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PrepCom 1

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PREPCOM 1 HIGHLIGHTS: TUESDAY, 5 APRIL 2016

On Tuesday, 5 April, the informal working group on environmental impact assessments (EIAs), continued discussions in the morning. In the afternoon, the PrepCom plenary reconvened briefly, followed by an informal working group on capacity building and marine technology transfer, facilitated by Rena Lee (Singapore).

INFORMAL WORKING GROUP ON ENVIRONMENTAL IMPACT ASSESSMENTS

CONCEPTS: AUSTRALIA considered strategic environmental assessments (SEAs) broader, longer and more resource-intensive than EIAs. ARGENTINA and CAMEROON noted the crosscutting nature of environmental assessments. INDIA recommended that SEAs take into account the different characteristics of each ocean. NEW ZEALAND underscored challenges in extending SEAs to areas beyond national jurisdiction (ABNJ).

THRESHOLDS: The PHILIPPINES called for identifying specific activities that may require full EIAs, taking into account environmentally sensitive or critical areas. NEW ZEALAND noted difficulty in listing activities requiring EIAs due to varying regional contexts. CHILE suggested that a body be established under a new international legally binding instrument (ILBI) to address possible thresholds. ERITREA proposed considering not only monitoring in relation to activities in ABNJ, which require an international mechanism accrediting activities that are not deemed a serious threat to biodiversity in areas beyond national jurisdiction (BBNJ), but also land-based activities that can have an impact on BBNJ, which require capacity building. CANADA called for caution in addressing indirect impacts from activities within national jurisdiction, and favored a "light EIA structure."

CONDUCT OF ASSESSMENTS: The FEDERATED STATES OF MICRONESIA (FSM), CHILE, COSTA RICA and TRINIDAD AND TOBAGO suggested creating a permanent scientific committee to conduct SEAs. COSTA RICA and IUCN suggested that proponents bear related costs. The EU stressed that the ILBI should establish general rules and procedures for conducting SEAs. The US noted that: under UNCLOS Article 206, states are responsible for conducting EIAs; and under the Protocol on Environmental Protection to the Antarctic Treaty state parties decide how to incorporate comments received by other parties, without a decisionmaking body. CAMEROON and ALGERIA supported calls for states to take responsibility for EIAs. ALGERIA proposed discussing an ILBI committee guaranteeing SEA conduct; and called for flexibility to allow assessments after activities have been authorized. MAURITIUS suggested that independent regional bodies, with consent from adjacent coastal states, conduct additional EIAs.

TRANSPARENCY: AUSTRALIA, with the EU, ALGERIA, TRINIDAD AND TOBAGO and NEW ZEALAND, highlighted the obligation for consultation and cooperation between states with identifiable interests, calling upon the ILBI to ensure an open, inclusive process. NEW ZEALAND proposed that proponents provide information on: consideration of environmental pressures, including to neighboring jurisdictions; temporal effects of activities; ecological characteristics; possible alternatives; and cumulative effects. CAMEROON suggested modelling a clearinghouse mechanism on the CBD and its Protocols. NEW ZEALAND noted that information to be collected from states and other entities in a repository include impacts of activities and projects, as well as assessment procedures and stakeholders involvement. IUCN emphasized: providing EIA and SEA documentation to the public for comments; and including comments in decisionmaking procedures. CAMEROON called for ensuring African states' participation in assessments. GREENPEACE shared an experience of an EIA process in New Zealand on seabed mining of phosphate nodules, which promoted participation of stakeholders and indigenous peoples, best available science and transparency.

DECISIONMAKING: COSTA RICA called for a scientific and technical committee to take decisions binding on parties. TRINIDAD AND TOBAGO recommended that an independent advisory scientific and technical body: provide advice on EIAs, manage a public EIA database, evaluate cumulative impacts, and refine EIA guidelines. AUSTRALIA noted a disconnect between requiring countries to conduct EIAs and leaving decisions on authorizing activities to an international body.

The EU argued that states under whose jurisdiction activities in ABNJ are to take place be responsible for decisionmaking on authorizing such activities, noting the importance of reviewing implementation and compliance under the ILBI on agreed rules and procedures for completed EIAs and SEAs. SINGAPORE favored placing obligations to conduct EIAs upon states, with stakeholders reacting to results. FSM cautioned against the possibility for companies to seek authorization from countries with least stringent regulations. NORWAY noted: technical challenges associated with assessing cumulative impacts; national experience in scaling down control with heavier responsibility on industry; and opportunities to build upon existing structures, citing the assessments required under General Assembly resolutions on bottom fisheries. FSM noted that joint EIAs by multiple entities allow sharing burdens.

MONITORING: NEW ZEALAND underscored the need for an adaptive process to include monitoring and review mechanisms, suggesting that states require proponents to monitor impacts, including long-term ones, and report back. TRINIDAD AND TOBAGO suggested: a mandatory mechanism to monitor and review activities in ABNJ; with FSM, a permanent scientific committee to monitor SEAs; and a compliance mechanism

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to ensure effective EIAs. INDIA proposed that the contractor monitor EIA activities and report back to an ILBI scientific or technical body. Cautioning against proliferation of reporting mechanisms, ERITREA, with CAMEROON, favored an international monitoring and reporting body. FSM suggested a sunset clause when EIAs are conducted and no activities take place for a given time period. CAMEROON stressed: links between monitoring activities conducted prior to the ILBI entry into force and the scope of the EIA regime; and, with FSM, the need for a reparation mechanism, including a fund giving effect to the polluter pays principle, which should be separate from a benefit-sharing fund.

INFORMAL WORKING GROUP ON CAPACITY BUILDING AND TECHNOLOGY TRANSFER

CAPACITY BUILDING: Drawing attention to North-South and South-South cooperation in building capacity to ensure access to marine genetic resources (MGRs) in ABNJ, the G-77/CHINA called for: defining clear capacity-building obligations; and considering capacity building as a crosscutting issue for each element of the 2011 “package.” P-SIDS highlighted the difference between capacities and capabilities, and the need for: crosscutting capacity building for a wide range of stakeholders; with BARBADOS, both individual and institutional capacity building; and drawing on existing clearinghouse mechanisms under the CBD and Nagoya Protocol. ALGERIA underscored: with BANGLADESH, UNCLOS Articles 268 and 269 (objectives and measures to achieve marine technology transfer); the importance of a balanced approach for capacity building and technology transfer; responsibilities of all partners and stakeholders; the need for binding provisions on capacity building and technology transfer; and the lack of formal obligations for the private sector to conduct capacity-building activities.

The EU stressed that tangible capacity-building measures are critical for successfully designing and implementing other aspects of the ILBI. NORWAY highlighted experiences in building developing countries’ capacity in the fields of fisheries, oil and gas, and research on the continental shelf; and suggested further exploring means for fulfilling capacity-building needs under the ILBI. AUSTRALIA emphasized: a broad approach to capacity building, including innovation, sharing experiences and knowledge, and, with NEW ZEALAND, South-South and triangular cooperation; the lack of reference to the special needs of country groupings like SIDS at the time of UNCLOS’ drafting, and the need for better dissemination of existing efforts, such as maritime boundaries training and workshops, scholarship programs for fisheries management, and the Pacific Patrol Boat Program.

NEW ZEALAND: underscored that capacity building and technology transfer need to respond to developing states’ needs and that “no one is left behind”; called for consideration of ways to adjust, improve and complement good practices in areas under national jurisdiction to take into account new obligations under the ILBI; and suggested that capacity building under the ILBI focus on technical assistance for effective implementation. The US supported “robust and ambitious” capacity-building provisions under the ILBI and a clearinghouse mechanism modelled after the Intergovernmental Oceanographic Commission; and suggested involving developing country scientists in marine scientific research (MSR). Noting that capacity building is more than training, COSTA RICA called for an indicative list of priority capacity-building and technology-transfer areas in the ILBI, taking into account SDG 14 and its targets, and the Addis Ababa Action Agenda on financing for development. BANGLADESH identified maximizing participation and knowledge sharing as challenges for the ILBI.

Measures: Pointing to “pockets” of capacity-building activities, the AFRICAN GROUP suggested taxing certain activities in ABNJ and depositing revenue in a capacity-building and participation fund to be used for “meaningful” capacity building, including university scholarships, “training the trainers” programs and building the capacity of unemployed graduates in Africa. BARBADOS pointed to concrete measures, such as central repositories, public-private partnerships, and training and research opportunities for scientists from SIDS.

JAPAN called for strengthening coordination and information sharing among intergovernmental organizations, and pointed to effective knowledge sharing through the Ocean Biogeographic Information System. JAMAICA, with ARGENTINA, referred to the definition of capacity building in Agenda 21, and suggested: sharing research results; creating a global clearinghouse mechanism; exchanging researchers; ensuring participation in research cruises; and conducting joint research, noting ISA’s experience.

TRINIDAD AND TOBAGO called for: with FSM, institutional strengthening; information sharing; exchange of research visits; training of scientists from SIDS; and addressing data gaps. MEXICO suggested that the ILBI define monetary compensation obligations for the exploitation of MGRs in ABNJ. INDONESIA highlighted mandatory capacity building near the areas of BBNJ exploration and exploitation. FIJI pointed to needed assistance for MSR, cumulative EIAs, SEAs, MGRs, and monitoring. PAPUA NEW GUINEA suggested the ILBI support: participation in conservation, research and training; EIAs; access to technology transfer; and science-policy interface.

Institutional aspects: ZAMBIA drew attention to the special situation of land-locked developing countries, and proposed the ILBI provide for: North-South regional cooperation; global scholarship programmes on marine science, research and governance; with INDONESIA, BARBADOS and BANGLADESH, a global fund; and an *ad hoc* body to coordinate initiatives, including cooperation on MSR and information exchange. PAPUA NEW GUINEA suggested the capacity-building fund address each aspect of the package. ECUADOR underscored the need for an efficient, universal, intergovernmental, transparent, participatory, accessible and crosscutting mechanism for capacity building and technology transfer. CAMEROON called for: an *ad hoc* body to assess, discuss and agree on capacity-building needs and priorities for interventions linked to the ILBI implementation; as well as capacity-building delivery and funding mechanisms. MAURITIUS suggested a centralized multilateral organization responsible for mid- to long-term training on ocean affairs and marine technology; and proposed working towards an umbrella organization to manage all ocean affairs by 2020.

IN THE CORRIDORS

Delegates rolled out substantive and institutional options for environmental assessments during the informal working group’s discussion, with a divergence appearing to emerge on whether states or a new international body should authorize activities in areas beyond national jurisdiction. For some, environmental assessments would primarily serve to share information on potential impacts and to open up to inputs from all stakeholders. For others, what matters most is monitoring and reviewing activities that may threaten biodiversity in the deep seas, and possibly also approaches for compliance and reparation. A spirited lunchtime side-event complemented these discussions, by shedding light on dispute settlement options – a complex tool not only to “push” international cooperation forward, but also to elucidate what international cooperation actually means in specific contexts, as demonstrated by the frequent references at PrepCom 1 to international case law that clarified international EIA obligations.