

PREPCOM 4 HIGHLIGHTS: THURSDAY, 13 JULY 2017

On Thursday, 13 July, delegates met in the informal working groups on capacity building and technology transfer (CB&TT), and on crosscutting issues, facilitated by Chair Duarte.

WORKING GROUP ON CB&TT

OBJECTIVES: The G-77/CHINA requested specific reference to SIDS, LDCs, coastal African states, and middle-income countries' special situation. LDCs called for including equitable participation of all states. MEXICO favored including access to MGRs *in situ*, *ex situ*, and *in silico* for commercial development among CB&TT objectives.

PRINCIPLES: The G-77/CHINA called for: CB&TT on fair and reasonable terms, and promotion of North-South, South-South, and triangular cooperation. LDCs recommended aligning preferential treatment with the Istanbul Plan of Action for LDCs. MEXICO included respect for IPRs, transparency, cooperation and favorable conditions for technology transfer. GUATEMALA preferred a tailor-made, country-driven approach implemented on a case-by-case basis.

MODALITIES: The G-77/CHINA stressed the need to enhance ongoing CB&TT efforts. The PHILIPPINES, MEXICO, PSIDS, GUATEMALA and THAILAND supported an indicative, non-exhaustive list of CB&TT modalities, with LDCs proposing development of human capital, legislation, and policy, and promoting private sector participation. PSIDS recommended including support for developing centers of excellence. NORWAY questioned the rationale for a list. The PHILIPPINES, with PSIDS, noted that CB&TT should be a precondition for access to MGRs. IUCN highlighted coordinated ocean observation and monitoring to simultaneously support multiple ILBI elements.

CLEARINGHOUSE: The G-77/CHINA proposed using the Nagoya Protocol's capacity-building network, advocating web-based, open-access data to match needs, and facilitate case-by-case technology transfer. PSIDS, supported by PAKISTAN, envisaged a global CHM for CB&TT, with a network of regional and subregional CHMs. The EU and LDCs suggested that the CHM facilitate access to scientific data and ensure transparency of CB&TT activities to match needs with offers.

CARICOM, the US, the EU, PSIDS and IRAN recommended using existing mechanisms. LDCs advocated building on existing mechanisms' experience. JAPAN cautioned against duplicating the IOC's activities, and proposed clarifying the IOC's role in the ILBI. The US, with MEXICO, suggested consolidating text on the CHM and drawing on the IOC's work. INDONESIA stressed the need to assess whether available CB&TT activities are adequate to address developing countries' needs. The IOC emphasized a user-friendly platform working at global, regional and subregional levels.

The RUSSIAN FEDERATION opposed a new global mechanism, arguing that diverse CB&TT needs require case-by-case consideration.

FUNDING: AOSIS called for establishing a capacity-building fund. CARICOM, with PSIDS, stressed that the funding mechanism should be easily accessible by SIDS and LDCs. PSIDS noted that the ILBI trust funds may address CB&TT-specific objectives. KENYA and GHANA underscored that voluntary trust funds have proved to be unsustainable.

MEXICO suggested further discussions on including donors, percentages of royalties, compulsory and voluntary contributions, and payments for technology transfer. The PHILIPPINES underscored that funding sources may include permit fees, royalties, a global fund, existing funding mechanisms, and voluntary contributions from organizations and states. The FSM stressed effective financial cooperation. TONGA emphasized "long-term" sustainable funding, as well as accountability and transparency in the funding mechanism's modalities. SAMOA called for full participation in the funding mechanism, taking into account SIDS' vulnerabilities. Emphasizing the need to recognize LLDCs' special requirements, NEPAL called for special and mandatory CB&TT provisions for LDCs. SINGAPORE, with MOROCCO, underlined the need for sustainable funding, open to contributions from the private sector and civil society. CAMEROON suggested considering financing as a principle.

The US, the EU, CANADA and NEW ZEALAND stressed that a decision on the ILBI functions should precede discussions on funding. The EU and SWITZERLAND favored using existing funding sources. CANADA, with JAPAN, AUSTRALIA and NEW ZEALAND, suggested "addressing the question of sustainable funding." AUSTRALIA expressed openness to considering monetary benefits from MGR development as a financing source for CB&TT.

MONITORING AND REVIEW: CARICOM suggested an evaluation of CB&TT objectives. LDCs proposed establishing an expert group on monitoring, review and follow-up. PSIDS supported a qualitative and quantitative monitoring approach. The EU requested reference to "periodically assessing" CB&TT needs. MEXICO supported a periodic review to align states' needs with the CHM capacities. IRAN underscored the need to measure the success of CB&TT activities.

AUSTRALIA proposed setting out monitoring and review modalities and "possible" follow-up action. JAPAN, supported by the US, suggested an exchange of views on CB&TT activities' effectiveness and follow-up action. GUATEMALA, with COSTA RICA, expressed a preference for a more open-ended formulation. The PHILIPPINES favored defined performance indicators.

WORKING GROUP ON CROSSCUTTING ISSUES

INSTITUTIONAL ARRANGEMENTS: The US, supported by NORWAY, COSTA RICA, AUSTRALIA, NEW ZEALAND and ICELAND, proposed referring to "possible" institutional arrangements. NORWAY and ICELAND questioned the level of detail on institutional arrangements in the Chair's suggested elements. CARICOM underscored the need to examine existing institutions as part of the ILBI institutional arrangements to increase coherence.

Decision-making forum: MONACO, NORWAY, CANADA and GREENPEACE supported a conference of parties (COP) as a decision-making body, with the EU expressing willingness to list its tentative competencies, and highlighting cost-effectiveness, with TONGA, and utilization of existing institutions.

CANADA preferred broader reference to the COP's functions. Noting that the decision-making body should ensure harmonization of BBNJ conservation and sustainable use measures, PSIDS considered, with the AFRICAN GROUP, the elements sufficiently broad to allow focused discussions at the IGC. NORWAY stressed that the forum should also allow for coordination and, supported by SWITZERLAND, NEW ZEALAND and COSTA RICA, information sharing. Preferring the use of existing mechanisms, AUSTRALIA and NEW ZEALAND suggested "a mechanism of cooperation with relevant regional and sectoral bodies."

IRAN supported a global platform with decision-making functions. GUINEA preferred the COP to have decision-making and strong state-level follow-up functions. Opposing the entire section on institutional arrangements, the RUSSIAN FEDERATION called for strengthening existing bodies including RFMOs, cautioning against undermining their mandates.

Scientific/technical body: The G-77/CHINA preferred an advisory body, including to review EIA reports. ICELAND recommended clarifying the relationship of the ILBI scientific body with existing scientific bodies under other instruments, arguing against detailed arrangements at this time. NORWAY, with TONGA, proposed referring to the creation of subsidiary bodies "as required." GREENPEACE called for a compliance committee.

JAPAN, opposed by the AFRICAN GROUP, considered a scientific/technical body premature, suggesting leaving the decision to the ILBI decision-making forum. The US, with NORWAY and AUSTRALIA, proposed reference to an "institutional framework for scientific/technical advice."

Secretariat: The US, NORWAY and NEW ZEALAND favored non-prescriptive language. CANADA suggested that reporting take place "as requested by parties," and opposed reference to providing assistance for ILBI implementation. Noting the need for secretariat functions to support an ILBI decision-making body, the EU, with SWITZERLAND and NEW ZEALAND, considered it premature to elaborate the secretariat's functions.

CLEARINGHOUSE: The G-77/CHINA proposed: opposed by CANADA, a protocol for environmental protection and transparency; and a trust fund, a central repository, and an online compilation of EIA good practices and reports. CHINA supported an efficient, user-friendly CHM for exchanging practical information, excluding IPRs and trade secrets.

The US, supported by JAPAN, but opposed by the AFRICAN GROUP, CARICOM, PSIDS, IRAN and COSTA RICA, recommended including provisions for crosscutting mechanisms that may be needed, such as data repositories and/or CHMs. JAPAN expressed concern about creating information-sharing obligations. SWITZERLAND recommended eliminating reference to "obligation." CANADA suggested flexibility for creating a new CHM or utilizing existing ones.

FINANCIAL MECHANISM: The G-77/CHINA emphasized the need for an adequate, predictable and sustainable funding mechanism, funded from potential benefit-sharing and complemented by a voluntary trust fund. Noting lack of consensus with respect to a funding mechanism, the US, JAPAN and SWITZERLAND, opposed by KENYA and NIGERIA, preferred eliminating reference to it. The EU, with the AFRICAN GROUP, noted that the term "mechanism" does not necessarily imply a mandatory funding scheme. SWITZERLAND said that existing mechanisms could be utilized. CARICOM expressed openness to consider new or existing funding mechanisms. CANADA proposed reference to "the possibility of a funding mechanism." PSIDS suggested reference to: both mandatory and voluntary provisions; clearer funding modalities; and potential liability and rehabilitation funds.

IMPLEMENTATION: The EU suggested eliminating reference to enforcement, emphasizing ILBI provisions requiring the adoption of legislation to ensure compliance and reference to UNCLOS Article 236 (sovereign immunity). GREENPEACE called for addressing non-parties.

DISPUTE SETTLEMENT: COLOMBIA and VENEZUELA proposed language similar to UN Charter Article 33 (obligations of state parties to a dispute). MEXICO proposed attributing a role to the International Tribunal for the Law of the Sea (ITLOS). CARICOM, supported by the PHILIPPINES and TONGA, suggested that ITLOS could provide advisory opinions. The US stated that references to the UN Charter and ITLOS advisory opinions require further discussion. The EU argued that disputes under the ILBI could qualify as disputes under UNCLOS, with modalities to be decided at a later stage. GREENPEACE urged for establishing transparent, accessible and effective dispute resolution.

RESPONSIBILITY AND LIABILITY: CHINA, supported by the US and opposed by MEXICO and CARICOM, proposed deleting the section. The PHILIPPINES noted that these provisions are consistent with the polluter pays principle. The EU considered a provision on responsibility unnecessary, suggesting that the IGC could take up the issue. The IMO recommended taking into consideration the work of international liability and compensation instruments.

REVIEW: JAPAN, supported by the EU and the AFRICAN GROUP, and opposed by CARICOM, TONGA and the PHILIPPINES, considered reference to UNCLOS Article 154 (periodic review) and UNFSA Article 36 (review conference) inappropriate, with ARGENTINA proposing periodic review of the ILBI effectiveness in achieving its objectives. The RUSSIAN FEDERATION recommended eliminating reference to UNFSA.

FINAL CLAUSES: The EU emphasized early entry into force and universality. MEXICO recommended providing for provisional implementation. ARGENTINA called for a safeguard clause.

PREAMBLE: The EU recommended clarifying that the ILBI is an implementing agreement under UNCLOS. The US suggested recognizing the central role of UNCLOS "and its implementing agreements." JAPAN, supported by COLOMBIA and VENEZUELA, but opposed by the EU, NORWAY and ARGENTINA, noted that the text should recognize both the role of UNCLOS and other relevant bodies, suggesting, with AUSTRALIA, a recognition "of the critical role" of other existing relevant legal instruments. He further suggested, with AUSTRALIA, recognizing the need for enhancing BBNJ conservation and sustainable use in close cooperation and coordination with relevant existing bodies. CANADA, supported by NORWAY, proposed adding "the need for consistency with and recognition of the role played by other relevant legal instruments, frameworks and bodies."

CHINA, supported by the AFRICAN GROUP and IRAN, suggested recognizing that "humankind has become an indivisible community with a shared future linked to BBNJ conservation and sustainable use" and "the international community as a whole has a common interest in BBNJ." MEXICO suggested a reference to the ILBI contribution to Agenda 2030, especially SDG 14 (life below water). CARICOM emphasized inter-generational equity and benefit-sharing by closing the marine science gap. The US suggested reaffirming UNCLOS Part XIII (MSR) and Article 236.

The RUSSIAN FEDERATION initially opposed recognizing the need for a comprehensive, global regime, noting that any future regime should be built on strengthening cooperation with regional organizations. ARGENTINA, the AFRICAN GROUP and NORWAY recalled that the reference is included in Resolution 69/292.

IN THE CORRIDORS

As the PrepCom soldiered on, the High-level Political Forum on Sustainable Development (HLPF) in the room next door exchanged views on innovative partnerships and follow-up actions to implement SDG 14. "I am not sure if the SDGs spirit is inspiring the BBNJ process," one participant reflected, pointing to the continuing North-South divide on classic issues, such as capacity building, technology transfer and funding, and scant attention to the implications of insufficient progress for vulnerable populations. Another delegate, however, noted that new partnerships among regional and sectoral organizations and other stakeholders have been showcased at this PrepCom side-events. One veteran opined, "there's still time to live up to the resounding calls for collective responsibility and political momentum on SDG 14 in the HLPF."