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PrepCom 2

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PREPCOM 2 HIGHLIGHTS: TUESDAY, 30 AUGUST 2016

On Tuesday, 30 August, the informal working group on ABMTs convened in the morning. Following a brief plenary, the informal working group on EIAs met for the rest of the day.

INFORMAL WORKING GROUP ON AREA-BASED MANAGEMENT TOOLS

PRINCIPLES: PALAU called attention to: restoration and revitalization of ocean health and biodiversity; MSP as a key objective for the ILBI; implementation and monitoring at the regional level by RFMOs and sectoral bodies, together with IPLCs; and the role of adjacent states.

INSTITUTIONAL MECHANISMS: JAPAN favored a cooperation and coordination forum to avoid contradictions between different MPA management measures, pointing to the Madrid Protocol on Environmental Protection to the Antarctic Treaty, and cautioning against the ILBI directly implementing management measures. CANADA underscored a global facilitative mechanism providing holistic scientific leadership, building upon and integrating existing knowledge such as on EBSAs and VMEs, and facilitating stakeholders' communication; and cautioned against a global mechanism endorsing regional decisions.

SRI LANKA recommended a permanent scientific body to compile data and a COP. MONACO favored a universal overarching, complementary framework, and Costa Rica's proposed mechanism for establishing ABMTs. NEPAL underscored the need for a scientific body to consider MPA proposals. IRAN suggested: entrusting MPA management to an international cooperation instrument, noting that existing agreements are not universal; and a time-bound moratorium on exploitation, but not on MSR, to allow resource regeneration.

AUSTRALIA and NEW ZEALAND supported a combination of vertical and horizontal approaches along the lines of the UNFSA, with AUSTRALIA favoring global standards applicable at the regional level, and reporting at the global level but without the need for global endorsement of regional decisions. NEW ZEALAND proposed that the ILBI ensure decisions based on best scientific information and transparent consultations. CHILE noted that the ILBI will encompass a higher number of institutions than the UNFSA, thus necessitating a coordinating institution. ICELAND cautioned against: negotiating definitions, emphasizing that the PrepCom is not a negotiating committee; and infringing on RFMOs' mandates through a potential global body.

IUCN suggested establishing a non-hierarchical global mechanism to: facilitate and implement a global MPA network, institute a reporting and review mechanism, and coordinate implementation. Highlighting that the ILBI should provide specific authority for establishing and managing MPAs in ABNJ, PEW, NRDC and GREENPEACE stressed that most existing regional and sectoral bodies do not have the competence to protect BBNJ. NEAFC responded that RFMOs, the International Maritime Organization (IMO) and the ISA have the legal mandate to set measures also on biodiversity protection, and called upon the PrepCom to address gaps and better coordinate existing efforts. Stating that coordination is not enough, NRDC preferred a scientific committee to propose MPAs to a decision-making body for addressing any conflicts. GREENPEACE and the DEEP SEA CONSERVATION COALITION (DSCC) pointed to: limited progress under UNFSA; difficulties to put in place MPAs through RFMOs; and the need for a cross-sectoral approach.

INFORMAL WORKING GROUP ON ENVIRONMENTAL IMPACT ASSESSMENTS

DEFINITIONS: FIJI proposed carrying out EIAs "prior to any planned or proposed activity in ABNJ, including adjacent waters, that may pose significant adverse impacts, including cumulative impacts on MPAs, EBSAs, VMEs, Particularly Sensitive Sea Area (PSSAs), World Heritage Sites, and be based on the best science available and the precautionary approach." COSTA RICA recommended defining EIAs as "an appropriate procedure subject to a decision of a competent authority for evaluating activities or processes in the marine environment likely to have significant adverse effects on biodiversity with a view to avoiding or minimizing such effects," including public participation and consultations, and requiring that the environment report and results of public participation be taken into account in the proposed activity.

PRINCIPLES AND APPROACHES: The G-77/CHINA highlighted EIAs' preventive nature. THE PHILIPPINES, supported by IUCN, proposed that EIAs also consider activities with climate change impacts. IRAN cited international case law clarifying that each UNCLOS state party may be entitled to claim compensation for violations of the *erga omnes* obligations relating to the preservation of the environment in ABNJ. The G-77/CHINA underlined that EIAs should not be cumbersome for developing states, especially SIDS, and that technical and financial assistance should be provided. AOSIS underscored EIAs' technical nature and SIDS' training needs. PSIDS highlighted MSP, supported by Trinidad and Tobago

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for CARICOM, and the interests of adjacent coastal states with respect to transboundary EIAs (TEIAs). The FSM noted that the duty to cooperate and coordinate does not imply that the adjacent state would assume EIA costs. CANADA, supported by NORWAY, the US and JAPAN, recommended avoiding duplication with existing EIA practices.

TEIAs: The EU noted that the ILBI will address activities in ABNJ that might have an impact on BBNJ, pointing to the existing responsibility of coastal states under UNCLOS Article 194(2) to regulate activities under their jurisdiction or control that may cause transboundary impacts. CHINA stated that only activities in ABNJ with harmful impacts on ABNJ should be covered by EIAs. MOROCCO and the REPUBLIC OF KOREA called for EIAs to focus on activities in ABNJ not covered by existing instruments.

The AFRICAN GROUP opined that the ILBI should also cover activities within national jurisdiction with impacts in ABNJ and vice versa. AUSTRALIA suggested attributing activities in ABNJ to flag states or states where private entities are registered; and when activities in ABNJ have transboundary effects on one or more coastal states, requiring consultation between flag and coastal states. NORWAY noted that UNCLOS Article 206 (EIA) does not distinguish between activities within the exclusive economic zone (EEZ) or on the continental shelf that could have an impact on the high seas, noting that the PrepCom's role is addressing activities that may have impacts, regardless of where they take place. The US underlined that the PrepCom's mandate is restricted to ABNJ. WWF noted that TEIAs constitute an international obligation, and called for EIAs and TEIAs to address all human activities with foreseeable or potential impacts in ABNJ, regardless of where they take place.

THRESHOLDS: MEXICO, supported by CHILE, suggested: a hybrid system between an exhaustive list of activities triggering EIAs and a case-by-case determination, ensuring relevance in relation to future technological advances; and EIAs for new activities or those at the limit between severe and non-severe impacts against established criteria. CAMEROON called for identifying activities that might be subject to EIAs in ABNJ. CANADA, supported by the FSM, preferred combining a list of activities and a threshold level. The G-77/CHINA expressed openness to consider a list of activities requiring EIAs, in addition to qualitative thresholds. The AFRICAN GROUP proposed as emerging activities that should be listed: marine geoengineering, deep-sea fisheries, bioprospecting, deep-seabed mining, cable laying and offshore aquaculture. The EU prioritized setting thresholds, impacts and criteria before deciding on a list of activities. JAPAN noted that not all activities in a category, such as navigation, should be subject to EIAs and that laying submarine cables has minor, if not negligible, impacts. The FSM favored a low threshold that is mutually reinforcing with a list of activities included in an annex, allowing for regular updates. CARICOM favored thresholds such as impacts on EBSAs, and a list of activities including renewable energy, carbon sequestration and installations in ABNJ.

NEW ZEALAND noted the need for guidance on thresholds. NORWAY recommended basing the threshold on UNCLOS and CBD notions of 'significant' impacts. SINGAPORE suggested thresholds based on UNCLOS Article 206, complemented by an illustrative list. NEPAL preferred criteria and activities to be listed, to ensure objectivity. AUSTRALIA, supported by CHILE, stressed the need to allow amendments to any list, with IUCN pointing to the London Protocol approach. COSTA RICA proposed a non-exhaustive list subject to periodic review, including activities that are absolutely banned like nuclear or chemical waste dumping.

GOVERNANCE: VENEZUELA underscored the need for a guarantee from users, including private entities, to fulfil EIA obligations; and for an EIA to include the description of the activity, alternatives, the affected environment, potential impacts, and a monitoring and management system. The G-77/CHINA suggested an advisory scientific and technical body, and including, in a step-wise process: description of proposed activities, potential impacts and mitigation measures; decision making; and a monitoring and compliance mechanism. The EU proposed for the ILBI to: require state parties to ensure that EIAs and SEAs are carried out according to agreed criteria prior to authorizing activities that may cause harmful effects; provide for monitoring of effects and compliance; and oblige parties to publicly report on EIAs.

The US favored: supported by NEW ZEALAND, a tiered approach ranging from the identification of activities with no significant effects to the EIA requirement proportional to the level of impact; and EIAs being carried out by states or under states' direction, allowing for public participation and making reports publicly available, and being subject to state approval, as opposed to being carried out or approved by a BBNJ institution. NORWAY suggested that EIAs be conducted by the operator under flag states' responsibility, and making reports public through an information-sharing mechanism. GREENPEACE and the HIGH SEAS ALLIANCE stated that SEA management plans could assist in defining the scope of EIAs, and the ILBI should provide for monitoring, review and compliance with EIAs. The EU stressed that each state party should be responsible for: deciding that an EIA is required for activities under its jurisdiction or control, applying the decided thresholds or criteria; and deciding whether an activity should proceed or not on the basis of an EIA.

The AFRICAN GROUP noted that procedural decisions should be made by a COP, advised by a scientific committee, while for EIAs and TEIAs the burden would lie with proponents supervised by state parties, with stakeholders providing input at different stages of the assessment. Noting that stakeholders should be allowed to provide inputs, AOSIS emphasized engaging proximate SIDS. The FSM suggested that: in addition to flag states, an international body or a sponsoring state could mandate or review an EIA, and an international body should decide to conduct an EIA; a participatory approach through joint EIAs should facilitate participation of small countries including SIDS; and the proponent should bear the cost. MEXICO stated that SEA costs may be shared by those affected by cumulative impacts. IUCN suggested creating: an EIA fund to cover the costs of EIAs for non-commercial or public-interest activities; a technical body to advise on standards; an evaluation body; a decision-making body representing the global community; and EIA requirements "with teeth."

IN THE CORRIDORS

The temperature rose inside and outside UN headquarters in possible anticipation of a summer storm, as RFMOs and NGOs locked horns over the existence and satisfactory use of mandates to conserve BBNJ. Meanwhile, as more delegations provided textual suggestions on MPAs and EIAs, some voiced long-standing questions on the need to go further than coordinating existing arrangements. On the other end of the spectrum, others were disappointed by the limited ambition displayed by proposals tantamount to the status quo. "Much work to identify common ground remains," noted a negotiator. "But at least – remarked an observer – all remain engaged in a frank exchange."