in the conservation and sustainable use of BBNJ depends on the CB&TT opportunities made available to them.

The AFRICAN GROUP and CANADA suggested reviewing CB&TT needs and priorities. The PHILIPPINES supported assessing CB&TT needs. AOSIS, P-SIDS, and CARICOM called for considering SIDS’ special circumstances. CARICOM and P-SIDS requested clarification regarding “equitable use of rights.”

On reporting, the AFRICAN GROUP and the PHILIPPINES noted that details of the procedures of review and monitoring should be determined by the decision-making body. AOSIS, AUSTRALIA, and SINGAPORE emphasized that reporting requirements should not be onerous. The REPUBLIC OF KOREA and others noted that reporting requirements should be voluntary, and SINGAPORE that they should be identical for all parties. JAPAN supported public reports from recipient countries to incentivize donor countries.

Regarding the monitoring and review entity, the AFRICAN GROUP opted for an expert auditing team from states parties reporting to the decision-making body. The PHILIPPINES, CANADA, and CHINA opted for the decision-making body, with CARICOM suggesting that this body coordinate with regional CB&TT committees. JAPAN preferred the decision-making body in consultations with states parties and regional bodies. P-SIDS emphasized that states parties and regional bodies should be consulted, in coordination with regional CB&TT committees. INDONESIA supported a monitoring and review committee reporting to the decision-making body. SINGAPORE stressed that monitoring and review of CB&TT should not take place at the regional level.

Objectives: On *general objectives and principles*, NORWAY did not support including text on marine biotechnology, with the US stating that this language is problematic.

THAILAND stressed that CB&TT should benefit developing states based on their needs, highlighting an obligation to cooperate and provide assistance towards marine scientific research (MSR).

On *specific objectives*, CARICOM, P-SIDS, the PHILIPPINES, TOGO, and THAILAND agreed that additional CB&TT objectives could be included. SINGAPORE suggested that language on “endogenous research capabilities” refer instead to “local” or “homegrown” research capabilities. The EU, JAPAN, the US, the RUSSIAN FEDERATION, and AUSTRALIA opined that there is no need to go into detail and recommended no text.

On *special states’ categories*, P-SIDS suggested deleting references to “coastal developing states” and, with the AFRICAN GROUP, INDONESIA, and the EU, called for clarification of “environmentally challenged and vulnerable states.” The PHILIPPINES tied “environmentally challenged and vulnerable states” to the Convention on Biological Diversity.

The G-77/CHINA, the AFRICAN GROUP, CARICOM, and P-SIDS underlined the need to recognize the special circumstances of SIDS, with CHINA also calling attention to LDCs and LLDCs. BANGLADESH highlighted the difference between LLDCs and geographically disadvantaged states. IRAN called for recognizing the capacity needs of all developing states.

INDONESIA, TOGO, and others advocated preferential treatment for developing countries, opposed by NORWAY and the US. The EU queried how preferential treatment would work in practice, opposing the categorization of states.

JAPAN, the RUSSIAN FEDERATION, and the REPUBLIC OF KOREA preferred the “no text” option, with the RUSSIAN FEDERATION noting that special requirements would not be necessary for CB&TT.

Cross-Cutting Issues

Institutional Arrangements: Regarding a *decision-making body or forum*, G-77/CHINA, AOSIS, the AFRICAN GROUP, the EU, CANADA, ICELAND, and others supported establishing a COP under the implementing agreement. The EU noted that a provision on the first meeting of the COP should be explicitly included in the agreement. BANGLADESH preferred the establishment of an assembly and a council, opposed by CANADA, AUSTRALIA, and others. The RUSSIAN FEDERATION supported a non-bureaucratic, cost-efficient structure, and did not favor including specific provisions on institutional arrangements.

On the *functions*, the AFRICAN GROUP, supported by many, suggested, *inter alia*, the COP: establish processes for cooperation and coordination between relevant global, regional, and sectoral bodies; follow-up on implementation; establish subsidiary bodies and *ad hoc* working groups; and perform monitoring and review. The EU, with MONACO, emphasized that the functions and competencies should be adequate to achieve the objectives, suggesting distinguishing between institutional and substantial functions, and, with CARICOM and others, cautioning against a long list.

NEW ZEALAND warned against an overly broad or duplicative mandate. SINGAPORE called for making use of existing mechanisms where possible, including the UNCLOS dispute settlement mechanism in cases of non-compliance. ICELAND did not support the COP following up implementation and progress on meeting global objectives, and maintained, with NORWAY, that it would not be appropriate for such a body to consider cases of non-compliance. The US underscored that relevant functions will depend on the substantive provisions of the instrument; queried a number of potential functions included in the draft document considering them beyond the mandate of a decision-making body; and supported consensus-based decision-making.

On a *scientific/technical body*, G-77/CHINA, AOSIS, the AFRICAN GROUP, the EU, CARICOM, and others supported its establishment. The EU preferred a scientific committee and called for flexibility to allow additional tasks to be mandated by the COP,

further suggesting setting out the possibility of establishing a pool of independent scientific experts, but also using expertise from existing arrangements. CANADA highlighted the need to include a “network of experts.” The AFRICAN GROUP, with P-SIDS, favored including in the body’s functions: monitoring utilization of MGRs of ABNJ; and providing recommendations on ABMTs, including MPAs, and EIAs on the decision-making body. The LIKE-MINDED LATIN AMERICAN COUNTRIES called for clarity on the composition of the body.

CARICOM recommended recognizing the body’s capacity to provide advice to other subsidiary bodies. P-SIDS suggested the scientific body be permanent, supported by INDONESIA and THAILAND, and opposed by the US. AUSTRALIA favored an *ad hoc* committee that meets in the margins and/or before the meetings, but not permanently. ICEL suggested an “advisory body.” The US underscored that the structure, functions, composition, and role can be discussed at a later stage, and queried a number of functions contained in the text. ICELAND did not foresee the need for a large scientific/technical body; preferred regional level guidance; and, with NORWAY, using existing arrangements.

Regarding *other subsidiary bodies*, AOSIS, P-SIDS, the AFRICAN GROUP, and CARICOM suggested establishing CB&TT and financial mechanisms. The AFRICAN GROUP proposed an implementation body as well as a finance committee. CARICOM favored the creation of an integrated implementation and compliance committee.

The EU and the US underscored that “form follows function,” noting that the establishment of subsidiary bodies will depend upon the evolution of the negotiations. The LIKE-MINDED LATIN AMERICAN COUNTRIES said that establishing subsidiary bodies is outside the purview of the instrument.

Regarding the *secretariat*, G-77/CHINA, CARICOM, P-SIDS, the LIKE-MINDED LATIN AMERICAN COUNTRIES, and others supported establishing the body. The AFRICAN GROUP preferred creating an independent secretariat or requesting UN Division on the Law of the Sea (UNDOALOS) to perform the relevant functions, with BANGLADESH and INDONESIA favoring the International Seabed Authority as secretariat. ICELAND preferred strengthening UNDOALOS. NORWAY, with NEW ZEALAND, acknowledged the need for extra resources for a secretariat. The EU and the US said this discussion is premature.

In the Corridors

What comes first, form or function? This is the persistent question that plagues the BBNJ process, and it reared its head again on Wednesday during discussions on funding for CB&TT and institutional arrangements. One delegate strenuously asserted that function (deciding on institutional arrangements, including whether they operate on a global or regional level) follows form (deciding on what the institutions will do). Echoing this, another remarked “We can’t really see the wood from the trees at this point, we’re getting so bogged down with detail,” alluding to the still yet undecided issues related to the CB&TT regime, the voluntary or otherwise nature of funding obligations, and how it will relate to existing frameworks.

Others, however, took a different view, making it clear that the important thing is to hammer out the technical minutiae in order to provide a definitive mandate to the institutions that will be established at a later point. “We are going to have to balance our preferences on specific options relating to the *modus operandi* of the future instrument with our considerations of the overall character and strategic direction of the agreement,” noted one seasoned observer, acknowledging the considerable amount of work ahead for IGC-3.