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PrepCom 1

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PREPCOM 1 HIGHLIGHTS: THURSDAY, 31 MARCH 2016

On Thursday, 31 March, the PrepCom plenary convened in the morning to consider EIAs, and capacity building and technology transfer. Following a short afternoon plenary, an informal working group on MGRs, including questions on benefit-sharing, was facilitated by Carlos Sobral Duarte (Brazil).

PLENARY

Chair Charles recalled that in informal meetings prior to the PrepCom it was agreed that the informal working groups would be open to civil society and industry, as they are not “informal informal” drafting sessions. He clarified that informal working groups: will address issues related to the package in greater detail; will not be held in parallel; and will be of equal duration, so that all elements of the “package” be given equal treatment, with outstanding items being readdressed when plenary reconvenes.

ENVIRONMENTAL ASSESSMENTS: Several highlighted the need for cumulative EIAs. FIJI, supported by BANGLADESH and COSTA RICA, underscored the lack of specific rules and reporting mechanisms for EIAs under UNCLOS; and called for accessibility of information on BBNJ, including a repository. BANGLADESH highlighted the involvement of relevant stakeholders. BRAZIL underscored the need to: refine the definition of EIAs, supported by LEBANON; develop implementation criteria and minimum requirements, without creating additional burdens; and incorporate ISA’s expertise. COSTA RICA recommended establishing: SEA obligations; objective, clear and transparent criteria to conduct EIAs, based on best scientific evidence; minimum elements of EIAs; and a monitoring mechanism. LEBANON suggested considering an EIA review mechanism. MEXICO proposed a technical and scientific advisory committee under the ILBI to, *inter alia*, identify criteria for activities requiring EIA.

CHINA stated: the EIA regime should be conducive to sustainable use; the scope of EIAs should be clarified, subject to best scientific data and international best practice; and the ILBI should make reference to existing instruments in designing EIAs. Calling for the ILBI to take into consideration developing countries’ capacities to conduct EIAs, the PHILIPPINES requested discussion of thresholds, and identification of those responsible for conducting EIAs.

The US suggested focusing on: understanding activities in ABNJ that may adversely affect the marine environment, including cumulative effects; existing guidelines on EIAs; understanding challenges related to assessments; and incorporating provisions on EIA implementation into the ILBI.

AUSTRALIA called for: best practices for conducting EIAs; an obligation to share EIA outcomes in ABNJ; and global standards for SEAs.

Calling for EIA principles under the ILBI to be in line with existing instruments, CANADA stressed that cumulative EIAs should avoid duplicative, cost-ineffective layers of assessments. NORWAY called for discussion of EIA thresholds. Acknowledging jurisprudence from the International Court of Justice on EIA, NEW ZEALAND called for the ILBI to provide guidance on conducting EIAs, including establishing thresholds. JAPAN underlined the need for a common understanding of EIAs; and called for the ILBI to develop EIA guidelines, balancing conservation and development, without undermining existing frameworks.

IUCN suggested including in the ILBI requirements for independent scientific review, transparency, access to information, public participation and capacity building. The CBD highlighted the Voluntary Guidelines for the Consideration of Biodiversity in EIAs and SEAs in Marine and Coastal Areas, noting that parties considered them most useful for unregulated activities and encouraged their application. FAO called attention to the International Guidelines for the Management of Deep-Sea Fisheries in the High Seas, noting that many RFMOs have developed relevant EIA procedures.

GREENPEACE, PEW, WWF, NRDC and the HIGH SEAS ALLIANCE highlighted the Advisory Opinion on Seabed Mining of the International Tribunal for the Law of the Sea (ITLOS) recognizing EIA as a customary international law obligation. They recommended that the ILBI permit activities only after proven to have no significant adverse effects; and make dispute settlement procedures applicable to EIAs and SEAs.

CAPACITY BUILDING AND TECHNOLOGY

TRANSFER: The G-77/CHINA pointed to UNCLOS Part XIV as the legal basis for marine technology transfer regarding BBNJ, taking into account the IOC Criteria and Guidelines on the Transfer of Marine Technology. Emphasizing implementation gaps regarding technology transfer, she called for a clearinghouse mechanism, with the FEDERATED STATES OF MICRONESIA suggesting it include information on MGRs. INDONESIA argued for a practical approach, including in identifying or creating a curator institution for capacity building and technology transfer. The AFRICAN GROUP proposed that the ILBI draw from IOC Criteria and Guidelines, and ISA.

CARICOM called for developing incentives for R&D of technology, compatible with local, national and regional realities. P-SIDS said the ILBI should recognize SIDS’ special situation, with capacity building corresponding to needs assessed, including consistent and predictable funding, and addressing both human and institutional capacities. JAMAICA suggested establishing a fund to support developing countries’

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implementation of the ILBI. The FEDERATED STATES OF MICRONESIA called for a fund ensuring developing countries' participation in ILBI-related meetings and activities. BRAZIL, with ARGENTINA, suggested drawing lessons from the ISA, and addressing both scientific and institutional capacities.

MEXICO suggested: facilitating scientific cooperation in the high seas through scientific programmes, training, and research; including technology-transfer criteria; and creating a financing mechanism. TRINIDAD AND TOBAGO called for capacity building and technology transfer in MPA management, marine spatial planning and R&D for MGRs, and other areas that inform decisionmaking on BBNJ; and underscored that funding can come from different contributions, including from international donors, the Global Environment Facility (GEF), and a new trust fund.

CHINA stressed that the ILBI should give full regard to developing countries' needs and formulate new capacity-building and technology-transfer provisions based on UNCLOS Part XIV and the SDGs. PAPUA NEW GUINEA highlighted provisions on special requirements for developing states under UNCLOS, UNFSA, SDGs and the Paris Agreement, including with respect to capacity building and technology transfer for climate mitigation and adaptation; and called for exploring means of operationalizing UNCLOS Part XIV. COSTA RICA proposed an indicative list of areas of cooperation between states and other partners, including international financial institutions, IGOs and NGOs.

The EU suggested that the ILBI develop capacity-building and technology-transfer tools relevant to developing countries' needs and UNCLOS' effective implementation, and scientific training programs and joint scientific research be expanded and carried out with institutions in developing countries, involving private and public partners. ICELAND proposed drawing from the UNFSA in emphasizing developing countries' capacity-building and technology-transfer needs in the ILBI. JAPAN stressed the need to accumulate scientific data on BBNJ, pointing to existing instruments with pertinent information.

The US supported ILBI provisions on technology transfer, provided transfer is on a voluntary basis, on mutually agreed terms and conditions, and consistent with the IOC Criteria and Guidelines. AUSTRALIA favored: building capacities for EIAs; taking into account SIDS' special requirements; and creating a clearinghouse to receive and disseminate information. NORWAY considered capacity building and technology transfer key for developing countries to fulfil obligations under the ILBI, including concerning MPAs and EIAs. NEW ZEALAND suggested drawing on existing expertise and better coordinating existing capacity-building and technology-transfer initiatives. CANADA emphasized effectiveness, coordination and utilization of existing frameworks, where possible and appropriate.

CHILE called for establishing an effective mechanism to transfer scientific information, with incentives for developing countries to improve their capacities. LEBANON referred to triangular, North-South and South-South cooperation. The PHILIPPINES suggested that critical capacities include taxonomy, genomics and bioinformatics, as well as advanced biotechnological and ocean engineering technologies. IUCN proposed that the ILBI: define capacity-development obligations; establish a central information repository for BBNJ; include proximal SIDS in marine research; involve the private sector; and establish a global fund to support developing country activities in BBNJ conservation and sustainable use. GREENPEACE, PEW, WWF, NRDC and the HIGH SEAS ALLIANCE prioritized establishing means for the full implementation of UNCLOS Part XIV, taking into account the IOC Criteria and Guidelines, as highlighted in SDG 14.

INFORMAL WORKING GROUP ON MGRS

Definitions and scope: JAMAICA suggested a definition for MGRs including fish and drawing on CBD Article 2. COSTA RICA suggested a definition including genetic information from marine organisms with current or potential value, including economic value and ecosystem services. The FEDERATED STATES OF MICRONESIA and SRI LANKA favored including reference to "potential" value. PERU proposed adding reference to marine ecosystems or habitats. The RUSSIAN FEDERATION stated that the definition of MGRs should exclude reference to fisheries resources. The AFRICAN GROUP emphasized that MGRs should include genetic compounds from fish, as excluding fish would affect the package. JAPAN opposed including commodities in the definition of MGRs.

Several supported drawing on CBD Article 2, with NEW ZEALAND noting that it should be tailored to the marine context. CANADA noted that definitions are logical within their specific contexts, with the FEDERATED STATES OF MICRONESIA stressing that CBD Article 2 reflects baseline definitions. The EU suggested referring also to definitions under the Nagoya Protocol and ITPGR. The PHILIPPINES suggested new definitions in the ILBI on "utilization" of MGRs. TRINIDAD AND TOBAGO proposed discussing the difference between MSR and bioprospecting. MEXICO pointed to connections between the definition of MGRs and other elements of the package, cautioning against definitions that can become obsolete due to scientific advancements.

CAMEROON noted that definitions may overlap with the issue of scope of the ILBI, suggesting consideration of *in situ* and *ex situ* MGRs. AUSTRALIA, NEW ZEALAND and the RUSSIAN FEDERATION, opposed by FIJI, the AFRICAN GROUP, EL SALVADOR and TRINIDAD AND TOBAGO, called for delinking discussions on definitions and on scope. INDONESIA underscored the need to address resources within the continental shelf, some of which fall both within and beyond national jurisdiction. The US suggested discussing the rationale for different proposals related to the inclusion of the high seas within the geographical scope, with COSTA RICA highlighting that MGRs cover marine organisms wherever they occur. SRI LANKA called for distinguishing discussions on substantive, geographic and temporal scope.

Benefit-sharing: CAMEROON noted that the issue of benefits determines the understanding of the scope, calling for a holistic approach and drawing attention to derivatives from MGRs, continuous utilization of MGRs, bioprospecting and MSR. BRAZIL pointed to common heritage, monetary and non-monetary benefits, and the link with fair and democratic access to MGRs, including *in situ*, *ex situ* and *ex silico* analysis. The AFRICAN GROUP argued that any benefit-sharing mechanism should reflect the common heritage principle. JAMAICA stated that benefit-sharing could cover commercial or non-commercial activities, information-sharing, royalties and shared research; and called for transparent access to *in situ* and molecular data from research and databanks. CAMEROON pointed to developing countries' involvement in research on MGRs as a means to build capacity, and called for a global benefit-sharing mechanism.

IN THE CORRIDORS

As the PrepCom plenary concluded its first round of considerations, several participants felt that BBNJ delegates are showing increasing signs of convergence in an effort to ensure that a new agreement can breathe life into UNCLOS general obligations on impact assessments, capacity building and technology transfer. In the afternoon, as Chair Charles dispelled concerns about the openness of the informal working group sessions, delegates began to reframe their recent plenary exchanges on the 2011 package, switching gear from "if" to "how."