



# Earth Negotiations Bulletin

PrepCom 2

#3

**iisd** Reporting Services

A Reporting Service for Environment and Development Negotiations

Online at <http://www.iisd.ca/oceans/bbnj/prepcom2/>

Vol. 25 No. 110

Published by the International Institute for Sustainable Development (IISD)

Tuesday, 30 August 2016

## PREPCOM 2 HIGHLIGHTS: MONDAY, 29 AUGUST 2016

On Monday, 29 August, the plenary of PrepCom 2 convened briefly, followed by the informal working groups on MGRs and on area-based management tools (ABMTs).

### PLENARY

Kiribati, for ASIA-PACIFIC, nominated Jun Hasebe (Japan) and the Netherlands, for WESTERN EUROPE AND OTHERS, nominated Catherine Boucher (Canada) as members of the Bureau.

### INFORMAL WORKING GROUP ON MGRS

**DEFINITIONS:** PSIDS underscored that bioprospecting and MSR should be elements of the working definition of MGRs. MEXICO cautioned against creating a separate regime for MSR and applied MSR. Thanking the *Earth Negotiations Bulletin* for the coverage of Friday's discussions, CHILE favored adapting definitions from other legal agreements to the ILBI, and including fish when it is not used as a commodity.

The US proposed definitions of: MGRs as "any marine genetic material of plant, animal or microbial origin of actual or potential value collected from the Area"; and marine genetic material as "any material of plant, animal or microbial origin containing functional units of heredity, collected from the Area," highlighting the exclusion of derivatives and of information describing material, such as genetic sequence data. VENEZUELA called for the ILBI to include the Nagoya Protocol definition of derivatives, with the AFRICAN GROUP noting that Nagoya Protocol Article 2 definitions should be adapted to the ILBI context.

Several countries highlighted that derivatives are included in the definition of "biotechnology," which is in turn included in the definition of "utilization of genetic resources" under the Nagoya Protocol. COSTA RICA set forth two proposals: a general definition of MGRs as "any living resources including of marine plant, animal, microbial or other origin, found in or originating from ABNJ and containing functional units of heredity, as well as any material derivatives and data thereof with actual or potential value"; and separate definitions of MGRs and utilization to be used in tandem, with MGRs as "any living resources including of marine plant, animal, microbial or other origin, found in or originating from ABNJ and containing functional units of heredity" and utilization of genetic resources as "conduct of research and development on the genetic and/or biochemical composition of genetic resources, including through the application of biotechnology as defined in CBD Article 2 and in line with the Nagoya Protocol."

**INTELLECTUAL PROPERTY:** IRAN called for a mandatory disclosure requirement of the origin of genetic resources in patent applications, with ALGERIA linking it to fairness in information gathering. ARGENTINA recommended a mandatory declaration of origin of MGRs found in or originated from ABNJ and an internationally recognized certificate inspired by Nagoya Protocol Article 17. VENEZUELA suggested convening a working group within the informal working group to address IPRs.

SWITZERLAND noted that the PrepCom is not a forum for discussing IPRs, recommending leaving these discussions to the World Intellectual Property Organization (WIPO) and World Trade Organization (WTO), with JAPAN adding that there is no need to refer to IPRs in the ILBI. ALGERIA opined that the PrepCom is the appropriate forum, as WIPO negotiations do not include ABNJ. CHILE noted that work under WIPO could be relied upon in the common heritage context.

**BENEFIT-SHARING:** AUSTRALIA suggested: recognizing the length of time from extraction to exploitation of MGRs; recalling that benefit-sharing can include, *inter alia*, access to the scientific process and research results; and recognizing that particular types of benefits can be shared at particular points. JAMAICA favored sharing both monetary and non-monetary benefits, including to strengthen developing countries' research capabilities, and considering the ITPGR approach to monetary benefits.

PSIDS added that traditional knowledge associated with MGRs must be accessed or used with the active involvement of indigenous peoples and local communities (IPLCs) and any benefits must be shared fairly with traditional knowledge holders. VENEZUELA called for the ILBI to consider IPLCs' needs. CAMEROON sought clarification on IPLCs' rights in the high seas.

### INFORMAL WORKING GROUP ON AREA-BASED MANAGEMENT TOOLS

**DEFINITIONS:** The G-77/CHINA called for adapting global, regional and sectoral definitions of ABMTs to ABNJ, and for defining MPAs and MSP. The AFRICAN GROUP noted sectoral and cross-sectoral ABMTs. CHILE favored an overarching definition of ABMTs. The FSM proposed drawing on CBD Decision VII/5 for defining ABMTs as "geographically defined tools beyond the limits of national jurisdiction which are designated or regulated and managed to achieve specific conservation and/or sustainable use objectives, including the use of customary practices to protect associated cultural values." The US called attention to the work of RFMOs and the CBD in defining ABMTs.

This issue of the *Earth Negotiations Bulletin* © <enb@iisd.org> is written and edited by Elisa Morgera, Ph.D., Daniela Diz, Ph.D., Tallash Kantai and Asterios Tsioumanis, Ph.D. The Digital Editor is Mike Muzurakis. The Editor is Pamela Chasek, Ph.D. <pam@iisd.org>. The Director of IISD Reporting Services is Langston James "Kimo" Goree VI <kimo@iisd.org>. The Sustaining Donors of the *Bulletin* are the European Union, the Government of Switzerland (the Swiss Federal Office for the Environment (FOEN)), the Italian Ministry for the Environment, Land and Sea, and the Kingdom of Saudi Arabia. General support for the *Bulletin* during 2016 is provided by the German Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety (BMUB), the New Zealand Ministry of Foreign Affairs and Trade, SWAN International, the Finnish Ministry for Foreign Affairs, the Japanese Ministry of Environment (through the Institute for Global Environmental Strategies - IGES), the United Nations Environment Programme (UNEP), and the International Development Research Centre (IDRC). Specific funding for coverage of this meeting has been provided by the Prince Albert II of Monaco Foundation and the European Commission (EC). Funding for translation of the *Bulletin* into French has been provided by the Government of France, the Wallonia, Québec, and the International Organization of La Francophonie/Institute for Sustainable Development of La Francophonie (IOF/IFDD). The opinions expressed in the *Bulletin* are those of the authors and do not necessarily reflect the views of IISD or other donors. Excerpts from the *Bulletin* may be used in non-commercial publications with appropriate academic citation. For information on the *Bulletin*, including requests to provide reporting services, contact the Director of IISD Reporting Services at <kimo@iisd.org>, +1-646-536-7556 or 300 East 56th St., 11D, New York, NY 10022 USA. The ENB team at the 2nd Session of the PrepCom can be contacted by e-mail at <elisa@iisd.org>.



<http://enb.iisd.mobi/>

CHINA proposed enumerating ABMT elements, including an objective related to protecting and sustainably using marine biodiversity, geographical scope and management approaches. NEW ZEALAND indicated as the objective of MPAs the long-term conservation of biodiversity and ecosystems, while other ABMTs could primarily have other purposes, such as resource management. AUSTRALIA underscored the importance of strategic environmental assessments (SEAs) in identifying the places and circumstances for applying ABMTs. CANADA underscored the importance of the relationship between the ILBI and existing instruments.

COSTA RICA suggested as a working concept for ABMTs “regulation of human activity and/or measures to achieve biodiversity conservation and sustainable use or resource management objectives in a specific area.” VENEZUELA suggested that the definition should be based on existing concepts, with FIJI noting that not every tool is universally defined or applicable. The North-East Atlantic Fisheries Commission (NEAFC) underscored that ABMTs by RFMOs are functioning well and that the ILBI should enhance harmony between tools of different sectoral bodies, rather than define ABMTs.

**MPAs:** The EU suggested adapting the CBD definition of protected areas as a geographically defined marine area, which is designated or regulated and managed to achieve specific conservation objectives, ultimately contributing to attaining the sustainable use of marine biodiversity. CARICOM called attention to language on MPAs, as well as on inclusion of threatened and endangered species, in the Protocol concerning Specially Protected Areas and Wildlife to the Cartagena Convention on the marine environment of the Wider Caribbean Region.

JAPAN called for encompassing both conservation and sustainable use in defining MPAs, and providing for the revision and termination of MPAs when their goal is achieved. The RUSSIAN FEDERATION suggested temporarily establishing MPAs on the basis of reliable data on the need to protect such an area, and periodic review.

COSTA RICA suggested a working concept of MPAs as “a clearly defined geographic space recognized, dedicated and managed through legal and other effective means to achieve the conservation of biodiversity, ecosystem services and other cultural values.” The International Commission for the Conservation of Atlantic Tunas (ICCAT) cautioned against replacing sectoral measures with MPAs. IUCN proposed including in the MPA definition explicit reference to the primary aim of long-term conservation of biodiversity and associated ecosystem services. The International Coastal and Ocean Organization (ICO) and GREENPEACE highlighted the importance of a global MPA network and the need for a global authority to facilitate and monitor it. The HIGH SEAS ALLIANCE and the Natural Resource Defense Council (NRDC) favored adapting CBD and IUCN definitions, also including cultural values; and supported by GREENPEACE, defining marine reserves as “areas of the ocean completely protected from all extractive and destructive activities.”

**PRINCIPLES AND APPROACHES:** IUCN suggested including specific annexes, similar to the UNFSA, to guide implementation of ABMTs and MPAs, and called for: transparency, cooperation, and regular reviews of progress. AOSIS stressed that the process for establishing ABMTs should not place disproportionate burdens on SIDS, and should provide for sustainable capacity building. COOK ISLANDS recommended referencing “high seas pockets.” PSIDS supported including traditional knowledge, with the FSM highlighting language on IPLCs in the Nagoya Protocol.

PSIDS also pointed to the principle of adjacency. The RUSSIAN FEDERATION stressed that remote states should not participate in the creation of MPAs in the high seas. The US called for further discussion of proximity rules in identifying and

creating MPAs. CHILE considered premature discussions of who should be involved in decision making regarding MPAs. CHINA emphasized the principles of necessity in MPA designation, cost effectiveness, best scientific evidence, and international cooperation and coordination.

**INSTITUTIONAL MECHANISMS:** The ICO called for global guidance on multi-sector management, incentives for collaboration, and financial resources for joint activities to build lasting collaboration. GREENPEACE stated that the ILBI could establish the only global organization able to create a comprehensive and representative MPA network to address cumulative impacts. MONACO highlighted the need for a scientific body to decide on proposed MPAs, with SWITZERLAND suggesting tasking the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) or IOC-UNESCO with deciding on proposed MPAs.

The AFRICAN GROUP proposed an integrated and coordinated approach to MPA establishment through the ILBI. JAPAN preferred a horizontal, as opposed to a top-down, approach to ABMT designation and management, to ensure that the ILBI does not undermine existing instruments. BELIZE suggested that a top-down approach facilitated by a scientific or coordinating body, including through comprehensiveness and integration principles and standards, and a horizontal approach are not mutually exclusive. The EU underscored that proposals to designate or recognize existing ABMTs, including MPAs, should come from state parties, individually or as a group, and that a platform for cooperation between states and competent organizations be formed throughout the establishment processes. NORWAY recommended that the ILBI focus on enhancing coordination between regional and sectoral bodies to ensure a holistic approach, referring to the bottom fisheries review as a potential model. ALGERIA underscored the need to review and build upon existing regional arrangements. Expressing support for existing regional and sectoral bodies, the US suggested a two-step scientific-policy process to identify areas for protection and conservation, drawing upon the CBD EBSA process; and a conference similar to the UNFSA Review Conference, that would meet every two years or as decided by the body, including all states entitled to be parties to the ILBI and relevant entities in MPA decision-making.

The G77/CHINA recommended that management plan proposals be submitted by state parties, and followed by consultations with relevant scientific and technical bodies. ARGENTINA favored a new scientific and technical body. COSTA RICA suggested a process whereby: states propose establishing ABMTs, including MPAs; a secretariat elicit comments from relevant entities about the potential to undermine their respective mandates and from other stakeholders, for the proponent to review; a scientific and technical body advise on the compatibility of potential MPAs with the ILBI scientific criteria, and assist in the identification of an MPA network, drawing input from scientific evaluations carried out by existing regional and sectoral organizations; and the ILBI COP consider adoption.

### IN THE CORRIDORS

On day 2 of PrepCom 2, deliberations shifted to area-based management tools, initiating whispered speculations on possible institutional arrangements under an ILBI. According to some participants, pragmatic considerations of cost-efficiency and principled issues of respect for pre-existing mandates call for a more systematic reliance on regional and sectoral organizations. For others, new or revised global structures are needed to ensure accountability vis-à-vis international cooperation obligations to conserve the oceans. While this divergence of views is not new in the process, the details of relevant proposals may well be the “trickiest” to negotiate – a seasoned participant observed – as they will determine the ILBI’s “strength or lack thereof.”