

## PREPCOM 4 HIGHLIGHTS: TUESDAY, 18 JULY 2017

On Tuesday, 18 July, delegates met in plenary throughout the day to continue consideration of a revised Chair's text containing draft recommendations to the UN General Assembly, focusing on the ILBI draft elements.

Chair Duarte proposed concluding consideration of the revised Chair's draft on Wednesday morning; holding informal consultations with interested delegations on Wednesday afternoon on difficult points on a non-objection basis; and if no reformulation is possible, developing another section to deal with non-consensus points.

### GENERAL ELEMENTS

**USE OF TERMS:** MEXICO, opposed by IRAN, requested deleting the section.

**SCOPE OF APPLICATION:** AUSTRALIA and NORWAY, opposed by NEW ZEALAND, LDCs and PAKISTAN, supported a reference to respecting coastal states' rights also within 200 nautical miles. MOROCCO requested referring to "sovereign rights and jurisdiction of coastal states over their continental shelf." CARICOM emphasized the ILBI's global focus. IRAN and the PHILIPPINES, opposed by CANADA, SWITZERLAND and NEW ZEALAND, recommended retaining language on material scope and specific reference to the "2011 package" elements.

**OBJECTIVES:** The RUSSIAN FEDERATION, with LDCs, SWITZERLAND and SENEGAL, opposed by NEW ZEALAND and MEXICO, recommended deleting "long-term" conservation and sustainable use. IUCN stressed that this is UNFSA language.

The RUSSIAN FEDERATION stressed that international cooperation and coordination should be referred to in the context of the ILBI conservation and sustainable use objective. AUSTRALIA and NORWAY preferred a separate paragraph on cooperation and coordination. JAPAN recommended that the ILBI could set out additional objectives, "if agreed," such as furthering international cooperation and coordination.

The PHILIPPINES proposed adding reference to developing states' "meaningful participation" in conservation and sustainable use.

**RELATIONSHIP WITH OTHER INSTRUMENTS:** IRAN supported indicating that nothing in the ILBI shall prejudice states' rights. The RUSSIAN FEDERATION, supported by PERU and ICELAND, questioned the meaning of "not undermining" existing relevant legal instruments, and proposed that the ILBI "shall be without prejudice to existing relevant instruments." AUSTRALIA preferred retaining reference to "non undermining," considering the Russian proposal useful and, with COSTA RICA, SWITZERLAND, SENEGAL, PERU and MALAYSIA, requested eliminating reference to activities covered by and/or excluded from the ILBI scope. ICELAND opposed, pointing to the usefulness of distinguishing between fish as commodity and as genetic resources.

The US, with NORWAY, JAPAN, NEW ZEALAND, ICELAND, the REPUBLIC OF KOREA and CANADA, and opposed by MEXICO, URUGUAY and the AFRICAN GROUP, suggested not undermining existing legal instruments and frameworks and relevant global, regional, and sectoral bodies "including their processes and mandates." The AFRICAN GROUP, with IUCN, ARGENTINA and others, underscored that language on relationships is sufficiently broad, with CAMEROON suggesting using "mutual support."

NORWAY, ICELAND and JAPAN, opposed by MEXICO, proposed deleting "existing" relevant legal instruments, and, with JAPAN, PAKISTAN, ICELAND and the REPUBLIC OF KOREA, adding a reference to "avoiding duplication" with other instruments. JAPAN, with ICELAND and MALAYSIA, also suggested that the ILBI "shall" not be interpreted and applied in a manner which would undermine existing instruments. PSIDS highlighted cooperation with international, regional and subregional organizations. VENEZUELA, opposed by the EU, supported language regarding the participation of non-parties.

**PRINCIPLES AND APPROACHES**

The G-77/CHINA requested including the common heritage principle. The AFRICAN GROUP, the EU and JAPAN questioned the meaning of the “duty not to transform one type of pollution into another.” The AFRICAN GROUP proposed adding “fair and equitable benefit-sharing” in line with the CBD.

IRAN underscored the polluter pays principle and public availability of information. The RUSSIAN FEDERATION emphasized that accessibility of information and transparency had not been discussed substantively.

The PHILIPPINES requested inclusion of adaptive management, adjacency and connectivity as principles. MOROCCO called for retaining language on sovereign rights and jurisdiction of coastal states, and respect of their territory. NEW ZEALAND and FIJI supported reference to traditional knowledge. The RUSSIAN FEDERATION questioned how traditional knowledge could be applicable to ABNJ.

**PRECAUTION:** FIJI and AUSTRALIA supported retaining reference to the precautionary approach. The AFRICAN GROUP, COSTA RICA and the EU supported including the precautionary principle, rather than the precautionary approach. CANADA said “precaution” might suffice.

**BALANCE BETWEEN CONSERVATION AND SUSTAINABLE USE:** The US, with AUSTRALIA, NEW ZEALAND, the EU, the FSM and JAPAN, opposed by IRAN and NORWAY, preferred “promoting both” conservation and sustainable use, rather than balancing them. SENEGAL preferred “promoting the balance” between them. SWITZERLAND underscored the need to maintain the link between conservation and sustainable use.

**ADJACENCY:** PSIDS and NEW ZEALAND, opposed by the US, SINGAPORE, the REPUBLIC OF KOREA and SWITZERLAND, favored reflecting the concept of adjacency to address the interests of adjacent coastal states. CHINA reiterated that the adjacency principle has no legal basis and would undermine the balance between the rights and obligations of coastal and other states under UNCLOS. AUSTRALIA, supported by NORWAY, highlighted that adjacency is referenced in relation to ABMTs, but could apply in other areas of the ILBI. SENEGAL recommended including connectivity as a separate approach, with GUINEA also proposing transboundary cooperation.

**DEVELOPING COUNTRIES:** AUSTRALIA suggested, supported by the US, the EU, JAPAN, CANADA and SWITZERLAND, but opposed by IRAN, removing reference to preferential treatment for developing countries. NEW ZEALAND proposed moving the reference to the capacity building and technology transfer (CB&TT) section.

The FSM recalled, with FIJI, UNFSA language on SIDS and LDCs’ special requirements, including avoiding disproportionate burdens. The EU pointed to the complexity of the disproportionate

burden concept. The US and JAPAN opposed reference to disproportionate burden. AOSIS called for retaining language on SIDS’ and LDCs’ special requirements, with JAPAN and AUSTRALIA expressing difficulty.

**INTERNATIONAL COOPERATION AND COORDINATION:** The RUSSIAN FEDERATION queried references to triangular cooperation and partnerships with relevant stakeholders. The US, with the EU, expressed difficulty with the concept of partnership with development stakeholders and, with JAPAN, preferred stakeholder engagement. URUGUAY preferred retaining reference to triangular cooperation, and including “cooperation principle.” The US, with JAPAN, proposed deleting reference to “North-South, South-South and triangular cooperation, in the context of international cooperation and coordination.” COSTA RICA stressed that this reference reflects the 2030 Development Agenda, especially SDG 17 (global partnership for sustainable development).

ARGENTINA, with SOUTH AFRICA and CAMEROON, called for qualifying reference to cooperation “either directly or through the competent international organizations,” so as not to prejudge the kind of cooperation. SOUTH AFRICA noted that Resolution 69/292 refers to the need for a comprehensive, global regime, with the RUSSIAN FEDERATION stating that the reference is taken out of context. ICELAND, supported by the US, the RUSSIAN FEDERATION and JAPAN, preferred “relevant global, regional and sectoral bodies,” instead of “competent international organizations.”

**MARINE GENETIC RESOURCES**

CARICOM said she could not support proposals, which would further weaken the section.

**SCOPE:** The G-77/CHINA reiterated including the common heritage principle. CARICOM added the equitable and efficient utilization of resources. LDCs, opposed by BRAZIL, recommended scientific thresholds. SINGAPORE, with ICELAND and JAPAN, opposed by the AFRICAN GROUP and the EU, preferred deleting reference to scope.

**ACCESS:** Noting that access to MGRs and benefit-sharing have not been equitable, LDCs underscored the need to ensure sharing of data and scientific knowledge. PSIDS called for identifying at a minimum what the ILBI provision on access will cover, highlighting, supported by IRAN and the PHILIPPINES, prior informed consent of traditional knowledge holders.

Emphasizing open access to ABNJ for MSR, that should not be linked to benefit-sharing, the US, with INDONESIA, JAPAN and the RUSSIAN FEDERATION, but opposed by BRAZIL, IRAN, the COOK ISLANDS, SWITZERLAND and COSTA RICA, requested eliminating the section on access. PERU proposed distinguishing between access and ownership. BRAZIL suggested adding “how to facilitate access.” The PHILIPPINES underscored that capacity building should be a precondition for access.

**BENEFIT-SHARING: Objectives:** PSIDS emphasized targeting capacity-building efforts at developing countries. JAPAN proposed that the ILBI set out the benefit-sharing objectives. The EU suggested including building capacity to access and use MGRs of ABNJ.

**Principles:** The EU suggested that the ILBI “could” set out benefit-sharing principles. The US, supported by JAPAN, requested utilizing “approaches,” in addition to “principles.” JAPAN underscored the need for a reference to high seas freedoms, if any reference to common heritage is included. The AFRICAN GROUP supported including both common heritage and high seas freedoms. INDONESIA proposed promoting the equitable and efficient use of MGRs. The COOK ISLANDS preferred to retain the section on benefit-sharing principles.

**Modalities:** The RUSSIAN FEDERATION supported the inclusion of non-monetary benefits only. The AFRICAN GROUP, COLOMBIA and LDCs called for monetary and non-monetary benefit-sharing modalities. BRAZIL preferred: with ARGENTINA, COSTA RICA and the PHILIPPINES, focusing on monetary benefits; and eliminating reference to the CHM. SWITZERLAND stated that the ILBI “could” set out types of benefits, opposing reference to specific benefits. The COOK ISLANDS stated that the ILBI “would” make provision for the CHM with regard to benefit-sharing.

**IPRs:** The AFRICAN GROUP, with BRAZIL, lamented the weak formulation that the ILBI “could” set out the relationship with IPRs. CANADA stressed that the relationship should be between the ILBI and “the international legal framework governing IPRs.”

IRAN, with the AFRICAN GROUP, BRAZIL, COLOMBIA, PERU, INDONESIA and the PHILIPPINES, underlined the importance of including language on mandatory disclosure of origin. JAPAN, SWITZERLAND, the RUSSIAN FEDERATION, the US, CHINA and the EU supported deleting this section due to lack of consensus, which was opposed by ARGENTINA, COLOMBIA and the AFRICAN GROUP. PERU underlined that current talks under WIPO do not consider IPRs over MGRs.

**Monitoring:** The US expressed concern about monitoring and potential burdens for scientists and industry. BRAZIL, with COSTA RICA, suggested adding “including addressing traceability.” JAPAN, the RUSSIAN FEDERATION, CHINA and the EU, opposed by the AFRICAN GROUP, COSTA RICA and ARGENTINA, supported deleting this section due to lack of consensus.

#### **AREA-BASED MANAGEMENT TOOLS**

Stating that she could not support any global structures on ABMTs, the RUSSIAN FEDERATION proposed deleting the sections on: relationships to measures under relevant instruments; ABMT process; implementation and monitoring; and review.

**OBJECTIVES:** The AFRICAN GROUP and BRAZIL proposed adding reference to the equitable distribution of benefits. The RUSSIAN FEDERATION and SWITZERLAND opposed reference to “long-term” conservation and sustainable use. The US proposed

that the “text would set out objectives of ABMTs, including MPAs for long-term sustainable use”; and considered the duration of an MPA, as well as the equitable distribution of benefits, non-consensus issues. MONACO called for further consideration of establishing a network of ABMTs.

**RELATIONSHIPS WITH OTHER INSTRUMENTS:** ARGENTINA, with CARICOM, called for avoiding duplication, noting that this section is not necessary. The US proposed deleting reference to: “measures,” in the context of the ILBI relationship to other instruments, with NORWAY noting no consensus on the adoption of new measures under the ILBI; and, opposed by CHILE and PSIDS, compatibility between ILBI measures and those established by adjacent coastal states. ICELAND called for caution in relation to compatibility. JAPAN noted that compatibility is already mentioned in the text, asking for time to scrutinize the concept and its conformity to UNFSA relevant references, and noting his preference that the ILBI “could,” rather than “would,” address this relationship.

AUSTRALIA supported affirming the importance of enhanced cooperation and coordination, and preferred “coherence,” rather than “harmonization,” in relation to coordinated efforts. NEW ZEALAND proposed adding “avoiding duplication.” The EU suggested replacing “harmonization” with cooperation, coherence or complementarity. SWITZERLAND proposed “synergies.” CANADA considered the section useful in introducing global/regional/hybrid models.

**PROCESS: Identification of areas:** SENEGAL requested reference to environmental processes. The PHILIPPINES and BRAZIL underscored connectivity. CHINA, supported by BRAZIL, stressed that economic and social factors, as well as areas’ specificities have to be taken into account, calling for retaining flexibility on the list of criteria and examination on a case-by-case basis. The FSM cautioned against implying that the full set of standards and criteria needs to be fulfilled for an area to be qualified as in need of protection.

**Proposal:** Noting that the content of ABMT proposals mainly reflect MPA designation, CANADA, with BRAZIL, suggested stating, “when considering MPAs, and other ABMTs when relevant, the elements of the proposal should include,” followed by the list of elements. The EU, with BRAZIL, proposed that the text “contain provisions on” proposals related to ABMTs, rather than “provide guidance” on them.

SENEGAL, supported by BRAZIL, underscored the importance of including protection levels. CHINA suggested adding “duration of ABMTs” in the content of proposals. JAPAN proposed adding “scientific data concerning criteria for identification of areas,” as well as identification of a contact person. The EU proposed referring strictly to conservation objectives, noting, with SWITZERLAND, that the aspects of sustainable use could be reflected under socioeconomic considerations. BRAZIL, ICELAND and NORWAY, opposed by NEW ZEALAND and IUCN, favored retaining conservation and “sustainable use” as objectives in MPA

designation, with BRAZIL suggesting, alternatively, “sustainable use and other socioeconomic objectives.” SWITZERLAND favored “potential for networks” in relation to ecological factors. PSIDS and the PHILIPPINES highlighted the importance of compatibility between ABMTs established under the ILBI and existing measures in the area or areas adjacent to it.

JAPAN, with NORWAY, recommended eliminating reference to “draft management plan” from the content of MPA proposals. The US proposed referring to draft management “recommendations,” rather than “plans,” and to monitoring and review “considerations,” rather than “plans.”

**Consultation on and assessment of the proposal:** Advocating an inclusive approach, the EU, with MONACO, suggested replacing “interested states” with “all states,” with the FSM calling, with BRAZIL, for adjacent coastal states’ role to be taken into account. JAPAN, supported by NEW ZEALAND and the US, but queried by IUCN, suggested adding “scientists and industries” to the list of relevant stakeholders, and deleting reference to guidance for the finalization of proposals. The US opposed reference to civil society, traditional knowledge holders and local communities in the context of consultation and assessment of ABMT proposals. NORWAY suggested a process for coordination with local communities and civil society for their input to be considered in decision making, and highlighted coordination of coastal states, to avoid a reference to adjacency.

**Decision-making:** The EU and SWITZERLAND reiterated that state parties will be responsible for decision making. CANADA, supported by NEW ZEALAND and the US, requested adding that “the question of the involvement of coastal states adjacent to a proposed ABMT area will also be considered.” VENEZUELA reserved his position on the use of the term “adjacency.”

**IMPLEMENTATION:** The US suggested eliminating reference to “measures” proposed for a particular area. PSIDS requested strengthening language referring to parties’ responsibilities for the measures “adopted,” rather than “proposed,” for a particular area.

**MONITORING AND REVIEW:** The US, supported by AUSTRALIA, proposed that the text should set out provisions for assessing the ABMT effectiveness rather than reporting, review and assessment.

#### ***ENVIRONMENTAL IMPACT ASSESSMENTS***

**OBLIGATION:** CARICOM reiterated the need to reference requirements to involve coastal states if an activity in ABNJ may impact areas within national jurisdiction; and to report on activities within national jurisdiction that may impact ABNJ. JAPAN underscored lack of consensus on referring to activities within national jurisdiction.

**RELATIONSHIP WITH OTHER INSTRUMENTS:** PSIDS cautioned against duplicative EIA requirements under different bodies.

**THRESHOLDS:** The US proposed eliminating reference to “how to operationalize UNCLOS 206” (assessment of potential effects of activities). JAPAN recommended clarifying that the ILBI

will “address,” rather than “set out,” thresholds and criteria, as the ILBI itself will not operationalize UNCLOS Article 206, but will rather provide for developing future guidelines.

**PROCESS:** PSIDS recommended consultation with adjacent coastal states and traditional knowledge holders. The PHILIPPINES suggested including a duty for states to communicate EIA results if there are any adverse effects to adjacent coastal states in light of UNCLOS Article 206. The US proposed: with JAPAN, replacing “objective scientific input” with “using best available scientific information,” cautioning against an independent scientific review; eliminating reference to “consideration of reports”; and referring to “any monitoring,” arguing against obligatory monitoring and review under the ILBI.

The AFRICAN GROUP, CANADA and JAPAN questioned the reference to access to justice among procedural steps. The US proposed including the publication of decision-making documents, instead of “access to information, public notification and participation, and access to justice,” as these should be domestic rather than ILBI requirements. CHINA proposed that the ILBI “would set out that states should formulate EIA procedural steps.”

**CONTENT OF EIA REPORTS:** CARICOM welcomed inclusion of social impacts in EIA reports. The PHILIPPINES preferred reference to: with the FSM, socioeconomic impacts; and to rehabilitation plans, as part of the description of mitigation measures. The US noted lack of consensus on this point.

PSIDS recommended reference to transboundary impacts. SENEGAL recommended including the description of cumulative and transboundary impacts, without stating “where relevant.”

**MONITORING AND REVIEW:** PSIDS recommended compliance and enforcement mechanisms, as well as provisions in case of non-compliance; and keeping adjacent coastal states informed of progress on approved activities. The US, opposed by the FSM, proposed deleting the section, considering it partially inconsistent with UNCLOS Articles 204-205 (monitoring the risks or effects of pollution and publication of reports). CHINA recommended eliminating reference to “review,” preferring reference to “monitoring and reporting.”

**SEAs:** CARICOM called for stronger language on SEAs. The US, supported by CHINA but opposed by PSIDS and SENEGAL, proposed deleting the section due to lack of consensus and insufficient information on how SEAs can be part of an international process.

#### ***IN THE CORRIDORS***

On the second day of the second week of PrepCom 4, BBNJ delegates blazed through the Chair’s revised draft all day in plenary. Meanwhile, the corridors were abuzz with the news of an international arbitral tribunal, established under UNCLOS, awarding 5.3 million euros against a country for unlawfully detaining a Greenpeace vessel and its crew, following protests against a remote drilling sea platform. Reeling at the size of the award, one delegate remarked, “I’m hoping this will strengthen the case for accountability and compliance mechanisms under the ILBI,” as he headed to the High Seas Alliance’s evening reception.