

ISA workshop  
"Interaction between the International Seabed Authority and the BBNJ"  
Panel 2 "The Implications of envisaged BBNJ measures such as ABMTs  
including MPAs on the work of ISA "  
Wednesday, November 5, 9:00-13:00 (Panel 2: 10:50-11:50)

**Statement by H.E. MIKANAGI Tomohiro**  
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**(Introduction)**

I thank the ISA Secretariat and co-organizers for preparing this timely event on the eve of the entry into force of the BBNJ Agreement. I would also like to join others in expressing solidarity with people affected by the hurricane.

Japan places importance on the maintenance and development of the maritime order based on the rule of law and welcomes the upcoming entry into force of the Agreement. We are now in the final stage of domestic procedures to join the Agreement, and we intend to actively participate in its implementation from the first stage.

Japan attaches great importance to the balance between the protection and conservation of the marine environment and the sustainable use of marine resources. In this regard, ensuring the right balance between the establishment of ABMTs under the BBNJ Agreement and the control of activities in the Area by ISA is an important issue.

**(Potential Overlap between ISA and BBNJ mandates in the high seas and the Area)**

Under UNCLOS, ISA has the mandate to “organize, carry out and control” all activities of exploration for and exploitation of mineral resources in the Area. ISA is also required to take necessary measures

to protect the marine environment from harmful effects arising from these activities, which affect not only the seabed but also the superjacent water. Therefore, ISA has a mandate to protect the marine environment in the high seas as well as the Area to the extent it relates to the activities in the Area. In this sense, there is a potential overlap of mandates between the BBNJ and ISA.

**(ISA's efforts concerning protection of the marine environment)**

ISA's Exploration Regulations stipulate measures to protect the marine environment including Environmental Impact Assessments. The contractors are also required to refer to recommendations by the Legal and Technical Commission. Additionally, environmental protection measures are being developed in the Draft Exploitation Regulations and the associated standards and guidelines.

Also, ISA has been developing "Regional Environmental Management Plans (REMPs)" for specific areas to provide tools for environmental management and to designate areas important for the protection of the marine environment as "Areas of Particular Environmental Interest (APEIs)." The potential overlap may therefore involve these area-based initiatives to guide the activities in the Area under ISA.

**(BBNJ's principle of "not undermining" and IFBs-related provisions concerning ABMT)**

As mentioned by previous speakers, Article 5 of the BBNJ Agreement first provides a general provision to interpret and apply the Agreement in a manner that does not undermine relevant legal instruments and frameworks and relevant global, regional, subregional, and sectoral bodies, and that promotes coherence and coordination with those IFBs. Then, Part 3 of the Agreement provides more specific provisions in relation to ABMT proposals.

### **(Collaboration between ISA and BBNJ)**

In implementing these provisions, continuous and sufficient collaboration must be ensured in the following two stages.

The first stage is the one before specific ABMT proposals are made. Article 22 of the Agreement stipulates regular consultations to cooperate and coordinate with IFBs. It is advisable that ISA starts building a relationship for continuous information sharing and consultation, including informal collaboration, from an early stage.

Information about ISA activities and conservation measures must be shared with the BBNJ side on a regular basis to ensure that decisions under the BBNJ Agreement are made based on scientific knowledge. Sharing information and exchanging views between BBNJ's Scientific and Technical Body and ISA's Legal and Technical Commission will be beneficial, and modalities for such communication may be included in the cooperation arrangements.

The second stage is when a specific ABMT is proposed. Under Part 3 of the BBNJ Agreement, Parties are required to collaborate and consult with IFBs, as appropriate, for the development of ABMT proposals (Article 19, paragraph 2), and consultations on proposals shall be open to all stakeholders and include those based on information and views submitted by IFBs (Article 21, paragraphs 1 and 2(b)).

At this stage, the BBNJ COP may also play its role under various provisions in Article 22. It may take decisions on measures compatible with those adopted by IFBs. If the proposed measures are within the competence of IFBs, it may recommend the IFBs to promote the adoption of relevant measures. The COP shall respect the competence of and not undermine IFBs when making these decisions.

Therefore, if a proposed ABMT is likely to affect "activities in the Area" or overlaps with existing measures implemented by ISA, ISA should proactively provide information and views related to the proposal and cooperate with the BBNJ COP.

Ideally speaking, if proposed measures fall within its competence, ISA should work with the BBNJ COP to encourage the latter to recommend ISA to adopt relevant measures. However, a problem arises if ISA is unable to adopt such measures, because it is not clear from the provisions of the Agreement whether the BBNJ COP may go beyond making recommendations and decide on measures within the competence of IFBs.

Such interpretation gaps are expected hopefully to be filled and clarified through future consultations. ISA's proactive involvement in such processes from an early stage is important.

### **(The meaning of “not undermine”)**

Apart from these procedural issues, differences in interpretation may arise regarding the meaning of “not undermine”. It is the responsibility of each State Party to interpret relevant agreements. While Parties to the BBNJ Agreement have the obligation to respect the activities of ISA, they are also required to promote the objectives of the BBNJ Agreement when participating in decision-making under IFBs. Since it is hoped that many of the member states of ISA will also become Parties to BBNJ, it is important for them to take a unified national approach through communication and coordination between departments in charge of BBNJ and ISA within their governments.

### **(Development of Exploitation Regulations by ISA)**

For the purpose of achieving the "30 by 30 target," multiple ABMT proposals may be made in a short period. If specific standards such as

reference values and thresholds that affect the activities in the Area are proposed in ABMTs under the BBNJ Agreement before the adoption of ISA's Exploitation Regulations, they may influence the ongoing negotiations of the Regulations.

While it is of utmost importance to establish regulations that minimize the effects on the marine environment and biodiversity, it is hardly conceivable that exploitation will have no impact on the environment at all. Therefore, it is necessary to engage in realistic, science-based discussions, taking into account the uniqueness of these activities.

At the same time, ISA needs to prove its competence to develop the required rules and standards for the protection of the marine environment. From this perspective, ISA should accelerate its efforts to develop exploitation regulations which strike a reasonable balance between the protection and conservation of the marine environment and the exploitation of mineral resources in the Area.

### **(Conclusion)**

I would like to conclude my remarks by emphasizing the importance of encouraging States to join the BBNJ Agreement. To ensure the respect for the activities under the BBNJ Agreement by the wider international community and avoid fragmentation of legal mechanisms, Parties to the Agreement must make efforts to ensure the widest possible participation by States. In this regard, the interpretation of the BBNJ Agreement, including in relation to ABMTs as well as IFBs, should encourage more States to join the Agreement, rather than discouraging them.

I thank you.