

PIF Negotiators Meeting

26 – 28 June 2019

Summary

From 26-28 June 2019, negotiators from the Pacific Islands Forum countries involved in the intergovernmental conference for the development of an international legally binding instrument under the United Nations convention on the law of the sea for the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ IGC) met in Suva to strengthen their common positions. The meeting was held under Chatham house rules. Below is a summary of discussions for the participants.

DAY 1

1. Traditional Knowledge (TK)

It was suggested that linking TK with BBNJ could be supported by elements of connectivity, passive mobility, and traditional navigation. The group suggested that references to science and scientific information/knowledge could be hooks to include TK in the future instrument. They suggested that TK be considered as a complement to science, not as a subset of science. The group also agreed that, at minimum, the instrument identified Indigenous Peoples and Local Communities (IPLC) as holders of TK.

The group also discussed the relationship between the BBNJ ILBI and the Nagoya Protocol, including in the link between associated knowledge of MGR in national jurisdiction and those in areas beyond national jurisdiction, as well as how prior informed consent should be considered. The discussions also touched upon the institutional arrangements such as a COP, the Scientific and Technical Body and the possible involvement of TK representatives in this body.

Delegates also discussed how much detail would be required in the instrument. There was preference to not leave too many decisions to the COP unless there was a clear indication of what issues would need to be fleshed out by the COP. Identifying what needs to go in each of the 4 pillars was identified as an important step to take. In addition, there was a suggestion to include language on TK in the preamble.

Documents Requested:

- Clement Mulalap's presentation on TK in the BBNJ instrument (circulated on Wednesday 26 June)
- Information from iTaukei Affairs

2. Special circumstances of Small Island Developing States (SIDS)

The group expressed the need to strengthen how the special circumstances of SIDS is to be reflected in the ILBI (compared to how it is now in the 0-draft). In particular, the group stressed that the special circumstances of SIDS should not be limited to the Capacity Building and Transfer of Technology section. Rather, it should be included and considered throughout the BBNJ ILBI suggesting that the region needs to further work to identify the key provisions that need to be reflected. Linked to that discussion was the suggestion to define SIDS and what the recognition of special circumstances entailed. Members noted AOSIS has been providing a lot of information and argumentation on this issue, including listing the criteria for the special circumstances in the BBNJ context. These criteria used are from existing sustainable

development instruments, in particular the Rio processes and the SIDS process (SAMOA Pathway for instance). Additional criteria to fit the Pacific BBNJ context could include socio-cultural and historical ties.

On linking adjacency with the special circumstances of SIDS, it was suggested that this could be considered but it depended on the context. There were also discussions on disproportionate burden. A suggestion was made to look at existing language in other instruments, including the UNFSA and the PSMA (in particular the ad-hoc working group) to find how it could be reflected in the future BBNJ ILBI to give it more teeth. There was also a suggestion to have a compilation of texts and instruments addressing the special case of SIDS, such as the Fishstocks Agreement and the WCPFC Convention.

Documents Requested: The BOS paper as presented to the meeting was requested for circulation (circulated on 26 June 2019)

Documents suggested: Compilation of texts and instruments on the special case of SIDS, as well as on the disproportionate burden

3. Adjacency

Much of the discussions touched upon the importance of the co-existence of adjacency with due regard and compatibility. It was stressed that due regard was weaker than adjacency and should not, therefore, replace it. It was suggested that due regard and adjacency could coexist. Participants stressed the importance to refer to compatibility in the instrument as it captures the underpinning rationale for the argument on adjacency.

Regardless of the term used, what matters was the objectives sought in advancing the concept. In that sense, it seemed apparent to participants that pursuing adjacency was a logical extension of some of the UNCLOS provisions. It was also indicated that it was well reflected in the 0-draft in terms of how interests and considerations of coastal states were addressed. As a concept, adjacency was said to be logical although the term may not be accepted by some members at the IGC negotiations. Furthermore, how the future ILBI captures regional characteristics is also relevant to this discussion on adjacency.

There was a mention of the stewardship and how this could be used to link with the interests of the region.

Documents Requested: None

Day 2

4. Marine Genetic Resources (MGR):

There were suggestions to have definitions or use of terms be consistent with ones from existing frameworks, in particular CBD and the Nagoya Protocol.

On the scope, there is agreement that fish used for their genetic purposes should be included in the instrument. However, this inclusion should be cautiously drafted to avoid any loophole in existing fisheries instruments, in particular those of our region. Participants also discussed the issue of temporal scope and one delegation referred to the example of the influenza database of the WHO PIP arrangement, which allowed for retroactive access payments.

Concerns regarding the wide gaps in capacity at all levels with respect to MGRs and MSR was expressed by many Pacific SIDS. Also expressed was the need to, at the very least, attempt to level the playing field, including through the provision of benefits that are tangible and sustainable: benefits should respond to the needs of the recipient countries and address near-term and long-term needs. Related to the issue of gaps, it was highlighted that implementation of the Nagoya Protocol for those PSIDS who have ratified it was overall very weak. It was suggested to have this in mind when designing the future instrument so as to provide adequate support for countries to implement it.

On the question on monetary vs non-monetary as well as mandatory vs voluntary benefit sharing, delegations agreed that there would perhaps need to be a combination of all these options, and that it would depend on the context/case. Provisions should, therefore, be drafted accordingly. It was further suggested that benefit sharing could also support countries' conservation and sustainable use efforts in areas within national jurisdiction. It was suggested to look at regional plans and efforts to increase fisheries' value and find ways to work through the MGR value chain so as to maximize benefit sharing.

There were suggestions for the establishment of a regional hub/office to cover the issue of benefit sharing. This hub/office could be a new entity created for the BBNJ ILBI, or an existing regional organization(s) with the understanding that their mandates would need to be adjusted accordingly. This regional hub/office could also be considered a regional centre of excellence, which is already provided by UNCLOS and not yet implemented in our region. This hub/office could also be linked to the capacity and technology needs assessment mechanism suggested in the IGC and reflected in the President's O-draft.

It was also highlighted that some research and sampling activities could have adverse impacts on the marine environment. Participants suggested that this could be dealt with in EIA and delegations recognized the need for language.

5. Institutional arrangements, including regional arrangements

Participants concurred that there is no single regional organization covering the full scope of the proposed new agreement, which is understandable given the complexity and broad scale of the instrument. Some organizations capture some elements. There was agreement that the new ILBI needed to capture the specificities of the region and recognize the work and expertise from existing regional organizations.

There was agreement for the need for a strong international body that brings together stakeholders, including other organizations to the table to agree on common global standards and criteria for the respective elements. However, the discussions highlighted the reluctance in having a global body take management measures in the donut holes that would not be in line with the region or adjacent coastal states' interests and objectives.

On discussions on the different options for the interface between the global and the regional levels, it was expressed that either countries could work directly through the global body or through a coordinating body across regional organizations. Participants were also mindful of the particularities of the Pacific Islands region, in particular that other regions may not have the same regional framework. They recognized the importance of drafting provisions that could be flexible enough to be implemented in all regions and still capture the characteristics of our region. Regional organizations present in the room

including SPC, SPREP, FFA and OPOC, shared their experiences and some of their mandates that relate to the BBNJ instrument. It was recognized that each had specific mandate that could support some parts of implementation of the BBNJ instrument. It was recognized that there was a strong need for coordination. OPOC highlighted its mandate as given by the leaders to serve as a coordinating body.

Paper requested: How effective is the implementation of conservation measures in the Pacific (mainly as regards the WCPFC)?

6. **USP Visit:**

The group was invited to the University of the South Pacific (USP) to visit the bioprospecting and marine science facilities. They met with researchers, including students, and got a glance on how research is actually being conducted in this institution. They heard about the network of International Cooperative Biodiversity Group (ICBG) of which USP is a member. Throughout the research chain, compounds collected by USP are sent to various labs in the ICBG networks for deeper analysis and/or sequencing as USP does not have the adequate facilities to conduct these types of analysis. Participants were told about the challenges in terms of capacity and technological means that the USP is faced with, as well as promising opportunities from our under-researched region.

Day 3

7. Discussions on the upcoming IGC 3: Programme of Work and President's 0-draft

A presentation of the draft programme of work highlighted the shift in negotiations with limited plenary meetings. Most of the conversations and negotiations will happen in informal informals, possibly closed to observers and may focus on specific sets of articles. While most of these discussions will be back-to-back, there will be two sessions that will have an hour overlap. The informal-informals will report to the informal working groups. These meetings will be open to observers.

A brief run through of the President's draft text for IGC3 in light of the four key issues discussed this week (TK, special circumstances of SIDS, adjacency, and regional consideration in the future instrument) was provided. It highlighted that the special circumstances of SIDS are not well reflected in the draft text, and that TK was well represented but with some disparities in how it was captured. Adjacency, in particular how coastal states' interests could be captured, was relatively in good state with some instances where a possible dilution of language from the IGC 2 paper was cautioned.

The group split in two sub-groups to further discuss the text in light of the issues.

In reporting back, each sub group provided a summary of their dense and rich discussions.

On TK, it was agreed, where science was referred to, to include the phrase: "based on best available scientific information and traditional knowledge" to highlight the complementarity between TK and science.

On SIDS, it was suggested to include a reference to the special circumstances of SIDS in the preamble. It was further suggested to list all criteria that define the special circumstances of SIDS to support its placement in the text. These would include those SIDS characteristics listed in existing instruments, such as The Future We Want, the SAMOA Pathway, or the UNFSA, cultural ties and proximity should be added.

On adjacency and regional component, suggestions for improvement and clarification of the use in the text were highlighted.

Paper requested (to SPREP): Difference between establishment and designation in the context of ABMT and MPA

8. Wrap up and way forward

On the way forward, participants recognized the usefulness of the meeting, which reinforced the need to ensure that the region is able to have meaningful participation and continued engagement in the process for the upcoming IGCs.

Annex 1: List of participants

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Annex 2: Agenda

DAY 1: Building our common understanding of regionalism within the BBNJ ILBI

9am: Opening

9:15am Session 1: Traditional knowledge and TK holders in the BBNJ ILBI

Moderated by: Nauru and OPOC

- How to capture the role of TK and TK holders in the future instrument?
- In the Pacific, who are the holders of TK? Who can represent TK holders?
- Can/should TK be linked to the concepts of ecological and cultural ecology/connectivity, as well as adjacency?
- How can the BBNJ institutional arrangement address the consideration of TK and inclusion of TK holders in a cost-effective and efficient manner?
- The question of who holders of TK are, how they are designated for seats/places in the future instrument? Who designates them?

10:45am TEA BREAK

11:00am: Session 2: Special case/circumstances of PSIDS

Moderated session by Fiji and SPC

- Should the special case of SIDS be treated as a general principle/approach or be reflected in the CB/TMT?
- Can the special case of SIDS be linked with adjacency?
- Is there a case to be made to include disproportionate burden to conservation action?
- Is there a case to be made for the creation of a new grouping, such as Big Ocean States?

1PM: LUNCH

2PM: Session 3: Building on the concept of adjacency: the interests of coastal states

Moderated Session: TBD

- What is meant by adjacency in the BBNJ ILBI context? How would this concept be operationalized?
- What is due regard? In what was is "due regard" in adequate?
- How can the interests of coastal states be addressed in the future BBNJ ILBI without undermining the rights of other states under UNCLOS?
- Can there be a link established and elaborated between the concepts of adjacency, ecological and cultural connectivity, compatibility and stewardship?
- How can the institutional arrangement address the consideration of adjacent coastal states without undermining existing provisions of international law and existing instruments?
- Could adjacency be addressed by a stronger regional level in the BBNJ ILBI? In that sense all coastal states (and SIDS) of a particular region would be actively engaged and consulted in projects either through a BBNJ mechanism or through a regional organization? If the latter is retained, which should it be for the Pacific (or what criteria should be taken into account when designating such organization)?

- Outcome: identify key elements of convergence for common TP. Consider the production of a non-paper?

3:30pm: Tea break

Continue session 3

4:30pm: summary of discussions from day 1

5pm: end of day 1

DAY 2: Continue building our understanding

9am: Session 4: Presentation of PSIDS, Australia and New Zealand's interests and concerns in the MGRs discussions. Some elements to discuss:

- The definition and scope of MGRs
- Access and utilization
- Mandatory and/vs voluntary benefit sharing
- Monetary and/vs non-monetary benefit sharing
- What is meaningful benefit sharing?
- How can the region benefit from a BBNJ MGR ABS mechanism?

Session 5: How could the ILBI operate with existing regional organisations and frameworks in the Pacific?

- In the principles section, how do we want a future ILBI to interact with competent Pacific regional organisations? (eg: What kinds of decision-making do we want to occur at the regional level vs the global level? When should the region be consulted/able to participate? What is the role of regional science expertise in considerations by the global body)
- Discuss options for how this regional – global interaction could work (possibly supported by a range of wire diagrams)?

LUNCH: meeting with iTaukei affairs

AFTERNOON Visit to USP facilities

3pm-5pm: Arrival at USP: venue: IAS front desk

Labs to be visited: Chemistry, Microlab, Marine Collection, DNA lab (MSP and IAS DNA labs), Bioprospecting Database.

DAY 3: Discussions on president's paper

9AM: Session 6

analysis, discussions and strategize for way forward in group discussions

1PM: LUNCH

2PM: Reports from group discussions/Continuing discussion on President's paper

3PM: Session 7: Wrap up and discuss next steps

- Discuss the President's provisional Programme of Work, paper and expectations for IGC3
- Possibly develop a strategy for outreach for IGC3

3:30pm: End of meeting