

PREPCOM 4 HIGHLIGHTS: FRIDAY, 14 JULY 2017

On Friday, 14 July, delegates met in the informal working group on crosscutting issues in the morning, and in plenary in the afternoon.

WORKING GROUP ON CROSSCUTTING ISSUES

USE OF TERMS: The G-77/CHINA, supported by the EU, the US and the RUSSIAN FEDERATION, considered it premature to discuss definitions. CARICOM called for pragmatic, workable and science-based definitions that are consistent with other agreements, with the PHILIPPINES adding they should be adapted to the BBNJ context.

PSIDS, opposed by JAPAN and the US, suggested defining MSR and bioprospecting. JAPAN considered definitions unnecessary for ABMTs and EIAs, and the US for technology, biotechnology, marine technology transfer, ecosystem, biological resources and sustainable use. The US further recommended referring to “possible” key terms.

CHINA, with the RUSSIAN FEDERATION, stressed that neither derivatives nor fish as a commodity should be introduced in the MGR definition, adding that fish as MGRs are covered by UNCLOS and high seas freedom. Agreeing that fishing resources should be distinguished from genetic ones, ARGENTINA recommended defining “derivatives” similar to the Nagoya Protocol. ERITREA proposed linking the definition of “ecosystem” to the “ecosystem-based approach,” and defining “traditional knowledge” and “biocultural heritage.” SENEGAL added “strategic evaluations/assessments.”

SCOPE: The AFRICAN GROUP, with the US, proposed including a reference to the EEZ in addition to sovereign rights over the continental shelf. The EU recommended reflecting the balance of rights of all states, including those that have not claimed an EEZ, without prejudice to states’ sovereign decision to claim an EEZ. The US expressed difficulty with this. CANADA, supported by the PHILIPPINES, proposed reference to states’ sovereign rights and jurisdiction, including sovereign rights over their continental shelf and EEZ. PSIDS maintained that ABNJ include the water column beyond the continental shelf. ICELAND preferred referring to the outer continental shelf. The RUSSIAN FEDERATION, with CANADA, AUSTRALIA and ICELAND, called for mandatory language with regard to respecting rights; and opposed reference to the Area, as it is already defined under UNCLOS.

CARICOM, with SINGAPORE, proposed discussing activities covered by, or excluded from, the scope in the context of the ILBI relationship with UNCLOS and other instruments. The EU and the US opposed reference to the ILBI material scope. PSIDS and AUSTRALIA argued that the material scope refers to activities in ABNJ with potential impacts on biodiversity.

OBJECTIVES: The G-77/CHINA underlined long-term conservation and sustainable use as the overarching objective. The RUSSIAN FEDERATION opposed referencing “long-term”

conservation, and favored “sustainable use and conservation.” The EU, with CANADA and JAPAN, preferred as “the one” ILBI objective BBNJ conservation and sustainable use and, opposed by CARICOM, PSIDS, the RUSSIAN FEDERATION and NORWAY, favored deleting reference to international cooperation and coordination from this section. JAPAN, supported by NEW ZEALAND, proposed adding that “if agreed,” the text could set out additional objectives.

The AFRICAN GROUP, with NORWAY, opposed reference to effective implementation of UNCLOS “relevant provisions.” CARICOM suggested referencing BBNJ conservation “for the benefit of future generations,” and “equitable and just use” of BBNJ. The PHILIPPINES proposed as an objective facilitating developing countries’ meaningful participation, including SIDS and LDCs, and KIRIBATI recommended “adequate and coherent climate change measures for BBNJ.”

RELATIONSHIPS: NEW ZEALAND, ICELAND, JAPAN, COSTA RICA, NORWAY, ARGENTINA, ERITREA, and the US supported stipulating that nothing in the ILBI shall prejudice states’ rights, jurisdiction and duties under UNCLOS, and the ILBI shall be interpreted and applied in the context of and in a manner consistent with UNCLOS. COLOMBIA, also on behalf of IRAN, TURKEY, EL SALVADOR and VENEZUELA, supported by ERITREA, reiterated that participation in the ILBI negotiations shall not affect their legal status as UNCLOS non-parties.

The AFRICAN GROUP queried whether “not undermining” other instruments has been used in other processes. CARICOM proposed adding that the ILBI should not be “interpreted as” undermining existing instruments or prejudicing states’ rights and obligations under existing instruments. JAPAN recommended mandatory language. ARGENTINA, with IUCN, underscored that, according to Resolution 69/292, it is the process of developing the ILBI that should not undermine other instruments. COSTA RICA underscored the ILBI purpose to complement and bridge existing gaps.

Noting that many relevant legal instruments and bodies are functioning successfully, the RUSSIAN FEDERATION pointed to the Vienna Convention on the Law of Treaties, emphasizing, with JAPAN, that references to regional, sectoral or bilateral agreements may be included. NEW ZEALAND, supported by ICELAND, the US and the REPUBLIC OF KOREA, noted that language on “not undermining” existing instruments is not strong enough. CANADA, supported by NORWAY and AUSTRALIA, suggested adding that the ILBI should not undermine “but rather promote greater coherence with, build upon and complement existing instruments.”

PRINCIPLES: The G-77/CHINA recommended including: the polluter pays principle; respect for traditional knowledge; and, opposed by the US and JAPAN, the common heritage principle as the ILBI basis. JAPAN called for clarity on the precautionary approach.

AOSIS, opposed by the US, proposed SIDS’ special case as a principle, including equal engagement in consultations on ABMTs and special consideration in conducting EIAs. The AFRICAN

GROUP underscored the special circumstances of coastal African states. PSIDS, opposed by the US and CHINA, requested including the adjacency principle, with the PHILIPPINES emphasizing consultation with adjacent coastal states. CHINA reiterated the principle of due regard, which ARGENTINA considered vague. The AFRICAN GROUP suggested “due diligence” instead of “adjacency.” COOK ISLANDS stressed that activities in ABNJ should not impact activities within national jurisdiction, illustrating the recent designation of the Marae Moana marine park.

CHILE, supported by the AFRICAN GROUP, suggested including high seas freedoms, subject to conditions under UNCLOS. CHINA pointed to the principle of good faith. IRAN and the RUSSIAN FEDERATION highlighted the necessity to balance conservation and sustainable use. CARICOM and LDCs, opposed by the US, recommended reference to inter- and intra-generational equity. CANADA favored: with ICELAND, reference to “possible” principles; the polluter pays principle, and effective use of resources; supported by the US, JAPAN, AUSTRALIA and the RUSSIAN FEDERATION, the science-based approach; and, with NEW ZEALAND, the precautionary approach.

International cooperation: The G-77/CHINA suggested strengthening North-South, South-South and triangular cooperation. CARICOM suggested a reference to cooperation in MSR and technology transfer. ICELAND, with AUSTRALIA, MOROCCO, CARICOM and NORWAY, supported cooperation also with regional, subregional and sectoral bodies.

PLENARY

INDICATIVE SUGGESTIONS: CANADA proposed, supported by the US, AUSTRALIA, NEW ZEALAND and NORWAY, endorsing the elements, with a non-exclusive list and an indicative structure, for further consideration. MAURITIUS recommended including elements where consensus had not been reached in the recommendations. MOROCCO supported forwarding the revised Chair’s indicative suggestions to the IGC as a reference document. CHILE, also for ARGENTINA, URUGUAY, PARAGUAY, PERU and ECUADOR, noted that as the Chair’s indicative suggestions reflect broad consensus, no modifications should be made which would change the balance of the text. CHINA said that the report to the General Assembly should contain: the information on all the PrepCom discussions; and recommendations for the ILBI draft elements, including indicative suggestions outlining consensus elements, and an annex containing divergent views. AUSTRALIA added, supported by NORWAY and NEW ZEALAND, that “the recommendations are made without prejudice to the positions of any party during future negotiations.”

IGC: The G-77/CHINA noted that, following the PrepCom’s recommendations, the General Assembly should decide as soon as possible on convening and on a starting date of an IGC. Underscoring the constructive spirit of PrepCom 4 discussions and the progress made, MEXICO, with COSTA RICA, GUATEMALA, the AFRICAN GROUP, the EU, AOSIS and PSIDS, stressed that the meeting’s report should contain recommendations to the General Assembly on elements of a draft text of an ILBI, calling for convening an IGC in 2018.

MEXICO and PSIDS emphasized that the IGC should have at least four two-weeks-long rounds of negotiations in 2018 and 2019, noting, with CARICOM, that the General Assembly’s rules must apply *mutatis mutandis* to the IGC. SOUTH AFRICA called on the Chair to prepare a report to the General Assembly including substantive recommendations on the elements of an ILBI, and a procedural recommendation to convene an IGC with a 2018 start date and a 2018-2019 timeframe. CHILE, also for ARGENTINA, URUGUAY, PARAGUAY, PERU and ECUADOR, supported an IGC to begin “as soon as possible,” focusing on all the elements of the package and being inclusive and open to all, including non-state actors. IUCN warned against delayed action to protect the oceans and welcomed the overwhelming majority supporting an IGC in 2018, with NRDC, on behalf of the HIGH SEAS ALLIANCE, also lauding the transparent and inclusive nature of the PrepCom.

CANADA expressed willingness to move into an IGC format, if agreed. Expressing optimism that recommendations may be provided to the General Assembly, NEW ZEALAND noted that an IGC should then be decided as soon as possible, in 2018 if feasible, and this should be recognized in the PrepCom’s report. Noting that the PrepCom has not yet agreed upon the draft elements, NORWAY express readiness to move towards convening an IGC as soon as possible, even in 2018 if at all possible, if the PrepCom provides consensus elements. Noting that consensus elements for the ILBI remain to be agreed upon, the US called for textual negotiations during the second week of PrepCom 4, to reach consensus on substantive elements, rather than general discussions or discussing modalities for a possible IGC.

JAPAN emphasized that: supported by CHINA, ICELAND and the US, the PrepCom does not have a mandate to recommend convening an IGC, as this will be addressed by the General Assembly; and no proposals had been made during the preparatory meeting for PrepCom 4 to discuss convening an IGC during this session. The RUSSIAN FEDERATION emphasized the significant level of disagreement on the Chair’s indicative suggestions, including on the adoption of a global, regional or hybrid model; and opposed suggestions to move forward to an IGC, calling for additional sessions of the PrepCom.

CHAIR’S STREAMLINED NON-PAPER: MEXICO, with COSTA RICA, the DOMINICAN REPUBLIC, the AFRICAN GROUP and CARICOM, opposed by JAPAN and ICELAND, further stressed that the Chair’s streamlined non-paper on elements of a draft text of an ILBI should be reflected in the final report and constitute a reference point for future negotiations. MONACO and the PHILIPPINES considered the streamlined non-paper as a useful reference tool.

The AFRICAN GROUP added that areas of non-convergence should also be reflected, either with a reference in the chapeau or, with MEXICO, in an annex. AOSIS highlighted the importance of capturing discussions that have taken place, “not starting from scratch at the next stage.” GUATEMALA said the streamlined document could be reflected in the PrepCom 4 report. SOUTH AFRICA proposed including annexes in the PrepCom report containing the Chair’s indicative suggestions, the Chair’s streamlined non-paper and a section on areas of non-convergence. ARGENTINA stressed that the Chair’s streamlined non-paper should be reflected “in some way” as an input to the IGC.

JAPAN emphasized that the streamlined non-paper had not been discussed during the session, with ICELAND adding that it was only received two days before PrepCom 4 and does not contain new proposals following PrepCom 3. ICELAND suggested, supported by NORWAY, that the non-paper be published on the PrepCom’s website, alongside with position papers by stakeholders to ensure accessibility and institutional memory.

IN THE CORRIDORS

At the halfway point, a number of delegates felt blindsided by unexpected suggestions that the Chair’s streamlined non-paper (earlier introduced as “reference only and not for discussion”) should be annexed to the PrepCom 4 report to the General Assembly. “We’ve hardly read it, and it’s never come up for discussion,” exclaimed one flustered participant. As a counterpoint, another offered, “The streamlined non-paper shows how much ground we have covered in unpacking the 2011 package, which cannot be easily inferred from the indicative suggestions.” Expecting a challenging week ahead, delegates heading off to enjoy a much-needed weekend break offered conciliatory words to the Chair and his team, who were expected to hunker down to revise the Chair’s indicative suggestions. “The BBNJ process is grateful for your sacrifice,” quipped one cheeky delegate.