

BBNJ IGC-3 Highlights: Monday, 26 August 2019

The third session of the Intergovernmental Conference (IGC) on the Conservation and Sustainable Use of Marine Biodiversity of Areas Beyond National Jurisdiction (BBNJ) met throughout the day in an informal working group on capacity building and the transfer of marine technology (CB&TT), facilitated by Olai Uludong (Palau), and briefly in an informal working group on cross-cutting issues. In parallel, delegates also met in two closed-door “informal-informals” to discuss aspects related to environmental impact assessments (EIAs), and area-based management tools (ABMTs), including marine protected areas.

Informal Working Group on CB&TT

Types: Delegates discussed three options: an indicative list of types of CB&TT within the international legally binding instrument (ILBI); an indicative list in an annex; and mandating the conference of the parties (COP) to develop such a list.

The G-77/CHINA, supported by the AFRICAN GROUP, CARICOM, and the LIKE-MINDED LATIN AMERICAN COUNTRIES, suggested the options be combined, with an indicative list included in the ILBI, additional types of CB&TT set forth in an annex, and a future body, like the COP or a subsidiary body, mandated to further develop the list. He stressed, supported by CARICOM and the LIKE-MINDED AMERICAN COUNTRIES, that the list shall be reviewed, assessed, and adjusted periodically by the COP.

P-SIDS supported including the types of CB&TT in an annex, adding that they could be further developed by the COP, including through a scientific, technical, and technological body. CHINA stressed the importance of a list in the ILBI. The EU and SWITZERLAND favored including a list of types of CB&TT in the ILBI, requesting deletion of reference to biotechnological research activities. CANADA, AUSTRALIA, NEW ZEALAND, INDONESIA, and NORWAY supported including a list in the ILBI and expressed flexibility in allowing the COP to complement it. The AFRICAN GROUP and CARICOM noted that future input to the list should be given by a CB&TT committee established under the ILBI.

The US proposed that the COP, not a subsidiary body, develop, by consensus, guidelines or an indicative, non-exhaustive list under the ILBI, if needed; and cautioned that periodic reviews and updates of a list included in the ILBI may require treaty amendments. The REPUBLIC OF KOREA preferred that the COP develop voluntary guidelines, which may be reviewed “as necessary.” JAPAN supported a simple, indicative list contained in an annex, cautioning against including such a list in the ILBI or mandating a subsidiary body to develop it. The RUSSIAN FEDERATION underlined that CB&TT is voluntary, supporting mandating related functions to the COP.

Considering the annex related to CB&TT, the G-77/CHINA, the LIKE-MINDED LATIN AMERICAN COUNTRIES, and P-SIDS noted the need to consider the level of detail to be provided in the ILBI and the annex, respectively. The EU reiterated its preference for having a short, non-exhaustive, and future-proofed “headline list” of CB&TT types in the ILBI.

Monitoring and Review: The REPUBLIC OF KOREA and the RUSSIAN FEDERATION opposed monitoring provisions in the context of CB&TT, noting, with JAPAN, that marine technology transfer should be done on a voluntary basis. The G-77/CHINA and others noted that CB&TT and related monitoring and review should be mandatory.

The G-77/CHINA suggested that performance measurement should be taken on the basis of “objectively verifiable” indicators. NEW ZEALAND and the EU preferred deleting the provision.

On those to be included in the monitoring and review process, the G-77/CHINA favored reference to relevant “stakeholders,” instead of “actors,” with CARICOM, P-SIDS, and NIGERIA adding stakeholders at the sub-regional level. JAPAN preferred that the process be “open to,” rather than “require the participation of,” relevant actors. The INTERNATIONAL COUNCIL OF ENVIRONMENTAL LAW (ICEL) queried which part of the monitoring and review process would be open to the engagement of relevant actors.

The EU, with AUSTRALIA, CANADA, and the RUSSIAN FEDERATION, said the monitoring and review of CB&TT should take place under the COP, opposing a reference to a CB&TT subsidiary body. JAPAN proposed that “the COP may convene meetings for review of CB&TT.” NORWAY noted that a subsidiary body could deliver on tasks related to: needs assessment; development of additional CB&TT types; and monitoring and review.

The EU, supported by the US and CANADA, cautioned against language alluding to a differentiation of states parties’ obligations under the ILBI, with the US proposing that CB&TT “assists developing states parties to strengthen their implementation of the agreement.” CANADA opined that CB&TT is not a prerequisite to implementation, but rather supports implementation.

The G-77/CHINA said states parties shall submit reports, which may include inputs from regional CB&TT committees, to be made publicly available. The REPUBLIC OF KOREA, JAPAN, and INDONESIA requested deleting a reference to “regional committees.” The US opposed mandatory reporting requirements for CB&TT providers. AUSTRALIA proposed that states parties may submit, on a voluntary basis, reports of CB&TT “they have provided or received.” Many delegations noted that reporting should not be onerous, in particular for developing states parties. JAPAN observed that reporting is voluntary and hence not onerous. The EU said modalities for monitoring and review should be decided by the COP. FAO emphasized taking into account monitoring and review requirements by donors and collaborators.

Definitions: On the use of terms (Article 1) related to marine technology and its transfer, the G-77/CHINA, P-SIDS, INDONESIA, SRI LANKA, NIGERIA, and CUBA underscored the need to include definitions on marine technology, the transfer of marine technology, and, with the LIKE-MINDED LATIN AMERICAN COUNTRIES, capacity building. The EU, JAPAN, the US, the REPUBLIC OF KOREA, CANADA, AUSTRALIA, and SWITZERLAND did not consider developing definitions for these items necessary. IOC-UNESCO highlighted the elements of its Criteria and Guidelines on Transfer of Marine Technology, and referenced its Capacity Development Strategy to develop a definition on capacity building.

Informal Working Group on Cross-Cutting Issues

Clearing-house Mechanism: The G-77/CHINA, CARICOM, the EU, and AUSTRALIA stressed the importance of the clearing-house mechanism (CHM) in the overall ILBI architecture. SINGAPORE highlighted the role of the CHM as a repository of information. The US suggested simplified language, stating that the CHM shall “enable states parties to have access to and share information.”

Establishment and nature: Many supported establishing the CHM, with the EU proposing specifying its objectives. The US stressed that the objectives of the CHM are better served building upon existing efforts. CHINA called for clearly defined, simple, and explicit functions.

Many supported an open-access, web-based platform. P-SIDS, the US, and the EU queried whether the ILBI will limit the CHM to a web-based platform, noting the need to allow for technological developments. P-SIDS and AUSTRALIA underlined that “open access” provisions must protect the holders of traditional knowledge.

Regarding including a network of experts as part of the CHM, the LIKE-MINDED LATIN AMERICAN COUNTRIES proposed deleting the reference. P-SIDS opined that the CHM should “cascade” information from the global to the regional and national levels and, with CARICOM, considered the importance of the network of experts and practitioners to that end. CUBA and P-SIDS emphasized the existence of networks of experts in other relevant bodies.

SWITZERLAND considered the reference to the network misplaced, with the RUSSIAN FEDERATION and the REPUBLIC OF KOREA requesting bracketing the reference. The US proposed including “contact information for a network of experts and practitioners in relevant fields.” AUSTRALIA suggested defining the functions of experts before referencing a network of experts.

The EU, CARICOM, AUSTRALIA, the US, the RUSSIAN FEDERATION, CHINA, and SWITZERLAND suggested that specific modalities for the CHM’s operation be developed by the COP. INDONESIA proposed considering the potential role of the IOC-UNESCO Secretariat.

IOC-UNESCO offered to provide a briefing on the design and development of a prototype of a CHM as a web-based platform, including a proactive network of experts. ICEL suggested referring to a “publicly available/open” platform.

Types and content: Regarding the content of information to be included in the CHM, the LIKE-MINDED LATIN AMERICAN COUNTRIES, with SWITZERLAND, suggested simplifying the provision, referring to information “with respect to the activities covered under this agreement.” P-SIDS requested removing the reference to the evaluation of information, with CANADA, and simplifying provisions related to information on EIAs. NEW ZEALAND and the US supported placing types of capacity building under the relevant provision (Article 46). The PHILIPPINES, opposed by the REPUBLIC OF KOREA, supported referring to the principle of prior informed consent in relation to traditional knowledge. The REPUBLIC OF KOREA considered a track-and-trace mechanism for marine genetic resources (MGRs) to be unrealistic, with CANADA requesting clarification as to how such a mechanism would work. CARICOM and the US noted the need for requests for CB&TT to be addressed on a case-by-case basis. CANADA requested clarification on the reference to “patent monitoring services.”

Functions and modalities: The LIKE-MINDED LATIN AMERICAN COUNTRIES suggested: “facilitating” rather than “providing” access to related expertise; “providing” rather than “promoting” linkages to existing relevant CHMs, supported by G-77/CHINA, but opposed by JAPAN; “fostering” rather than “facilitating” enhanced transparency; deleting reference to building on existing regional clearing-house institutions, with CARICOM and SWITZERLAND; and adding functions determined by the COP. P-SIDS noted that the CHM “shall facilitate” the list of functions included in the text, with JAPAN preferring “should.” SWITZERLAND emphasized the existence of match-making capacity-building platforms, while JAPAN opposed the establishment of new sub-regional or regional mechanisms under the provision. The US proposed reference to “publicly available” databases and private and non-governmental platforms.

The EU stressed that the concrete functions and tasks of the CHM should be addressed in the specific parts of the ILBI, supported by the MALDIVES, and provided indicative language, notably on: the dissemination of pre-cruise information and post-cruise notification in relation to MGRs; EIA decision-making documentation and information on negative screening discussions; and facilitating cooperation and coordination among states parties in relation to ABMTs. SWITZERLAND favored that the CHM’s operational modalities be determined and decided upon by the COP, with TURKEY, JAPAN, the REPUBLIC OF KOREA, and ICEL, taking into account lessons learned from other organizations, existing information systems and databases, and potential issues of confidentiality. NEW ZEALAND proposed first addressing the CHM’s functions and then its content. The PHILIPPINES supported including provisions on the functions of the CHM in the treaty, noting additional functions may be determined by the COP.

ICEL suggested that the provision on CHM cross-reference sections of the ILBI containing CHM-related obligations.

Additional functions: The LIKE-MINDED LATIN AMERICAN COUNTRIES proposed that the CHM shall “take into consideration” the special circumstances of SIDS, and, opposed by INDONESIA, deleting reference to archipelagic developing states. SWITZERLAND, the US, CANADA, AUSTRALIA, and NEW ZEALAND supported referencing the special circumstances of SIDS, but considered access to the CHM should be facilitated for all states parties. CANADA proposed the CHM provide information related to specific programmes for SIDS.

In the Corridors

On Monday, delegates arrived refreshed and eager to continue their deliberations on the draft text. Addressing a considerably smaller pool of delegates, with several colleagues tied up in parallel informal-informal discussions, CB&TT Facilitator Olai Uludong (Palau) urged those in attendance to focus on “landing zones and bridging areas” rather than previously articulated positions.

Some delegates were surprised hearing that others consider definitions of CB&TT terminology to be duplicative of existing provisions elsewhere. Recalling that the language on these elements in UNCLOS is “very broad” and adding that “as good as they may be, the IOC-UNESCO guidelines on the transfer of marine technology are non-binding,” one observer noted “this is exactly the lacuna we are trying to fill with the new treaty.”

In whispers in the corridors, one seasoned delegate shared that the “informal-informals are actually too formal,” observing that the format precludes participants from fully exploring individual articles. “The format and time constraints prevent us from addressing crucial linkages,” she said, optimistic, however, that “we will get there.”

The hope to “get there” is also what spurred Facilitator Uludong and President Lee to push delegates into areas not programmed for discussion until later in the week. “This new programme of work, as well as the additional discussions in parallel, are already pushing us to our limits,” sighed one.