

## PREPCOM 3 HIGHLIGHTS: THURSDAY, 6 APRIL 2017

On Thursday, 6 April, plenary met throughout the day to discuss environmental impact assessments (EIAs), capacity building and technology transfer (CB&TT), and cross-cutting issues.

### ENVIRONMENTAL IMPACT ASSESSMENTS

**Transboundary EIAs:** NIGERIA and the HIGH SEAS ALLIANCE recommended including transboundary EIAs (TEIAs) in the international legally binding instrument (ILBI). SENEGAL favored TEIAs for activities in ABNJ having an impact within national jurisdiction and for activities within national jurisdiction that have an impact in ABNJ. COLOMBIA, ICELAND and CANADA excluded activities within national jurisdiction from the ILBI's scope. CANADA noted that transboundary impacts do not require a separate process.

**Strategic Environmental Assessments:** NIGERIA and CANADA supported including strategic environmental assessments (SEAs) in the ILBI, with the HIGH SEAS ALLIANCE pointing to a strategic environmental management plan to operationalize their outcomes. ICELAND called for consultation with adjacent coastal states, when relevant, and developing EIA and SEA guidelines.

**Ecologically or biologically significant marine areas:** ICELAND supported developing a special EIA provision for ecologically or biologically significant marine areas (EBSAs) in consultation with relevant stakeholders. IUCN and the HIGH SEAS ALLIANCE emphasized the need to scrutinize any activity in EBSAs and vulnerable marine ecosystems (VMEs).

**GOVERNANCE:** CANADA noted that decision-making should rest with sponsor states or the proponents, adding the need to consult with adjacent coastal states. CHILE considered defining adjacency unnecessary, pointing to UNCLOS' compatibility principle. IUCN stressed that responsibilities for conducting an EIA and decision-making are connected to liability for potential damage, cautioning against allocating such a task to individual states. The HIGH SEAS ALLIANCE emphasized the need for transparency, and accessible compliance and dispute-resolution mechanisms.

**REVIEWS:** PERU considered the Intergovernmental Oceanographic Commission (IOC) a point of reference for conducting independent scientific reviews of EIAs. ICELAND and CANADA opposed review of EIAs under the ILBI. IUCN recommended harmonizing EIA standards to include biodiversity concerns in regional and sectoral organizations. SENEGAL stressed the need for a transparent process, including: basic requirements; evaluation criteria for assessment of direct, indirect, cumulative, short- and long-term impacts; and a follow-up mechanism.

**Clearinghouse mechanism:** SENEGAL recommended that parties utilize centralized facilities for communicating EIAs' results to improve transparency. The HIGH SEAS ALLIANCE suggested

establishing a clearinghouse mechanism (CHM), including baseline data, for exchanging information and best practices, with well-defined exemptions for commercial confidentiality.

### CB&TT

Following a report by Facilitator Lee on the informal working group discussions, Chair Duarte encouraged further discussions on a list of issues circulated in writing.

**MODALITIES:** Calling, with the DOMINICAN REPUBLIC, for needs-driven CB&TT, the EU favored capacity building on a voluntary basis and technology transfer on mutually agreed terms. PSIDS observed that CB&TT should: be voluntary and mandatory; connect regional centers of excellence; and reach the national level through a targeted trust fund. NEW ZEALAND proposed drawing from examples of CB&TT provisions from other instruments, supported by AOSIS, and, with BANGLADESH, retaining flexibility in considering the full range of desirable activities. The COOK ISLANDS suggested: taking into account existing knowledge, including traditional knowledge; operationalizing UNCLOS technology transfer commitments; and avoiding conditionality. The AFRICAN GROUP preferred deferring the identification of CB&TT activities to the ILBI ABS mechanism and scientific body.

ERITREA prioritized the principles of the Istanbul Programme of Action for LDCs and the need to eliminate trade barriers. IUCN suggested an updated assessment of CB&TT needs, which could involve stakeholders including the private sector.

**CHM:** The EU preferred: using existing CHMs, noting the IOC's role in exchanging scientific information, and providing transparency; and relying on a one-stop shop CB&TT mechanism, linked to regional arrangements. AOSIS supported a centralized, accessible CHM, integrating traditional knowledge. PSIDS highlighted storage and dissemination of traditional knowledge. CARICOM proposed building on existing CHMs to develop a one-stop-shop mechanism, supported by NORWAY, PAKISTAN, BANGLADESH and IUCN. JAPAN favored making information on needs and priorities only accessible to states.

MEXICO, for a group of Latin American countries, proposed a user-friendly, accessible and comprehensive CHM. TONGA recommended reviewing the CHM content following a pilot phase. CHINA called for an open and transparent CHM. AUSTRALIA proposed using the CHM for, *inter alia*, compliance, review, and benefit-sharing from marine genetic resources (MGRs). The US prioritized considering the ISA's and the IOC's related work, noting the value of a voluntary web-based CHM. ARGENTINA, supported by BRAZIL, favored an ILBI-specific, user-friendly and expeditious CHM linked to existing mechanisms. PERU highlighted the need to develop regional networks between institutions. The PHILIPPINES supported a central CHM linked to existing ones. The IOC suggested: a "hub-and-node" CHM encompassing regional networks; dynamic integration of experts and a user-friendly online system; a tech-smart interface; engagement of both users and

creators; and cost-effectiveness and non-duplication. The AFRICAN GROUP welcomed the IOC report on CHM modalities. The COOK ISLANDS noted that the IOC's CHM framework is not operational, and recommended partnering with other organizations to cater for the ILBI's scope. IUCN called upon the IOC to develop an international meta-database to monitor needs and foster projects that are tailored to local, national, and regional levels.

**FUNDING:** The AFRICAN GROUP recommended using existing funding mechanisms and, supported by AOSIS, ARGENTINA, PERU and NEPAL, a new specific fund, with BRAZIL and GUYANA recommending contributions also from benefit-sharing.

The EU preferred: with JAPAN and NORWAY, financing CB&TT through existing funds, including the Global Environment Facility (GEF); and, with the US, establishing a trust fund for developing countries' participation in ILBI meetings. INDONESIA proposed a minimum mandatory funding scheme, also open to voluntary funding. CANADA underscored that contributions should be voluntary. CARICOM emphasized the need for dedicated funding, whether existing or new. PSIDS supported a funding mechanism including a trust fund. BANGLADESH drew attention to the ISA's financing mechanism to provide guidance for an ILBI funding mechanism. IUCN suggested periodically assessing funding needs.

**IPRs:** The AFRICAN GROUP, with BRAZIL, noted that derivatives could be patented and called for a disclosure of origin clause. AOSIS noted that IPRs should not act as barrier to CB&TT. CARICOM asserted IPRs should be factored into the ILBI. The EU reiterated that IPRs are addressed under other fora, with JAPAN and the US recommending respect for IPRs.

**MONITORING AND REVIEW:** AOSIS underscored periodic review, and regular reporting on support required and received. CARICOM supported a review conference of state parties. NORWAY supported periodic review by the ILBI COP. TONGA suggested that each party submit its report to an elected scientific body that advise an executive body, which subsequently make recommendations to the COP for decision-making, linked to periodic review based on milestone indicators. The PHILIPPINES called for defined indicators for periodic monitoring and evaluation. The COOK ISLANDS prioritized a non-onerous follow-up mechanism. The US opposed a compliance process, but welcomed a periodic review of capacity needs. ARGENTINA supported a periodic review process, focusing on CB&TT needs. CANADA referred to the overall review of the ILBI effectiveness. INDIA pointed to the ISA as a useful example. FIJI proposed that regional centers providing information on CB&TT activities could undertake monitoring. INDONESIA supported a mechanism to review gaps in CB&TT.

### **CROSS-CUTTING ISSUES**

Chair Duarte reported on informal working group discussions. Recalling the PrepCom's mandate, the RUSSIAN FEDERATION expressed concern about the "lack of substantive discussion" and "limited attempts" to reach consensus.

**INSTITUTIONAL ARRANGEMENTS:** The AFRICAN GROUP and the FSM recommended establishing an ABS mechanism covering monetary and non-monetary benefit-sharing, and CB&TT. PSIDS favored global decision-making, taking into account specific sub-regional and regional characteristics. CARICOM noted the need to ensure application of uniform criteria and standards. The EU, supported by SINGAPORE, recommended leaving the competence of establishing subsidiary bodies with the ILBI COP. SINGAPORE and CANADA suggested further discussions on subsidiary bodies' functions and cost-effectiveness. MEXICO called for: considering the mandates of the envisaged subsidiary bodies; types and frequency of meetings; and defining the role of the secretariat.

**REVIEW AND MONITORING:** The AFRICAN GROUP supported a monitoring and review mechanism. CARICOM suggested review and monitoring procedures at the international,

regional and national levels, through a periodic review process. SINGAPORE favored a review conference. The EU recommended leaving with the ILBI COP the competence of establishing review and monitoring structures. CHILE called for, in addition to a review conference, other bodies to scrutinize implemented measures and relevant recommendations.

**COMPLIANCE:** The AFRICAN GROUP, SINGAPORE and GUATEMALA supported a facilitative compliance mechanism. CARICOM suggested a compliance body with both facilitative and punitive functions, based on a fast-track procedure and universal participation. The EU favored a transparent mechanism to bolster cooperation and coordination. MEXICO called for non-compliance provisions, including the polluter pays principle.

**LIABILITY:** Invoking the polluter pays principle, the AFRICAN GROUP suggested establishing a liability fund. The FSM proposed a contingency or liability fund, with a proponent providing a security deposit to be used as reparation for damage. TONGA called for provisions on acts or omissions, which would result in liability for compensation, as well as provisions exempting liability. CARICOM underscored the polluter pays principle and the precautionary approach, with the EU adding due diligence and highlighting the complexity of international liability.

**DISPUTE SETTLEMENT:** Noting that further discussions are needed, the AFRICAN GROUP and the EU, with the FSM, stressed that all parties with substantial interest should have access to dispute settlement. CARICOM proposed drawing from the UNFSA. MEXICO suggested that access should be contingent on the ILBI membership and the type of dispute-settlement procedure, noting opportunities for non-state actors' access. VENEZUELA proposed drawing from the UN Charter.

**NOT UNDERMINING:** The AFRICAN GROUP argued that addressing recommendations to regional or sectoral bodies does not constitute "undermining," especially when these bodies can participate in decision-making. PSIDS proposed interpreting "not undermining" as not reducing or eroding the effectiveness of existing instruments, as in the UNFSA. CARICOM opined that "not undermining" involves non-duplication, coherence and coordination, addressing existing gaps. The EU stressed that the ILBI should respect the balance of rights and obligations under UNCLOS and the competence of other bodies. CHILE underscored consistency and coherence. MOROCCO emphasized that the General Assembly Resolution 69/292 is clear that the ILBI should not affect existing instruments' effectiveness. CANADA indicated that "not undermining" does not mean "no contact" with existing instruments. GUATEMALA, with MEXICO, proposed "not contradicting or weakening" existing instruments' mandates. The FSM pointed out that the ILBI will address issues that are not yet regulated.

### **IN THE CORRIDORS**

As PrepCom 3 entered the home stretch, most participants, with one notable exception, agreed that the session has been helpful, including by spelling out the linkages across the "package" elements, thus increasing the chances of a coherent PrepCom outcome down the road. "Regional coordination has become much more productive and positions are now becoming clearer. We definitely have some fodder to ruminate on during the intersessional period!" exclaimed one delegate. There were, however, rumblings of frustration regarding the long list of questions circulated to aid further discussions, which did not allow for focused plenary discussions and reduced the time for informal huddles. "It remains to be seen," pondered a veteran, in anticipation of the closing plenary, "what the next steps will be."

**ENB SUMMARY AND ANALYSIS:** The *Earth Negotiations Bulletin* summary and analysis of PrepCom 3 will be available on Monday, 10 April 2017, online at: <http://enb.iisd.org/oceans/bbnj/prepcom3/>