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PrepCom 2

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PREPCOM 2 HIGHLIGHTS: WEDNESDAY, 31 AUGUST 2016

On Wednesday, 31 August, the informal working group on EIAs and a brief plenary convened in the morning. The informal working group on capacity building and technology transfer (CB&TT) met for the rest of the day.

PLENARY

Underscoring the need to meet General Assembly Resolution 69/292 deadline and to avoid the situation which occurred on the final night of the Nagoya Protocol negotiations, Chair Charles called upon delegations to offer specific language proposals at PrepCom 2, clarifying that treaty language proposals will be developed at the intergovernmental conference to be convened by the General Assembly. He proposed submitting a compilation of proposals to PrepCom 3, together with his reflections on PrepCom 2, and temporarily “parking” elements on which convergence is, or seems to be, emerging, to focus discussions on more contentious issues.

INFORMAL WORKING GROUP ON ENVIRONMENTAL IMPACT ASSESSMENTS

EIA GOVERNANCE: The EU, CANADA and CARICOM stated that state parties should be responsible to conduct EIAs, make decisions and bear costs. CANADA also suggested a mechanism for reviewing ILBI’s implementation, including EIA provisions. NORWAY proposed that the ILBI: provide general principles and guidelines, focusing on activities not covered by other organizations; with the EU, allow stakeholders to provide inputs before decisions are made; and leave final decisions and responsibilities with flag states. NEW ZEALAND suggested the ILBI support states in meeting their obligations, involving organizations with relevant mandates; and provide for a central information repository available to those preparing, assessing and deciding on EIAs. IOC-UNESCO suggested making data resulting from EIAs available through an open-access system as a form of technology transfer, using existing mechanisms such as the IOC’s Ocean Biogeographic Information System (OBIS).

JAPAN supported: developing a tiered approach, considering it unrealistic for a new body to review EIA reports; with NORWAY and AUSTRALIA, avoiding duplication of EIA procedures under other frameworks; and hearing stakeholders’ views, noting challenges in identifying relevant stakeholders. AUSTRALIA opined that if EIA mechanisms do not exist, states have to meet UNCLOS obligations through domestic legislation regulating activities and ensuring that EIAs are carried out by operators beyond national jurisdiction. GREENPEACE, the HIGH SEAS ALLIANCE and DSCC cautioned against allowing

states to unilaterally proceed with an activity if an ILBI scientific committee or COP finds shortcomings in the EIA findings or in the proposed mitigation measures.

CAMEROON favored an international mechanism for oversight, beyond being a mere repository. CARICOM urged subjecting EIAs to an independent, publicly available assessment as part of a broader consultation process. PALAU proposed: assessing not only impacts on the physical environment, but also economic, social, and health considerations; and developing a transparent and tiered approach with an independent review, approval and oversight mechanism in light of possible flags of convenience; with a COP providing last resort if EIA guidelines are not respected. ALGERIA underscored the need for a governing body or a scientific and technical body to define activities subject to EIAs and provide guidelines, and an appeal mechanism. MAURITIUS suggested going beyond pollution in proposing mitigation measures in EIAs. SINGAPORE pointed to SIDS’ special circumstance and the time sensitivity of certain activities.

COSTA RICA recommended that: the activity proponent submit an application to the state; the state assess the activity’s potential for harm in light of threshold criteria in the ILBI; if the criteria are met, the state be responsible for conducting EIAs and making the outcome publicly available; public consultation with all stakeholders, including existing organizations, be opened; an ILBI scientific committee review EIA outcomes and make recommendations; and an appeal process be created. She suggested discussing whether the state or the COP should make decisions, which should in either case be followed by a period for comments and by reporting and monitoring by the state, with oversight by an ILBI scientific committee or COP.

The EU suggested specifying as general rules of procedure for EIAs the requirements for minimum content of assessment reports, for quality control and public availability, including on: description, baseline information and duration of proposed activities; severity of impacts; methods used and uncertainties; proposed mitigation measures; and monitoring plans.

STRATEGIC ENVIRONMENTAL ASSESSMENT: The AFRICAN GROUP drew from the definition in the Kyiv Protocol on SEA, noting that SEAs allow for addressing potential cumulative impacts at an early stage and assessing alternatives against agreed criteria. The EU urged including SEAs under the ILBI, noting challenges in SEA governance in ABNJ. Supporting SEAs as an MSP tool, AUSTRALIA stated that SEAs can reduce administrative burdens on states concerned. Expressing interest in SEAs’ role in evaluating cumulative impacts, the US highlighted that SEAs go beyond UNCLOS scope, and decision making on SEAs involving all states would be challenging.

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IUCN underscored: the value of SEAs in analyzing environmental, economic and sustainability issues of existing and emerging activities in ABNJ; and precedents in the oil and gas, wind and wave energy, carbon capture and storage, and fisheries sectors. WWF and the HIGH SEAS ALLIANCE underscored that SEAs: should not be a one-off exercise but periodically improved; may encompass ocean acidification and climate change effects, together with their interactions; facilitate MSP; address potential cross-sectoral conflicts; and provide the means to meet relevant UNCLOS obligations.

INFORMAL WORKING GROUP ON CAPACITY BUILDING AND TECHNOLOGY TRANSFER

PRINCIPLES AND APPROACHES: MAURITIUS highlighted SDG 14.7 on SIDS and the intertwining of CB&TT. MOROCCO emphasized tripartite cooperation to expand CB&TT, ongoing training and lasting financing. CHINA called for targeted CB&TT to improve capacities for BBNJ conservation and sustainable use. JAPAN called for a common understanding of the scope of CB&TT directly related to BBNJ conservation and sustainable use. Noting the 2030 Agenda for Sustainable Development concept of leaving no-one behind, ZAMBIA recommended establishing a coordinating body and emphasized project monitoring. ARGENTINA underscored relating CB&TT to ILBI objectives, needs of vulnerable states, and decision making based on best available science.

The REPUBLIC OF KOREA said that states should cooperate under fair conditions, underscoring, with JAPAN and the US, voluntary CB&TT and due regard to IPRs. The US underscored RFMOs' capacity-building activities. AUSTRALIA cautioned against prescriptive language on CB&TT, with CANADA suggesting a mechanism for prioritizing capacity-building areas. NEPAL recommended: mandatory CB&TT; with FSM, an indicative list of potential CB&TT areas; and easier access to marine information for land-locked developing countries (LLDCs).

INDIA focused on: CB&TT for the blue economy; with KENYA, capacity retention; the need for global participation in CB&TT; and strengthening regional mechanisms. KENYA called for reporting mechanisms and transparency. IOC-UNESCO suggested linking international, regional and national approaches, as well as the need for resources to coordinate activities and create new regional and global programs.

WWF highlighted institutional capacity building, and least-developed countries' (LDCs) and LLDCs' particular needs to ensure intra-generational benefits. MAURITIUS recommended integrating Aichi Biodiversity Target 19 (biodiversity knowledge and technology) into the ILBI. The EU suggested: CB&TT for implementation, compliance and monitoring; and cooperation on technology transfer and development of new technologies. Lamenting the under-representation of LDCs at PrepCom2, ERITREA focused on gaps in data sharing, and between science and policy formulation.

CAPACITY BUILDING: The G-77/CHINA called for capacity building to: be country-driven; foster inclusiveness; be responsive to national needs, priorities and interests; and, with CARICOM, consider the special needs of SIDS. The EU preferred capacity building to be demand-driven, ensuring national ownership and gender equality, emphasizing bilateral and multilateral approaches. ECUADOR stressed that capacity building should be needs-driven rather than demand-driven. CARICOM underscored equitable participation through needs-based and country-driven capacity building.

Emphasizing mutual learning between developed and developing countries, the FSM stressed the need to retain knowledge acquired through capacity building in developing countries, and include research institutions and private actors. NORWAY underscored the need to: link capacity building to ILBI implementation by developing countries, as well as to

specific elements of the "package"; promote joint programmes, including in commercial activities; and go beyond developing countries being mere recipients of development aid. The PHILIPPINES stressed that the costs of sponsorship and training activities should be borne by BBNJ users, calling for access to developed-country laboratories and long-term disciplinary partnerships.

ICCAT noted that capacity building can be found in many legal instruments but results are not commensurate with expectations. IUCN pointed to a potential mechanism to enhance cooperation on MSR, building capacity for drafting legislation, and technical and scientific requirements to implement the ILBI. FSM focused on: creating conditions for enhanced access to information, data and samples; strengthening research institutions in developing countries; and collaborating in problem solving. The AFRICAN GROUP called for capacity on all elements of the 2011 package. AOSIS highlighted: the role of regional centers; knowledge-sharing through research and development; joint scientific research cooperation; and the need for regular assessments of capacity. Papua New Guinea (PNG) emphasized capacity building for adjacent areas affected by activities in ABNJ, and institutional strengthening, including of national focal points.

TECHNOLOGY TRANSFER: AOSIS drew attention to, *inter alia*, the SIDS Accelerated Modalities Of Action (SAMOA) Pathway, reaffirming support for SIDS' efforts "to gain access, on mutually agreed terms, to appropriate, reliable, affordable, modern and environmentally sound technologies and know-how." CARICOM prioritized the duty to promote MSR development in all states and provide preferential treatment to developing countries, pointing to the Nagoya and Cartagena Protocols' treatment of SIDS' special circumstances. PSIDS highlighted the role of adjacent coastal states. IRAN prioritized training over technology transfer. CHILE noted that most CB&TT initiatives are bilateral, favoring a horizontal approach to technology transfer. ALGERIA stressed that UNCLOS is not only about technology transfer, but also technology development.

INSTITUTIONAL MECHANISMS: CHINA called for a comprehensive information-sharing mechanism. SINGAPORE proposed a coordination mechanism assisting in identifying and matching marine technology users and providers. VENEZUELA suggested: equitable access to research data through an open-access platform and clearinghouse; an international cooperation and capacity-building mechanism on MSR, including bioprospecting and EIAs; and a global network of research and training centers. The EU supported access to information through a clearinghouse mechanism. COSTA RICA, supported by AUSTRALIA, pointed to a clearinghouse as a virtual information-sharing mechanism and a platform for coordination assisting parties in ILBI implementation. Highlighting CB&TT for ABMTs, including MPAs, and EIAs, GREENPEACE called for a clearinghouse to facilitate implementation and monitoring. SRI LANKA, supported by IUCN and GREENPEACE, proposed a fund to facilitate capacity building.

IN THE CORRIDORS

With informal working groups plunging deeper still into the elements of the BBNJ package, some delegations were taken aback by PrepCom 2 "moving too quickly." After Chair Charles reassured delegates that PrepCom 2 is duly moving from a series of questions to a compilation of detailed textual proposals (albeit not yet "treaty text" proposals), several declared themselves happy to entrust "the car keys" to the Chair to "park" issues of convergence. As a participant joked, however, "the keys should be left in the car," so that parked issues can be brought back into discussion when needed. With that, delegates appeared to be looking forward to "driving back" to plenary, some eager to see reactions to parking proposals and others keen to guarantee that all questions from PrepCom 1 have been sufficiently addressed.