



Civil society and transparency in the future BBNJ Agreement and implications for the ISA

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Environmental participation as a human right



Framework Principles on Human Rights and the Env't (2018)

- Provide affordable, effective and timely access to information (Principle 7)
- Facilitate participation in decision-making, taking public views into account (Principle 9)
- Ensure human rights in environmental impact assessments (Principle 8)

Environmental Protection as a Human Right: Specific Applications



- The provision of ecosystem services depends on the health and sustainability of ecosystems, which in turn depend on biodiversity. The full enjoyment of human rights thus depends on biodiversity, and the degradation and loss of biodiversity undermine the ability of human beings to enjoy their human rights. Human Rights Council [A/HRC/34/49](#)
- BBNJ: Principle 13: States should cooperate with each other to establish, maintain and enforce effective international legal frameworks in order to prevent, reduce and remedy transboundary and global environmental harm that interferes with the full enjoyment of human rights
- Free, prior informed consent of indigenous peoples (also UNDRIP)
- States should apply a rights-based approach to all aspects of conserving, protecting, restoring, using and benefitting from healthy ecosystems and biodiversity.
- Ensure that the proposed agreement on the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction includes appropriate consideration of human rights, to protect human rights, healthy ecosystems and biodiversity

Aarhus Convention and Almaty Guidelines

Aarhus Convention Art 3(7): Each Party shall promote the application of the principles of the Convention in Int'l environmental decision-making processes and within the framework of international organizations in matters relating to environment

3 pillars: access to information; public participation; and access to justice —articles 4 to 9.

- *Almaty Guidelines: Access to information:*
 - Each Party should encourage international forums to develop and make available to the public a clear and transparent set of policies and procedures on access to the environmental information that they hold in order to make access by the public more consistent and reliable. Provide info proactively; over internet.
- *Public Participation:*
 - international forum, or a process within it, should in principle be open to the participation of the public at an early stage. Reasonable timeframes; time to become informed; participate effectively; when options still open. Due account should be taken.
- *Review Procedures*
 - facilitate public access to review procedures relating to any application of the rules and standards of each forum
- The [Almaty Guidelines](#) adopted under Aarhus promote the application of the Aarhus Convention in International Forums; states that access to information, public participation and access to justice in environmental matters are fundamental elements of good governance at all levels and essential for sustainability.

Public Participation in BBNJ...

During negotiation

EIAs: Art 36: States to publish assessment reports

Art 38(3): decision-making-related documents to be made public

ABMTs: Art 18: consultations on proposals to be inclusive, transparent and open to all relevant stakeholders; to be invited to submit views on merits of proposals; scientific inputs; traditional knowledge; etc

Art 21: Monitoring and review reports to be publicly available

Capacity Building and Transfer of Marine Technology

Art 37: reports to be made public

Institutional

Art 48: decisions to be made publicly available

Art 51: Clearing House Mechanism [make public information]



Public Participation in BBNJ

EIAs: Art 34: 1. States Parties shall ensure early notification to stakeholders about planned activities under their jurisdiction or control and effective, time-bound opportunities for stakeholder participation throughout the environmental impact assessment process, including through the submission of comments, before a decision is made as to whether to proceed with the activity. (not bracketed)

[2. Stakeholders in this process include {long list}

3. Public notification and consultation shall be transparent and inclusive [, and targeted and proactive when involving adjacent small island developing States].

4. [Substantive] comments received during the consultation process [from adjacent coastal States] shall be considered and [addressed] [responded to] by States Parties. States Parties shall give particular regard to comments concerning potential transboundary impacts. States Parties shall make public the comments received and the descriptions of how they were addressed.

5. {States parties to establish procedures allowing for access to information}.... [Notwithstanding this, States Parties shall not be required to disclose non-public information or information that would undermine intellectual property rights or other interests].

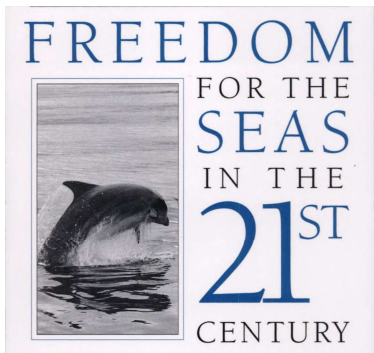
New transparency article proposed by New Zealand, Canada, Australia Norway and PSIDS

ISA: Starting Point: Common heritage of (hu)mankind

UNCLOS Art 136: The Area and its resources are the common heritage of mankind.

Arvid Pardo:

“The second implication [of CHM] is that the use of the common heritage requires a system of management involving all of the users. Although not everybody necessarily has to share to the same extent, **everybody participates in management. This view is one of the revolutionary bases of the common heritage concept and must apply not only to the seabed but also to ocean space as a whole.**” *Freedom for the Seas in the 21st Century*



ISA and the Aarhus Convention

The Environmental Monitoring Plan for the Clarion-Clipperton Zone: the Authority shall enable public participation in environmental decision-making procedures in accordance with the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, 1998, and its own rules and procedures (Aarhus Convention). ISBA/18/C/



Public Participation in ISA

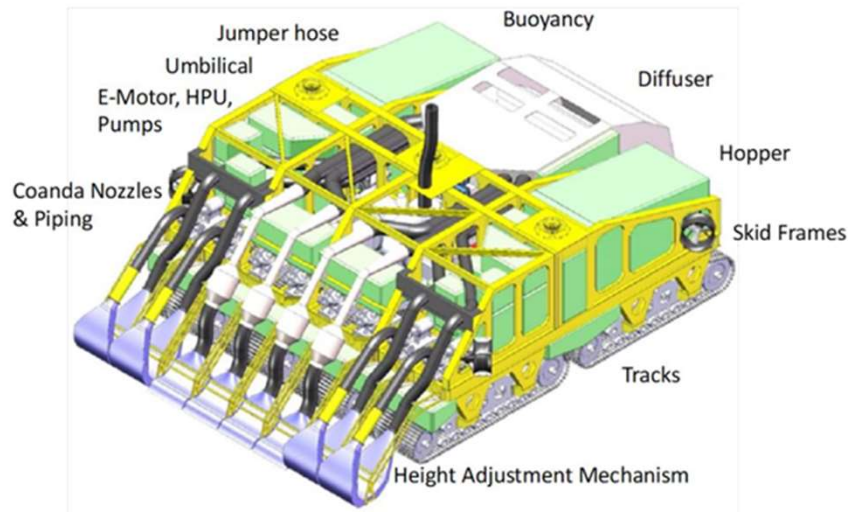
- Legal and Technical Commission – behind closed doors
- Workshops – tightly controlled agenda, participation; speakers; reports
- Correspondence frequently not shared
- Secretariat openly hostile

"International negotiations are increasingly confronted with extreme ideological positions including a growing environmental extremism and dogmatism bordering on fanaticism in some instances" – SG Michael Lodge

- Attempted to restrict observers 2019 (defeated)

Would have laid down 5 restrictive guidelines which must all be satisfied; require an undertaking that the NGO will both support the activities of the ISA and promote and disseminate its work; power to withdraw observer status if conflict of interest ISA and NGO.

Public Participation in ISA



- NORI EIA: “Although sponsoring states are encouraged to conduct stakeholder consultation there is currently no legal obligation to do so and a preferred process is not prescribed.”
- Standards and Guidelines on EIA: Commission noted that the inclusion of stakeholder consultation in the standard for an environmental impact assessment process would be inconsistent with the draft exploitation regulations as they recommend but does not require stakeholder consultation during the preparation of an environmental impact assessment.
- NORI EIS – consultation problem: 5 Oct-19 Nov

Relationship between this Agreement and environmental impact assessment processes under other relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies

[4. Alt. 4. Where a planned activity under the jurisdiction or control of a State Party [with impacts] in areas beyond national jurisdiction is **already covered by existing environmental impact assessment obligations and agreements**, it is **not necessary to conduct another environmental impact assessment of that activity under this Agreement** [, provided that the [State with jurisdiction or control over the planned activity] [body set forth in Part [...]] [, following consultation with relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies,] **determines that:**

[(a) The outcome of environmental impact assessment under those obligations or agreements is effectively implemented;]

[(b) **The environmental impact assessment already undertaken is [[functionally] [substantively] equivalent to the one required under this Part**] [comparably comprehensive, including with regard to such elements as the assessment of cumulative impacts];]

[(c) The threshold for the conduct of environmental impact assessments meets or exceeds the threshold set out in this Part.]]