

Japan's Statements in EIA Working Group

(5.1) (Obligation to conduct environmental impact assessments)

The manner in which the instrument would set out the obligation for States to assess the potential effects of planned activities under their jurisdiction or control in areas beyond national jurisdiction.

In our opinion, the legal base of EIA obligation is Articles 204 to 206 of the UNCLOS and the same provisions set out the basic rules on EIA.

(5.2) (Relationship to environmental impact assessment processes under other relevant instruments, frameworks and bodies)

The manner in which the instrument would set out its relationship to environmental impact assessment processes under other relevant legal instruments and frameworks and relevant global, regional and sectoral bodies.

For example, ships have to discharge bilge oils that have been accumulated during its navigation in its bottom. In order to avoid the negative impact of such oil discharge to the marine environment, the MALPOL Convention established a number of detailed regulations, such as permissible density of oils to be discharged, the marine areas in which discharges are permitted and the method of discharge. Insofar as these requirements are met, a ship operator or its flag State does not conduct an EIA for each discharge.

Similarly, Ballast Water Management Convention has set relevant regulations on discharges of ballast water. As long as the water treatment facility that meets the requirements stipulated in the Convention, is equipped, EIA is exempted.

These standards and regulations have been established by IMO after studying impacts on the marine environment in a very careful manner. This can be regarded as a comprehensive EIA. If those activities are to be subject of another EIA under the new instrument, it would cause a confusion.

Thus, our delegation believes it should be made clear in the text of new instrument that an EIA is not required for an activity that is conducted in accordance with rules and guidelines appropriately established by the existing bodies pursuant to the provision of Article 206 of UNCLOS.

(5.3 (a)) (Activities for which an environmental impact assessment is required)

(a) The thresholds and criteria for environmental impact assessments that would be included in the instrument and how these would be reflected.

Regarding 5.3 (a), although Article 206 of UNCLOS sets out the basic rules on EIA including its thresholds. In order to further elaborate the provision of Article 206, guidelines for EIA should be prepared as an annex to the new instrument.

(5.3 (b)) : list of activities

(b) Would a list of activities that require or do not require an environmental impact assessment complement those thresholds and criteria?

In respect of 5.3 (b), We are open to considering if an indicative list of activities that may require EIA, should be developed as an appendix to guidelines for EIA.

(5.3 (c)) : cumulative impacts

(c) Would cumulative impacts be taken into account? If so, how would the instrument provide for such impacts being taken into account?

As for “cumulative impacts” Japan recognises them as one of important elements to be considered in EIA. However, its definition and assessment method should be further elaborated in the context of developing EIA guidelines. In doing so, we should seek related international organizations to provide with their expertise on assessment of cumulative impacts. Japan also would like to contribute to discussions in this regard.

(5.3 (d)) : specific provision for EBSA

(d) Would the instrument include a specific provision for environmental impact assessments in areas identified as ecologically or biologically significant or vulnerable?

In respect of 5.3 (d), as our delegation considers guidelines for EIA should be prepared as an annex to the new instrument, with such guidelines, specific provision for EIA in EBSA will not be necessary.

(5.4 (a)) Environmental impact assessment process)

(a) Taking into account the procedural steps of the environmental impact assessment process set out in section III of the report of the Preparatory Committee, which procedural steps would be included in the instrument? Are there any other steps that could be included?

Regarding 5.4 (a) and this relates to the issue of “internationalization” of EIA process mentioned in 5.4 (c)

We support the procedural steps listed in the section III of the PrepCom report. However, at end of those procedural steps there is a note which reads *“The text would address decision-making following the environmental impact assessment, including on whether an activity would proceed or not and under which conditions.”* If this is literally about the possibility that the new instrument body decides on whether an activity can proceed or not, our delegation cannot support. In that case, the step listed in the section III relevant to this note “Publication of decision-making documents” should not be included in the new instrument. At the time of Procom, Japan construed the wordings of “Publication of decision-making documents” were simple reference to the question of whether the documents ought to be publicized or not and the phrase did not have any implication that the new instrument would decide whether an activity could proceed or not. For our delegation, it is difficult to imagine the Conference of the Parties of the new instrument, for example, dictating whether submarine cables can be laid or not and where shipping routes should be set. //If this is the intention of those wordings, the mandates of competent sectoral organizations would be undermined. Japan considers this phrase should not be included in the new instrument.

(5.4 (b)) : level of detail regarding procedural steps

(b) How much detail regarding procedural steps for environmental impact assessment would

be included in the instrument?

Regarding 5.4 (b), because our delegation considers guidelines for EIA should be prepared as an annex to the new instrument, details of procedural steps should be included in such guidelines.

(5.4(c)) : internationalized EIA?

(c) To what degree would the environmental impact assessment process, including the decision on whether an activity would proceed or not, be conducted by States or be “internationalized”? If the process were to be “internationalized”, which aspects of the process should be “internationalized”?

Our view is that EIA is conducted by States that is clear in Article 206 which most of the delegation consider as legal base of EIA. At the same time, we are open to considering the need of capacity building for, and assisting developing countries in conducting EIA. It should be further discussed in capacity building working group.

(5.4 (d)) : involvement of adjacent coastal States

(d) How would the instrument reflect the involvement of adjacent coastal States, for example, and when and how would such involvement take place?

Regarding 5.4 (d) the involvement of adjacent coastal States, our view is that whether an activity would proceed or not and under which conditions should not be subject to an approval of the Coastal States. However, it is understandable that Coastal States have great concerns on activities in the adjacent sea area. Therefore, when implementing EIA for an activity in ABNJ, Japan considers that EIA plan should be circulated to all the adjacent Coastal States and other member States in order to provide them an opportunity to make comments and to have consultations as necessary.

(5.5 (b)) : detail on the content of environmental impact assessment reports

(b) How much detail on the content of environmental impact assessment reports would be set out in the instrument?

Regarding 5.5 (b), how much detail on the content of EIA reports should be set out in the

instrument, our view is that the details should be included in EIA guidelines which should be prepared as an annex to the new instrument.

(5.5 (c) : transboundary impacts

(c) In addressing transboundary impacts, would an activity-oriented approach (based on the location of the activity), an impact-oriented approach (based on the location of the impact) or a combination of both be adopted? What other approaches, if any, could be considered?

Regarding 5.5(c), Our understanding is that the new instrument covers only activities planning to take place in ABNJ. EIA to be conducted for activities planned in ABNJ should assess the risk of impact not only BBNJ but also to areas within national jurisdiction.