

Statement by Japan, morning April 5, 2019 regarding Scope of application and others

2. Scope of Application [p.6]

2.1. Geographical scope [p.6]

Basically, our delegation considers **Geographical scope** should be revisited after the outline of obligations under the new instrument is agreed.

Regarding para. (1), the phrase of “the areas beyond National Jurisdiction” is very well-established so we use that without thinking deeply but that phrase could mean to include the other planets in space. It may need a clear definition as stated by some delegations yesterday. Other than that, we don't have comment at this stage.

2.2 Material scope [p.6]

Regarding **2.2 the material scope**, as we see in the GA Resolutions 69/292 and 72/249, the new instrument is about the conservation and sustainable use of marine biological diversity, so the material scope of the instrument should reflect this.

This is minor point but in order to reflect the precise meaning of Article 236 of the Convention, paragraph (2) OPTION I should be revised by deleting “or” after naval auxiliary and replace with comma. It reads;

This instrument does not apply to any warship, naval auxiliary **or**, other vessels or aircraft owned or operated by a State and used at present only on government non-commercial service.

As to matters to which this instrument should not apply, we have additional matters that we think should be excluded from the scope of the new instrument. Our delegation is considering to make proposal that the following be inserted as the second paragraph of OPTION I in para. (2) . It reads;

This instrument shall not apply to any of the following activities in areas beyond national jurisdiction.

(a) marine scientific research

(b) intellectual property rights

(c) fish and other biological resources used as commodities and

(d) activities which fall under authority of other existing frameworks and bodies

3. Objective [p.7]

Regarding Objectives, we support para. (1) which is simple and clear.

As for para. (2), we consider OPTION I is too vague and can pick up wide range of matters and activities as objectives of the new instrument. So, we support OPTION II (No text).

4. Relationship to the Convention and other instruments and frameworks and relevant global, regional and sectoral bodies

Regarding **Relationship to the Convention and other instruments**, Japan supports para. (1) provided that after the “Convention,” the phrase of “and other instruments and frameworks and relevant global, regional and sectoral bodies” is inserted just like the title of this section.

In respect of (2), we support OPTION II. With respect to OPTION I, we are of the view that it is not the new instrument that promotes coherence with existing relevant instruments/framework but only mutual collaboration and cooperation between them can do that. we propose that the first sentence be replaced by “*Greater coherence and complementarity should be promoted between this instrument and existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies.*”

II . Conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction
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1 . General principles and approaches

In respect of **General principles and approaches**, our basic position is, once again, that these should be discussed at later stage. At this point in time, it is impossible to tell which principles and approaches are relevant to the content of final version of the instrument.

Regarding the structure of this section, thanks to the Aid to Negotiations, we notice that only this section takes more than 5 pages and see many duplications and overlapping over those principles and approaches for each substantive issue. Our delegation believes this section should need a tidy-up to be more concise. Only limited numbers of truly significant general

principles could be listed in a section as General principles of the new instrument. List of principles for each topic may not be necessary.

I will send the rest of my intervention by paper smart.

Regarding para. (1), Japan supports subparagraphs (a), (b), (c), (f), (m) and (n) to be listed as general principles

Having said that our preliminary comments on each item are as follows.

Regarding (f), we propose to insert “both” after “Promote.”

Promote both the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction

Regarding (v), “Adjacency” should be deleted as I understand there was a consensus in the PrepCom4 that Adjacency would be further discussed in the context of ABMT and EIA but not as a general principle for the instrument as a whole.

Regarding (t) , based on the discussions in the PrepCom4, we would like to propose to delete the part of the sentence after “including” and “small islands developing States” should be replaced by “developing countries including small islands developing States”

Consider the special requirements of developing countries including small islands developing States and least developed countries, ~~including by ensuring that measures do not result in transferring, directly or indirectly, a disproportionate burden of conservation action onto developing countries~~

(2) MGR [p.8]

Regarding (2), **General principles and approaches on MGR**, again our basic position is that these should be discussed at later stage. Many of the principles and approaches listed here may be moved to and integrated as General principles and approaches for a whole instrument rather than creating a separate section for individual substantive issues. Having said that our opinions on each item are as follows.

We will not support (a) as this is changing the status of CHM. ~~[Article 311 para.2 prohibits~~

~~any amendment to the basic principle of CHM set forth in Article 136.]~~

With respect to (h), “non-appropriation” provided in Article 137 of the Convention is for the Area and its mineral resources so, it is irrelevant in the context of MGR.

In respect of (l), Our understanding is that sharing information and knowledge is not “duty” under the Convention. However, there are many bioresource centers in the world playing major roles in voluntary sharing of genetic resources. Having this in mind, we propose following revision.

~~Duty to share~~ Promotion of information and knowledge sharing

Regarding (e), we understand the wording comes from Article 143 of the Convention. However, MSR must be conducted in accordance with the provisions of Part XIII as well as Article 143. For this reason, we propose the following revision.

~~Recognition that marine scientific research shall be carried out exclusively for peaceful purposes and for the benefit of mankind as a whole~~ in accordance with Article 143 and provisions of Part 13 of the Convention.

Regarding (t) transparency, it should be noted that the locations of each research vessels accessing MGRs are acquired by International Maritime Organization (IMO) and publicized on website by IMO. Namely, International Convention for the Safety of Life at Sea (SOLAS) requires those vessels to equip with Automatic Identification Systems(AIS) and based on information transmitted by AIS, their locations are indicated online. Information on those research vessels’ activities are already in public domain and there is no significance in requiring prior information upon their access to MGR.

Regarding (m), we support “precautionary approach” which is widely known and accepted rather than “precautionary principle.”

In respect of (d), “duty to protect and preserve the marine environment” is important principle for the whole new instrument and should be provided as such.

In respect of (r), we understand the concept of “common but differentiated responsibilities

(CBRD)” was developed in addressing the issue of Climate Change. But, things are different in BBNJ. And from the perspective of universality of the new instrument, division of duties between developing and developed States should be avoided. Our delegation proposes it be deleted.

Regarding (p), we propose to add “shall be respected” at the end of the sentence.

The right to conduct marine scientific research shall be respected.

(3) General principles and approaches on ABMT [p.9]

Regarding (3) General principles and approaches on ABMT, the meaning of (g) is not clear. Especially the meaning of referring to CHM in the context of ABMT therefore should be deleted.

In respect of (q) Adjacency and (r) Compatibility we understand there were consensus that these would not be considered as one of general principles or approaches of the new instrument but should be further considered in the substantive discussions of ABMT and EIA. So, they should be deleted.

(4) General principles and approaches on EIA [p.10]

Regarding (4) General principles and approaches on EIA, (d) refers to CHM which falls in the jurisdiction of the International Seabed Authority. So, we suggest this paragraph (g) should be deleted.

~~In respect of (b), it is premature at this stage to consider whether “due diligence” can be listed as a general principle. Priority should be given to substantive discussions on basic mechanism of EIA under the new instrument.—~~

(5) General principles and approaches on CB/TMT [p11~]

Regarding (5) General principles and approaches on CB/TMT, most of those listed are subject to discussions on substantive issues of CB/TMT. Many of the items such as paragraphs (f), (h), (i) and (j) are based on the provisions of the Convention, Articles 202 and 203 and 200. Therefore, our delegation considers these provisions are not necessary.

2. International Cooperation

Japan can go along with the draft provision on international cooperation.