

BBNJ IGC-2 Highlights: Thursday, 4 April 2019

The second Intergovernmental Conference (IGC-2) on the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction (BBNJ) met on Thursday in an informal working group on cross-cutting issues.

Cross-Cutting Issues

Clearinghouse Mechanism: G-77/CHINA, the AFRICAN GROUP, CARICOM, P-SIDS, and others supported including relevant provisions in the implementing agreement. G-77/CHINA and the AFRICAN GROUP called for allowing the decision-making body to develop the functions of the clearinghouse mechanism. The LIKE-MINDED LATIN AMERICAN COUNTRIES expressed flexibility on where the mechanism would reside. The EU and NEW ZEALAND preferred that the decision-making body, at its first meeting, determine how to establish the clearinghouse mechanism. CARICOM highlighted the need for centralized access to information and tools.

P-SIDS called for an open access, web-based platform that links the global, regional, and national levels. CANADA, with P-SIDS and the INTERNATIONAL COUNCIL FOR ENVIRONMENTAL LAW (ICEL), agreed with including traditional knowledge. The EU, with NORWAY, the RUSSIAN FEDERATION, and the US emphasized that the clearinghouse mechanism could be addressed once the ILBI modalities have been decided.

President Lee clarified the difference between the two lists presented in the President's Aid, noting that one relates to the type of information that would be available in the mechanism and the other explains what could be done. NORWAY noted more information related to ABMTs, CB&TT, and MGRs could be included in the list. INDONESIA supported both lists. AUSTRALIA deemed the list unnecessary. The US cautioned against the potential burden of providing a case-by case option for CB&TT.

G-77/CHINA and P-SIDS supported linking the clearinghouse mechanism to gene banks, with the AFRICAN GROUP suggesting referring to "genetic data banks" instead. CANADA, with NORWAY and JAPAN, recognized the importance of confidentiality, highlighting that due regard may not suffice.

P-SIDS, SWITZERLAND, NORWAY, and ICELAND noted that the secretariat could manage the clearinghouse mechanism, assisted by relevant organizations and regional hubs. CARICOM, INDONESIA, and WWF supported relying on existing frameworks such as IOC-UNESCO, ISA, and IMO, with NORWAY also proposing FAO. The RUSSIAN FEDERATION requested clarity

on how the mechanism would affect these organizations' mandates, while the US suggested that an additional mechanism could be beyond their scope.

CANADA, ICELAND, INDONESIA, AUSTRALIA, and others did not support the clearinghouse mechanism assisting in the administration of the fund.

Review and Other Issues: On *review*, G-77/CHINA, the AFRICAN GROUP, CARICOM, and others supported convening a review conference to assess the ILBI's effectiveness. CARICOM noted that the decision-making body could undertake the first review, as per the Nagoya Protocol. P-SIDS and the RUSSIAN FEDERATION pointed to the UN Fish Stocks Agreement (UNFSA). The LIKE-MINDED LATIN AMERICAN COUNTRIES and the HIGH SEAS ALLIANCE noted that the review should be conducted regularly. ICELAND, the US, and AUSTRALIA, opposed by the AFRICAN GROUP, maintained that there was no need for a separate review conference if the COP meets annually.

On *financial resources*, the AFRICAN GROUP suggested drawing from CBD Article 20 (financial resources). CARICOM reiterated the crucial role of funding and SIDS' special circumstances. The EU said details could be elaborated by parties in due course, supporting a combination of voluntary and mandatory funding, with mandatory funding restricted to institutional costs. HOLY SEE outlined economic tools that should be considered, including guarantees, licensing fees, bonds, and tools for prevention of sale or supply of technologies that may pose environmental risks.

On *compliance*, the AFRICAN GROUP noted that the function could be performed by a subsidiary implementation body. The EU supported the implementing agreement requiring states to adopt regulations and measures. P-SIDS maintained that compliance should include respecting ABMTs or EIA management-plan provisions, proposing an international compliance committee reporting to a decision-making body, complemented by regional and sub-regional enforcement committees based on UNFSA.

On *responsibility and liability*, the AFRICAN GROUP, CARICOM, and NEW ZEALAND noted that UNFSA Article 35 (responsibility and liability) could provide inspiration. HOLY SEE underscored that states parties should not be liable if they have adopted and enforced appropriate laws to ensure compliance. The EU and CANADA pointed out that rules reflecting customary law have already been elaborated by the International Law Commission. P-SIDS called for a rehabilitation and liability funding mechanism. CHINA maintained that, *inter alia*: environmental baselines in ABNJ are difficult to define; and scope and degree of damage is difficult to assess.

On *dispute settlement*, the AFRICAN GROUP suggested drawing from the Paris Agreement on climate change. CARICOM highlighted UNFSA Articles 27-32, with NEW ZEALAND also pointing to the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean. The EU, CHINA, and IUCN favored an obligation to settle disputes by peaceful means as provided for under UNCLOS and the UNFSA. HOLY SEE queried the meaning of non-adversarial consultations, noting that disputes of a commercial nature may require different types of dispute settlement procedures. P-SIDS proposed that the mechanism also provide for advisory opinions. The US said it was too soon to consider the details.

On *final clauses*, the AFRICAN GROUP, with the EU, suggested provisions on: ratification; entry into force; reservations and exemptions; declarations and statements; and annexes and amendments.

Definitions: The G-77/CHINA and several others preferred discussing definitions after substantive provisions have been agreed. The EU recommended that each cluster of definitions be dealt with by its respective working group and, with others, offered that all definitions be subject to review based on the context of the final instrument. The LIKE-MINDED LATIN AMERICAN COUNTRIES stressed that definitions should be contained in a single paragraph. CHINA, SINGAPORE, and CANADA underscored that there is no need to define concepts that enjoy international recognition. ICELAND highlighted that definitions could affect the scope of the instrument's application, pointing to UNCLOS, UNFSA, and CBD as potential sources of inspiration. The PHILIPPINES, with SAMOA and the REPUBLIC OF KOREA, also highlighted IOC-UNESCO.

NORWAY called for consistency with definitions developed under existing relevant bodies. SWITZERLAND said agreed language should be used for terms such as access, *in situ*, *ex situ*, MGRs, ABMTs, cumulative impacts, and other terms. AUSTRALIA preferred limiting definitions to those where a specific technical meaning is necessary. INDONESIA and TURKEY asked for a definition of ABNJ. SENEGAL suggested including reference to, among others, sustainable development, biodiversity, sustainable management of ecosystem, and resilience.

On terms related to *MGRs*, the AFRICAN GROUP, with P-SIDS, suggested that a definition of MGRs include derivatives. CARICOM recommended adding digital sequencing data and information. P-SIDS rejected only defining MGRs as “any marine genetic material”; recommended broadening the scope of MGRs; and called for definitions of “origin” and “source.” The EU suggested that MGRs definitions build on those agreed under the CBD. P-SIDS, opposed by CHINA, JAPAN, and the US, proposed defining *in situ*, *ex situ*, and *in silico*. CHINA and the US opined that it is unnecessary to define derivatives, bioprospecting, biotechnology, cumulative effects, and access. The US, NORWAY, and others highlighted that marine scientific research was deliberately not defined in UNCLOS, cautioning that relevant discussions could prove difficult and lengthy.

On terms related to *AMBTs, including MPAs*, the EU and NEW ZEALAND called for distinguishing MPAs from ABMTs because of their geographical scope and conservation objectives, with CANADA and AUSTRALIA proposing inserting a reference to “sustainable use.” P-SIDS proposed merging both ABMT definitions to clarify defined objectives and use in conservation. The LIKE-MINDED LATIN AMERICAN COUNTRIES emphasized that MPAs are one of many ABMTs. CHINA defined ABMTs as tools designed and applicable in a specific area located beyond national jurisdiction with a view to achieving defined objectives, “including the conservation and sustainable use of biodiversity.” The US

underscored that different definitions could be acceptable depending on the scope, adding, regarding MPAs, that distinction is needed between designation, regulation, and management. NORWAY and others called for clarifying the concept of strategic environmental assessments (SEAs), prior to defining it. The HIGH SEAS ALLIANCE stressed the need to establish, not designate, MPAs.

On terms related to *EIAs*, the EU pointed to the UNCLOS definition. CARICOM recommended including socioeconomic impacts. P-SIDS, opposed by the RUSSIAN FEDERATION, suggested reflecting climate change impacts and ocean acidification. CHINA argued that no definition is needed. The US stressed that it is premature to discuss a definition before deciding on the substance of EIAs. CANADA preferred using the Espoo Convention definition of SEAs. The RUSSIAN FEDERATION maintained that a definition is not necessary. On cumulative impacts, AUSTRALIA expressed willingness to take into account the impact of historical activities and likely future impacts.

On terms related to *CB&TT*, CARICOM called for defining both “capacity-building” and “marine environment,” and proposed a hybrid definition of “transfer of marine technology” including physical equipment, processes, and IPRs.

Scope: On geographical scope, BANGLADESH maintained that the instrument should apply to ABNJ, including the water column and subsoil thereof.

Relationship with UNCLOS and Other Instruments: G-77/CHINA, the AFRICAN GROUP, and P-SIDS supported language on international cooperation and coordination. CARICOM and P-SIDS preferred that the ILBI promote greater coherence with relevant instruments and frameworks, while the AFRICAN GROUP recommended implementation in a mutually supportive manner. The EU suggested merging the options.

General Principles and Approaches: G-77/CHINA, the AFRICAN GROUP, and P-SIDS espoused common heritage of humankind as a general principle. The AFRICAN GROUP and LIKE-MINDED LATIN AMERICAN COUNTRIES suggested removing references to high seas freedoms. The AFRICAN GROUP, CARICOM, and P-SIDS supported using the precautionary principle throughout the section. The EU called for a distinction between principles that need to be stated in general provisions and those which should be operationalized in guiding the work of the agreement. The LIKE-MINDED LATIN AMERICAN COUNTRIES and NORWAY preferred presenting principles in one section. CARICOM and P-SIDS supported references to the special circumstances of SIDS, with P-SIDS recommending specific reference to the role of traditional knowledge and practices.

In the Corridors

The conference room and corridors echoed on Thursday with the refrain that the IGC was “not in a position to engage” in detailed discussions on technical aspects of the new instrument until cornerstone items have been agreed upon.

Some delegates considered the trek through the labyrinth of options as “a painful, but essential exercise” to foster mutual understanding. Others were less enthusiastic: at the end of the session, two veterans said that progress felt like “one step forward, two steps back,” or “tap dancing on the spot.”

Most participants seemed to agree that the need for “serious negotiations” to start at IGC-3 is clear, with one worrying that “otherwise, we won’t find meaningful agreement without calling for an extension of the IGC.”

The *Earth Negotiations Bulletin* summary and analysis of IGC-2 will be available on Monday, 8 April 2019 at <http://enb.iisd.org/oceans/bbnj/igc2/>