

## PREPCOM 4 HIGHLIGHTS: MONDAY, 10 JULY 2017

On Monday, 10 July, PrepCom 4 plenary addressed administrative matters and heard general statements. In the afternoon, the informal working group on marine genetic resources (MGRs), facilitated by Janine Coye-Felson (Belize), addressed scope, guiding principles and approaches, access, and objectives and principles of benefit-sharing.

### PLENARY

Opening the session, PrepCom Chair Carlos Sobral Duarte (Brazil) stressed that work during previous sessions, as well as intersessionally, placed the PrepCom in a good position to fulfil its mandate. Miguel de Serpa Soares, Under-Secretary-General for Legal Affairs and UN Legal Counsel, reported on ICP 18 and the UN Ocean Conference.

**ADMINISTRATIVE MATTERS:** Chair Duarte drew attention to the Chair's: indicative suggestions to assist the PrepCom in developing recommendations to the General Assembly, circulated on 31 May 2017 as a guide for discussions at PrepCom 4; and streamlined non-paper on elements of a draft text of an international legally binding instrument (ILBI), which was circulated on 6 July 2017 for reference only and not for discussion. He proposed: reconvening the informal working groups during the first week, and considering the chapeau to the draft recommendations on Friday, 14 July, in plenary; and continuing plenary discussions of outstanding issues during the second week, on the basis of a new draft of the Chair's indicative suggestions. Delegates approved the provisional agenda (AC.287/2017/PC.4/L.1) and the programme of work (AC.287/2017/PC.4/L.2).

**GENERAL STATEMENTS:** Several delegations expressed appreciation for the Chair's indicative suggestions. Ecuador, for the Group of 77 and China (G-77/CHINA), expressed confidence that PrepCom 4 would fulfil its mandate, and called for a decision on convening an intergovernmental conference (IGC) as soon as possible. Algeria, for the AFRICAN GROUP, acknowledged the Chair's indicative suggestions as a "step in the right direction" to allow the PrepCom to fulfil its mandate; and, supported by MONACO, the DOMINICAN REPUBLIC, the Federated States of Micronesia (FSM) for the PACIFIC ISLANDS FORUM, SUDAN, MAURITIUS, IUCN and the HIGH SEAS ALLIANCE, urged for an IGC in 2018.

GUATEMALA and MOROCCO called for capitalizing on political will engendered at the UN Ocean Conference. The PACIFIC ISLANDS FORUM recalled Kenya's and Portugal's

offer to hold a follow-up conference. COMISIÓN PERMANENTE DEL PACÍFICO SUR, SRI LANKA and INDIA considered BBNJ conservation key to achieving SDG 14.

Bangladesh, for Least Developed Countries (LDCs), stressed that the recommendations should help strike a balance between BBNJ conservation and sustainable use. NEPAL noted the need to address climate change impacts on both the ocean and mountains, and to share benefits equitably, including with land-locked developing countries (LLDCs).

INDONESIA emphasized: inter-generational equity, and fair and equitable benefit-sharing; common concern of humankind; and respect for national jurisdiction over the outer continental shelf. Underscoring the common heritage principle with THAILAND, the PHILIPPINES called for: good governance, transparency and public participation to inform discussions; and monetary and non-monetary benefit-sharing, as well as a non-exhaustive list of activities subject to environmental impact assessments.

Maldives, for the Alliance of Small Island States (AOSIS), considered an IGC the next logical step to urgently protect the oceans. Nauru, for the Pacific SIDS (PSIDS), called for including traditional knowledge and a funding mechanism supporting ILBI implementation; and moving forward in the protection of marine biodiversity. Barbados, on behalf of the Caribbean Community (CARICOM), looked forward to the successful conclusion of PrepCom 4, with a recommendation to convene an IGC.

MEXICO, speaking also for Brazil, Colombia, Chile, Guatemala, Costa Rica, Honduras, El Salvador, Panama, Ecuador and Peru (LIKE-MINDED LATIN AMERICA), expressed confidence that the session would adopt substantive recommendations for convening an IGC in 2018, and underscored the right to bring additional elements for further consideration at an IGC. CHILE, also on behalf of ARGENTINA, PERU, VENEZUELA, ECUADOR, URUGUAY, COLOMBIA and PARAGUAY, expressed confidence in finalizing substantive recommendations at PrepCom 4. CHINA recommended adhering to the mandate outlined in Resolution 69/292.

The European Union (EU) highlighted progress in reaching common ground, as well as emerging consensus, on several issues, noting that intractable issues can be addressed by an IGC, to be convened ideally in 2018, as the "correct forum for consolidating work, compromising and arriving at a balanced outcome." Welcoming an IGC as soon as possible, AUSTRALIA noted that work done by the PrepCom should not preclude an IGC from elaborating other elements as required. Considering the streamlined paper a useful document, NEW ZEALAND suggested: focusing on recommendations reflecting areas of agreement; addressing divergences in an IGC, which should be the next step; and avoiding prejudicing the ILBI's final structure.

NORWAY highlighted that: although an IGC in 2018 seems ambitious, he would “not stand in the way, if it is practical and politically possible”; and the recommendations should establish the necessary confidence in the process to move to the next stage, and ensure that the different options remain open for discussion at an IGC. The RUSSIAN FEDERATION stated that: his position was not accurately reflected in the Chair’s indicative suggestions; he would not object to the indicative suggestions forming the basis for discussions, cautioning about the lack of consensus on serious issues; and another PrepCom session would be needed to reach agreement. The US underscored the need for “important adjustments” for the Chair’s indicative suggestions to lead to the recommendations to the General Assembly, stating that his country will only take a decision on convening an IGC after the PrepCom process is concluded.

ICELAND opined that: the Chair’s indicative suggestions were in line with Resolution 69/292, as the recommendations should clearly indicate unresolved issues, in addition to those where consensus has been reached; and the streamlined non-paper was useful but only served as reference for future work. CANADA stressed that: certain elements in the Chair’s indicative suggestions need to be further considered, noting the need to clarify that the elements listed are not formally agreed and that the structure is indicative; a hybrid approach needs to be fleshed out; and a degree of flexibility should be maintained in the recommendations to the General Assembly. Noting that numerous issues in the Chair’s indicative suggestions require further deliberations, the REPUBLIC OF KOREA emphasized that the ILBI should not undermine existing relevant legal instruments, and strike a balance between conservation and sustainable use, taking into account all legitimate interests. Anticipating that not all issues will be resolved at this session, JAPAN recommended a fact-based discussion of monetary benefit-sharing.

The International Chamber of Commerce (ICC) underscored the importance of business expertise and perspectives at PrepCom 4 on MGRs and innovation. The Intergovernmental Oceanographic Commission of the UN Educational, Scientific and Cultural Organization (IOC) drew attention to an IOC *ad hoc* report to PrepCom 4 on the IOC strategy on capacity building and technology transfer, as well as issues related to the operationalization of a clearinghouse mechanism for the purposes of an ILBI. The INTERNATIONAL MARITIME ORGANIZATION (IMO) welcomed efforts to further address BBNJ conservation and sustainable use, cautioning against undermining existing frameworks. UN ENVIRONMENT reported on the Regional Seas Programme. The CBD highlighted discussions on digital sequence information on genetic resources and consideration of developments under the General Assembly at the next meeting of the CBD Subsidiary Body on Implementation in relation to Nagoya Protocol Article 10 on multilateral benefit-sharing.

### **WORKING GROUP ON MGRS**

**PRINCIPLES AND APPROACHES:** The G-77/CHINA emphasized the common heritage principle as the legal basis for a fair and equitable regime, with CARICOM acknowledging that if no agreement is reached during PrepCom 4, the issue could be considered by the IGC. The AFRICAN GROUP called for mentioning transparency and VANUATU inter- and intra-generational equity. KENYA underscored accountability. PSIDS highlighted the special case of SIDS and BANGLADESH that of LDCs.

CANADA, supported by the EU and others, drew attention to duplication of text in sections on principles and approaches, objectives, the clearinghouse, capacity building and technology

transfer. JAPAN reiterated, with the RUSSIAN FEDERATION, the applicability of high seas freedoms, and noted that the consequences of including “equity” as a guiding principle need to be better understood.

**ACCESS:** The EU welcomed reference to UNCLOS Articles 256 (MSR in the Area) and 257 (MSR in the water column beyond the exclusive economic zone), and Articles 238-244 (general provisions and international cooperation concerning MSR), noting that facilitated access should be linked to benefit-sharing and capacity building.

JAPAN, supported by the RUSSIAN FEDERATION, ICELAND and the REPUBLIC OF KOREA, opposed reference to specific UNCLOS provisions, and argued, with the US, that UNCLOS provides for open access and there is no need for additional rules. The US further suggested, opposed by the AFRICAN GROUP, eliminating references to access in the ILBI draft elements. The RUSSIAN FEDERATION opined that the high seas freedoms apply to MGRs, as well as derivatives. The REPUBLIC OF KOREA noted that access should facilitate research activities.

The G-77/CHINA stressed the importance of access and distribution of benefits. The FSM emphasized including access to samples that have already been collected in ABNJ. CARICOM suggested focusing on who is granted which type of access under what conditions, highlighting: LDCs and SIDS’ special circumstances, the importance of a notification and reporting mechanism, and, with PSIDS, the need to build on UNCLOS provisions on MSR and technology transfer. LDCs suggested scientifically informed thresholds to regulate access. PSIDS urged including access to information; supported the inclusion of traditional knowledge associated to MGRs in BBNJ; and stressed that bioprospecting activities should be subject to benefit-sharing, transparency and traceability of MGRs. GUATEMALA proposed a multilateral system to regulate both access and benefit sharing of MGRs.

**BENEFIT-SHARING: Objectives:** CHINA said both conservation and sustainable use should be the objectives of benefit-sharing. CARICOM proposed language on contribution to the equitable and effective utilization of marine resources. LDCs suggested “promoting effective and meaningful partnerships for MSR and economic exploration in ABNJ, and underscoring equity.” PSIDS proposed drawing from UNCLOS on supporting the realization of a just and equitable economic order. JAPAN, with the US, preferred limiting the objectives to contributing to conservation and sustainable use, and building capacity to access and use MGRs.

**Principles:** The G-77/CHINA pointed to common heritage, which was opposed by the US, who noted that this reference was not agreed by consensus.

### **IN THE CORRIDORS**

Riding the crest of the positive wave generated by the UN Ocean Conference in June, BBNJ delegates regrouped for what many hoped would be the final PrepCom push. “It is difficult to predict how the next two weeks will play out,” many commented. One delegate worried that the discussion of the Chair’s indicative suggestions for the ILBI draft elements could turn into a “poking holes” exercise, stripping an already slim document of much of its substance. Another, feeling optimistic amidst the chorus of voices calling for an IGC as soon as 2018, hoped that these discussions would increase the number of areas of convergence. “Ultimately, what we need to transmit to the General Assembly,” an observer reflected, “is that we have made sufficient progress in the PrepCom for the negotiating process to move to the next stage.”