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PrepCom 2

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PREPCOM 2 HIGHLIGHTS: THURSDAY, 1 SEPTEMBER 2016

On Thursday, 1 September, the informal working group on capacity building and technology transfer (CB&TT) met in the morning. Plenary reconvened for the rest of the day to discuss possible areas of convergence and areas for further discussion based on a report from the informal working group on marine genetic resources (MGRs), including benefit-sharing.

INFORMAL WORKING GROUP ON CAPACITY BUILDING AND TECHNOLOGY TRANSFER

CAPACITY BUILDING: The AFRICAN GROUP stressed the need for capacity in marine taxonomy, genetics, chemistry and oceanography, as well as technological equipment. The OCEAN POLICY RESEARCH INSTITUTE highlighted long-term commitment for capacity building and the role of stakeholders in cooperation and coordination.

TECHNOLOGY TRANSFER: Underscoring transfer of knowledge and infrastructure, AOSIS called for country- and content-specific technology transfer, tailored to states' needs, interests and special requirements. CARICOM recommended operationalizing in the ILBI the IOC Criteria and Guidelines on the Transfer of Marine Technology, with provisions on access, regional focal points, and *in situ*, *ex situ* and *in silico* technology transfer. CHILE referred to "vertical" technology transfer as information-exchange from basic to applied research, research and development, and production stage; and to "horizontal" technology transfer from one place, institution or context to another. The FSM highlighted strengthening research institutions, including through equipment transfers. The EU stressed technology transfer through multistakeholder partnerships, and, with the US, pointed to the IOC Guidelines including non-physical aspects of transfer.

FIJI said that any proposed activity in ABNJ should trigger a CB&TT obligation. The US reiterated that technology transfer should be voluntary, based on mutually agreed terms, and respect IPRs. NEPAL called for an indicative list of activities for which marine technology is necessary, noting that any technology transfer should be mandatory. The Asian-African Legal Consultative Organization (AALCO) underscored challenges related to hard technology transfer due to IPR constraints, noting the role of joint ventures and contracts.

INSTITUTIONAL MECHANISMS: The G-77/CHINA considered the clearinghouse mechanism promoting and facilitating technological and scientific cooperation, and data sharing, a cross-cutting issue. Calling for building on work under the ISA and IOC-UNESCO, the AFRICAN GROUP expressed openness to discuss the need for a new institution. JAMAICA favored building on existing institutions, including the ISA. ARGENTINA noted that the proposed clearinghouse could identify capacity needs. NEPAL emphasized linking regional mechanisms, and greater South-South cooperation. PERU pointed to the IOC's OBIS and the Ballast Water Management Convention.

JAPAN requested preparing a discussion paper clarifying types of technologies, developing countries' priorities, and addressing how to avoid overlap with existing frameworks. AUSTRALIA proposed a mechanism to promote a dynamic dialogue to give international visibility to available projects, while allowing states to articulate needs and lessons learnt over time through a clearinghouse or COP.

FUNDING: Noting the need to ensure adequate, predictable and sustainable funding to realize the ILBI's objective, the G-77/CHINA stressed that the Voluntary Trust Fund cannot be the only option; and called for: financial contributions to the Fund; drawing lessons from the Global Environment Facility (GEF) and the Green Climate Fund (GCF); and channeling mandatory benefit-sharing from MGRs into capacity-building areas. NEPAL called for a global fund for capacity building. The AFRICAN GROUP underscored the need to explore a new global fund, pointing to the World Bank, regional banks, and the UN Financing System for Science and Technology for Development. AOSIS called for simple, targeted and user-friendly funding modalities. The FSM favored a less burdensome procedure as a funding mechanism than under the GEF. The US stressed that any new trust fund should be voluntary. The INTERNATIONAL COASTAL AND OCEAN ORGANIZATION reported on a global survey on capacity development, recommending a dedicated funding mechanism with periodic assessments on expenditures, aggregate impacts and achievements. IUCN suggested: a multilateral fund to support regional centers with pooled global resources for technology transfer; payments by developers in the event of commercialization; and a mechanism to monitor the impacts of CB&TT programs with periodic reviews to assess funding needs and sources.

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Gabriele Goettsche-Wanli, UNDOALOS Director, reported that contributions to the Voluntary Trust Fund were received from the Netherlands, New Zealand and Finland, which are available for PrepCom 3, and encouraged further contributions. She also invited contributions to the UNFSA Part VII Assistance Fund, which is depleted.

PLENARY

MARINE GENETIC RESOURCES: Informal Working Group Facilitator Carlos Sobral Duarte (Brazil) reported on possible convergence on: agreeing, at a preliminary stage, on working definitions for MGRs and utilization; drawing from definitions in existing instruments, and possibly adapting them; distinguishing between fish used for its genetic properties and as a commodity when developing a definition; considering non-mutually exclusive, and concurrently applying, the principles of common heritage and high seas freedoms; sharing non-monetary benefits; and benefit-sharing for current and future generations, and building capacities to access MGRs of ABNJ without detriment to research and development. He underscored as issues requiring further discussion whether to include in an ABS regime, *inter alia*: monetary benefit-sharing; *ex situ* and *in silico* access; derivatives; MGRs of the ABNJ water column; regulation of access to MGRs of ABNJ; and IPRs.

Chair Charles suggested that the areas of broad convergence form the basis of a compiled “rolling text” open for further proposals from delegates, highlighting that issues could be “parked” at this juncture for reopening at PrepCom 3, time permitting, or PrepCom 4. Following requests from the floor and a Bureau meeting, a note containing the Chair’s understanding of possible areas of convergence of views and possible issues for the discussion emanating from the informal working group was circulated to plenary, with Chair Charles reminding delegates that all the facilitators’ full reports will be made orally.

Regime: JAPAN called for clarification on the non-mutually exclusive nature of common heritage and high seas freedoms, with ICELAND questioning whether both principles can be applied to the same issue at the same time. CARICOM responded that both are applied in the management of MGRs of ABNJ, with IRAN noting the common element of “no sovereign rights” over the mineral resources or living resources found in the Area and the high seas. CARICOM and CHILE reiterated that high seas freedoms are not absolute. Underscoring the need to fill legal gaps on the protection of MGRs of ABNJ, BANGLADESH called for a pragmatic approach, pointing to UNCLOS Article 82 (payments and contributions with respect to the exploitation of the outer continental shelf), as a possible basis for discussion on benefit-sharing. MAURITIUS called attention to the need to respect states’ acquired rights of exploration and exploitation on the continental shelf beyond 200 nautical miles. PERU called for further discussion of this point. Chair Charles noted lack of agreement on parking the issue.

Definitions: JAPAN opposed adapting existing definitions until the intergovernmental conference. The RUSSIAN FEDERATION, opposed by CHILE, cautioned about the legal implications of adapting definitions from other instruments. COSTA RICA reported on informal discussions on definitions, pointing to three options: first, including concepts from the CBD, as well as derivatives and data as enshrined in the Nagoya Protocol; second, referring to the definition of MGRs in the

CBD, as well as providing a definition of utilization and a footnote referring to data, as this is not explicitly included in the Nagoya Protocol; and third, including definitions of MGRs, their utilization, biotechnology, and derivatives. ECUADOR underscored the need to define BBNJ, noting that it could facilitate agreement on MGRs. PSIDS called for including a definition of traditional knowledge.

Fish: PERU requested clarification on distinguishing fish as a commodity and fish as MGRs. The AFRICAN GROUP underscored the link between this distinction and the definition of MGRs. ICELAND noted that discussions on the distinction had not yielded convergence and this issue should thus not be “parked.”

Benefit-sharing: Delegates agreed to “park” the issue of benefit-sharing for non-monetary benefits. JAPAN requested parking the idea of utilizing for BBNJ conservation and sustainable use the benefits from benefit-sharing mechanisms. The EU proposed text referencing that “benefit-sharing be beneficial to BBNJ conservation and sustainable use,” with the FSM noting that this was new text that had not been discussed.

Opposed by the AFRICAN GROUP, the US proposed deleting a reference to a benefit-sharing “mechanism” in the context of benefit-sharing for current and future generations, or adding “if any,” noting that the idea of a mechanism had not been fully discussed. The FSM noted that the issue was not whether or not there should be a benefit-sharing mechanism, but rather that benefit-sharing be considered as beneficial to current and future generations. COSTA RICA, with ECUADOR, favored a reference to a benefit-sharing “regime.” BANGLADESH preferred sticking to the mandate of the PrepCom, and proposed a general reference to the sharing of benefits. CANADA cautioned against engaging in a drafting exercise, with MEXICO, supported by the FSM, proposing that the question of whether to establish a benefit-sharing mechanism should be included among issues requiring further discussion. The AFRICAN GROUP proposed including the entire reference to the beneficial nature of a benefit-sharing mechanism among issues requiring further discussion. ERITREA noted that benefit-sharing does not occur in a vacuum and requires a mechanism through which to operate, and encouraged delegates to consider ecosystem services with regard to benefit-sharing.

IN THE CORRIDORS

As the PrepCom plenary engaged in its first round of “parking” issues that have garnered a semblance of convergence, several delegations started to hanker for written text, as the whole PrepCom process so far has been based on oral exchanges, giving rise to a generalized sense of unclarity about the next steps at this juncture of the second session. Several participants were heard pointing to difficulties in following increasingly dense discussions without a written collation of ideas at hand. Many observers, however, noted on the sidelines that few delegations are submitting written elements to the Secretariat. According to the well informed, national delegations are apprehensive that the first proposals to be shared will be butchered just because they are the only text on the table, rather than being considered on their merits. In order to safely maneuver the process forward, a seasoned observer mused, the Prepcom’s parking skills may need some honing yet.