



Earth Negotiations Bulletin

PrepCom 2

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Vol. 25 No. 116

Published by the International Institute for Sustainable Development (IISD)

Thursday, 8 September 2016

PREPCOM 2 HIGHLIGHTS: WEDNESDAY, 7 SEPTEMBER 2016

On Wednesday, 7 September, plenary convened to discuss possible areas of convergence and areas for further discussion on capacity building and technology transfer (CB&TT), and hear proposals on environmental impact assessments (EIAs) and on next steps. An informal working group on cross-cutting issues, facilitated by Chair Charles, met in the afternoon.

PLENARY

CAPACITY BUILDING AND TECHNOLOGY

TRANSFER: Rena Lee (Singapore), Facilitator of the informal working group on CB&TT, reported as possible areas of convergence: CB&TT as cross-cutting and essential to enable developing states to conserve and sustainably use BBNJ; the need to consider the special needs of LDCs, SIDS, LLDCs and geographically disadvantaged states; the need to build upon the work and lessons learned from, without undermining or duplicating, existing programmes or mechanisms; country-driven CB&TT that are responsive to national needs and priorities, and adaptable; the usefulness of the IOC Guidelines as a guiding tool; and the need for multistakeholder partnerships.

As possible issues requiring further discussion, Lee highlighted: whether CB&TT should have a broad and general focus; how to periodically review CB&TT needs and priorities; if and how to address IPRs; whether and how to address innovation with reference to marine science and technology transfer; how to define marine technology, and which technology needs to be transferred; what are CB&TT terms and conditions; what is the nature of any funding mechanism and its modalities of operation, including whether it is voluntary or mandatory; if and how to link CB&TT with a benefit-sharing regime; how to incentivize CB&TT; whether to establish a CB&TT clearinghouse mechanism, or use existing ones; what mechanisms are required for following up CB&TT programmes; and how to coordinate CB&TT activities under the ILBI with existing programmes or mechanisms.

JAPAN proposed stating that CB&TT are essential to “assist,” rather than “enable,” developing states to conserve and sustainably use BBNJ, with the US suggesting “vitaly important to enable/assist/help.” COSTA RICA accepted considering CB&TT “vitaly important to enable” developing states to conserve and sustainable use BBNJ.

Special needs: The AFRICAN GROUP requested taking into account also the special circumstances of African countries. COSTA RICA proposed referring to the special needs of

“LDCs and developing countries, including SIDS, LLDCs, African countries and geographically disadvantaged countries.” The PHILIPPINES suggested adding states highly vulnerable to climate change. BANGLADESH stated that there is no UNCLOS provision directly supporting the inclusion of SIDS, African states and states vulnerable to climate change. The FSM responded that the UNFSA includes reference to SIDS. ALGERIA added that African states are mentioned under the UN Framework Convention on Climate Change. The EU noted that there are other instruments dealing with capacity building regarding adaptation and mitigation. ECUADOR, supported by VENEZUELA, HONDURAS and COSTA RICA, proposed including also middle-income countries, with AUSTRALIA and the EU querying the expansion of the list.

Approaches: The G-77/CHINA called for CB&TT being country-driven and responsive to national needs. The US argued that CB&TT should be responsive to requests, rather than country-driven per se. The EU, supported by JAPAN and the US, proposed including regional concerns, by stating that “CB&TT should be needs-driven, country-owned and responsive to priorities related to the ILBI, with flexibility to adapt as needs and priorities change.” COSTA RICA recommended that CB&TT be “responsive to national, local and regional needs, priorities and requests, with flexibility to adapt as needs and priorities change.”

The G-77/CHINA noted the importance of building both individual and, with AOSIS, institutional capacity. IRAN cautioned against distinguishing between institutional capacity building and human capacities. The EU, supported by CARICOM, affirmed that “capacity building, including institutional CB&TT should be responsive to national, local and regional needs,” with ARGENTINA, supported by the US, preferring the deletion of “local.”

INDIA requested that technology be transferred on fair and reasonable terms and conditions. Noting that certain technologies are available to developed countries and emerging economies, MAURITIUS underscored the idea of universality. ERITREA recommended assessing capacities of countries with special needs, ensuring compatibility between implementing and monitoring tools and existing capacities; and identifying enabling and disabling conditions for technology transfer in global instruments.

Scope: JAPAN, with the US and the EU, recommended referring not only to the definition and meaning of marine technology, but also to its scope, and further discussing which technology should be transferred, with the US proposing

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>.



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reference to “consideration of the benefit of transferring particular technology.” COSTA RICA emphasized the need to clarify who will decide what the benefits will be. VENEZUELA suggested including traditional knowledge and indigenous peoples’ capacity needs.

Legal nature: NEPAL stressed that CB&TT should be carried out on a mandatory basis. FIJI stressed the need to go beyond voluntary procedures and mutually agreed terms for technology transfer, noting that CB&TT provisions could form part of the conditions for permits or contracts, as in the ISA. JAPAN noted that technology transfer should be done based on agreed terms, with the US adding it can be done either voluntarily or under mutually agreed terms and conditions.

Stakeholders: JAPAN, supported by the US and opposed by MAURITIUS, favored further discussion on the need for multi-stakeholder partnerships. COSTA RICA proposed underscoring the “importance of involving relevant stakeholders,” with SRI LANKA suggesting reference also to “multiple stakeholders in the CB&TT process.” JAPAN, supported by the EU and CARICOM, proposed reference only to the importance of involving relevant stakeholders in CB&TT. Delegates agreed to “park” the language proposed by Japan, with Chair Charles suggesting multistakeholder partnerships as an issue requiring further discussions.

Existing arrangements: Delegates agreed to “park” reference to the IOC Guidelines being a useful guiding tool for further work on technology transfer in ILBI. MOROCCO recommended also considering other institutions, and noted the need for technology transfer to be adequately financed, including by the World Bank and other organizations. The EU, supported by JAPAN, proposed including as an issue for further discussion “if and how a funding mechanism should be established and its modalities of operation.”

CHILE, supported by COSTA RICA, suggested including reference to enhanced cooperation, in addition to coordination of CB&TT activities, as an area for further discussion. The PHILIPPINES suggested adding that “existing mechanisms should not be undermined or duplicated, but rather strengthened, harmonized and/or simplified.” The US called for discussing references to harmonizing and simplifying. The PHILIPPINES, opposed by JAPAN, then proposed: “The work and lessons learned from existing instruments and mechanisms should be built upon, or improved. Existing mechanisms should not be undermined or duplicated, rather should be strengthened and/or simplified.” Chair Charles proposed including this among the issues requiring further discussion.

ENVIRONMENTAL IMPACT ASSESSMENTS: The EU proposed as an area of convergence that “capacity building should address the capacity of SIDS and developing countries to participate in and conduct EIAs.” The AFRICAN GROUP called for the inclusion of African countries. The G-77/CHINA proposed that “EIAs should contribute to BBNJ conservation and sustainable use.” Delegates agreed to “park” these suggestions.

NEXT STEPS: In the morning, the AFRICAN GROUP, supported by the US and CARICOM, suggested mandating Chair Charles to develop a paper based on delegations’ submissions and interventions before PrepCom 3 to assist deliberations. NEW ZEALAND highlighted the need for a paper, structured around basic headings to guide delegates in deeper deliberations.

In the afternoon, Chair Charles reported on a Bureau meeting supporting the preparation of a Chair’s non-paper, containing elements of convergence and those requiring further discussion, submissions by states at PrepCom 2 and in the intersessional period until 5 December 2016, including textual and non-textual proposals and ideas, for circulation before PrepCom 3. He stressed that the non-paper would not prejudice delegations’ opportunity to submit further proposals.

INFORMAL WORKING GROUP ON CROSS-CUTTING ISSUES

OBJECTIVES: The AFRICAN GROUP, supported by PSIDS, CARICOM, the FSM and MONACO, suggested that the ILBI address “existing legal and implementation gaps” in order to ensure BBNJ conservation and sustainable use through effective implementation of relevant UNCLOS provisions. The FSM underscored elements of the package as part of the ILBI objectives, and benefits stemming from BBNJ conservation and sustainable use, including climate change mitigation and poverty eradication. JAPAN stressed, supported by the EU and CANADA, that the objective of BBNJ conservation and sustainable use is clear, cautioning against adding or subtracting language included in General Assembly Resolution 69/292. COSTA RICA suggested that specific objectives be developed for each package element.

ARGENTINA, with AUSTRALIA, underscored the need for a focused objective, noting that provisions not strictly connected to the overall objective could be reflected in the preamble of the agreement. AUSTRALIA, supported by CANADA, the US, ICELAND and CAMEROON, proposed as the objective to ensure long-term conservation and sustainable use of BBNJ through effective implementation of relevant UNCLOS provisions.

ALGERIA suggested including benefit-sharing among the ILBI objectives, noting its linkages to all package elements and ecosystem services. The EU underscored that the package is indivisible, and cautioned against mentioning one part of the package in isolation, with CANADA noting that under Resolution 69/292, BBNJ conservation and sustainable use include all package elements.

PARAGUAY, supported by VENEZUELA, stressed revitalization and recovery of life in the oceans. Suggesting an informal working group on BBNJ and humanity as a whole, VENEZUELA supported by ECUADOR, highlighted threats and imminent dangers, urging for a systemic approach. The EU, supported by CANADA and ICELAND, noted a number of these threats are dealt with by other instruments. PSIDS called for the adoption of an integrated approach, attaining universal participation in the ILBI. NORWAY highlighted UNCLOS Articles 192 (duty to protect) and, with MONACO, 197 (duty to cooperate).

GUIDING PRINCIPLES AND APPROACHES: Several delegations reiterated the principles and approaches discussed throughout PrepCom 2. The FSM highlighted, *inter alia*, the principles of adjacency, preventing the ILBI from being dominated by corporate interests, and disproportionate burdens. The EU questioned their status as principles, calling for respecting the balance of rights under UNCLOS without cherry-picking.

IN THE CORRIDORS

Discussion proceeded at slower pace on the points of convergence and those for further discussion on capacity building and technology transfer (CB&TT), which raised the question of whether the debate was affected by donor-fatigue associated with CB&TT discussions in other processes. One participant, seeking to explain this impression, noted that “it is the donors that are quiet throughout the discussions at PrepCom who do a lot of the work on the ground, bilaterally.” Another, however, lamented that donor countries’ references to voluntary CB&TT do not bode well for fully operationalizing UNCLOS obligations on CB&TT into the ILBI. Hoping for more animated discussions on cross-cutting issues on Thursday, a participant was quick to remind the pessimists that the compilation of ideas in a proposed Chair’s non-paper before PrepCom 3 may help inject some dynamism in future deliberations on the needed support for all countries to implement a new treaty on oceans biodiversity.