

PREPCOM 4 HIGHLIGHTS: WEDNESDAY, 19 JULY 2017

On Wednesday, 19 July, delegates met in plenary to continue consideration of a revised Chair's text. In the afternoon, Chair Duarte held informal closed consultations on: the ILBI relationships with other legal instruments and relevant bodies; international cooperation; access to marine genetic resources (MGRs), types of benefits to be shared, IPRs and monitoring of MGR utilization; relationships of area-based management tools (ABMTs) with measures under other instruments, and adjacency; strategic environmental assessments (SEAs); terms for technology transfer, and funding for capacity building and technology transfer (CB&TT); institutional arrangements; financing; responsibility and liability; and the procedural recommendation to the General Assembly.

ENVIRONMENTAL IMPACT ASSESSMENTS

Due to lack of consensus, the RUSSIAN FEDERATION proposed deleting sections on process, content of reports, monitoring and review, and SEAs.

THRESHOLDS: The EU underscored the importance of thresholds and criteria for determining when an environmental impact assessment (EIA) should be conducted. NEW ZEALAND, ARGENTINA, NORWAY and AUSTRALIA supported Japan's proposal for the ILBI to "address," rather than "set out," thresholds and criteria.

PROCESS: The EU opposed: China's proposal that states should formulate procedural steps; with ARGENTINA, the US' request to eliminate reference to "consideration of reports"; and the US' proposal, supported by NEW ZEALAND, to use "best available scientific information," emphasizing the need for "independent scientific review." The EU further proposed: with NORWAY, specifying that decision-making is conducted by the state under whose jurisdiction and control the activity takes place; and eliminating reference to the ILBI "elaborating procedural steps" following an EIA.

The REPUBLIC OF KOREA, NORWAY and NEW ZEALAND requested eliminating "access to justice" as a procedural step. The AFRICAN GROUP proposed clarifying language on access to justice in the context of an appeal mechanism, opposed by CANADA who noted that the appeal mechanism "raises too many questions."

IRAN proposed referring to "screening of activities, especially activities that may cause harm to the marine environment." AUSTRALIA, supported by NORWAY, requested noting that the ILBI will consider an appropriate role for adjacent states.

CONTENT OF EIA REPORTS: The EU, CANADA and ARGENTINA opposed Senegal's proposal to delete "where relevant" in relation to the description of cumulative and transboundary impacts. The REPUBLIC OF KOREA suggested: replacing "planned work" with "proposed work"; opposed by IRAN, replacing "description of scoping results" with "description of scope"; and, opposed by CARICOM, deleting "description of social impacts." IRAN supported the Philippines' proposal

to include reference to socioeconomic impacts. AUSTRALIA proposed that the text "address," rather than "specify," the content of EIA reports, including a point on "uncertainties and gaps in knowledge."

MONITORING AND REVIEW: CANADA supported the US proposal to delete the section.

SEAs: The EU, with CARICOM, ARGENTINA, NEW ZEALAND and IRAN, opposed the US and China's proposal to delete the section, with AUSTRALIA, supported by NORWAY, suggesting a footnote, clarifying that this issue "could be considered in a different ILBI section, for example under ABMTs."

CAPACITY BUILDING AND TECHNOLOGY TRANSFER

OBJECTIVES: PSIDS called for "beefing up" this section. The EU and SWITZERLAND, opposed by the AFRICAN GROUP, recommended clarifying that conservation and sustainable use are the overall ILBI objectives.

The G-77/CHINA requested that the ILBI "should," rather than "would," recognize developing countries' special requirements. The EU, supported by TOGO, SWITZERLAND and JAPAN, proposed language on developing and strengthening the capacity of states which may need and request it, particularly developing states, in accordance with UNCLOS Article 226 (technology transfer), to assist them in implementing their rights and fulfilling their obligations. The PHILIPPINES called for reference to the special requirements of environmentally vulnerable states.

MODALITIES: The US, supported by JAPAN, AUSTRALIA and CANADA, but opposed by the AFRICAN GROUP and CUBA, proposed referencing voluntary technology transfer on mutually agreed terms and conditions.

ERITREA suggested reference to enhancing recipient countries' ability to identify and assimilate technological know-how.

CANADA, with AUSTRALIA, preferred referencing needs- or priority- or country-driven modalities, rather than modalities "driven by recipient countries."

PSIDS, opposed by JAPAN and AUSTRALIA, supported reference to developing "productive capacities."

MONITORING AND REVIEW: The US, opposed by AOSIS, suggested deleting the section.

FUNDING: The G-77/CHINA, opposed by the US, JAPAN and AUSTRALIA, welcomed reference to accessible, predictable and sustainable funding. TOGO emphasized that any language that would "dilute the text would be unacceptable." AOSIS, with TOGO and GHANA, underscored referencing Resolution 69/292 and the "2011 package," in case of changes to the Chair's draft. CANADA noted that "predictable funding" could point to mandatory funding requirements, considering this premature.

INSTITUTIONAL ARRANGEMENTS

The RUSSIAN FEDERATION emphasized that institutional arrangements should be considered after concluding discussions on substantive elements, requesting deletion of these sections. CANADA proposed adding in the chapeau "making best use of existing bodies." PAPUA NEW GUINEA considered language on "possible" institutional arrangements ambiguous.

DECISION-MAKING BODY: The EU and the US questioned “harmonization of efforts” as a possible function of the decision-making body, with JAPAN suggesting instead “to address the issue of harmonization of efforts.” The US and CANADA proposed “promoting cooperation and coordination, including with relevant regional and sectoral bodies towards conservation and sustainable use,” with AUSTRALIA adding also relevant “global” bodies. The EU, with the AFRICAN GROUP, requested eliminating reference to establishing subsidiary bodies “as necessary.”

SCIENTIFIC AND TECHNICAL BODY: JAPAN proposed that this body should focus on matters related to the ILBI implementation “specified in the ILBI and such other functions as may be determined by the decision-making body.” The EU considered reference to “matters related to the ILBI implementation” superfluous. MEXICO cautioned against precluding the possibility of creating new bodies.

NORWAY suggested that: the ILBI “could,” rather than “would,” provide for a scientific and technical body, and a secretariat; or, alternatively, supported by the US and AUSTRALIA, focusing on functions, without pre-empting the establishment of subsidiary bodies. The US proposed that the ILBI “would set out a scientific and technical body for scientific advice to the decision-making body.”

SECRETARIAT: The EU suggested postponing consideration of secretariat functions. The US proposed that the ILBI “would set out an institutional framework for secretariat functions, such as,” followed by the functions to be performed. Noting potential resource implications, CANADA, with AUSTRALIA and MEXICO, suggested providing assistance for ILBI implementation, as requested by parties, “if mandated by the decision-making body.”

CLEARINGHOUSE MECHANISM: JAPAN supported the US proposal on taking into account mechanisms under other bodies. PSIDS recommended that the CHM “would not undermine existing clearinghouse structures.” NORWAY requested reference to ILBI implementation to frame information exchange. CHINA proposed deleting reference to: with JAPAN, PAKISTAN and the REPUBLIC OF KOREA, dissemination of information, data and knowledge resulting from research and from traditional knowledge relating to MGRs in ABNJ; and, opposed by the PHILIPPINES, baseline data.

The EU, opposed by BRAZIL and the PHILIPPINES, requested eliminating reference to “possible information related to MGR utilization.” BRAZIL suggested adding reference to information on sharing of monetary benefits, with JAPAN underscoring lack of consensus on monetary benefits. IRAN proposed including sharing of information on research programmes, and also on funding opportunities. ERITREA proposed additional language on safeguards for traditional knowledge holders’ rights.

FINANCIAL MECHANISM: PSIDS underscored funding mechanisms also for rehabilitation and liability, and availability and access modalities. The US, opposed by ARGENTINA, COLOMBIA and CAMEROON, proposed deleting reference to “the possibility of a funding mechanism,” and rather referring to “financial issues.” The EU maintained that reference to a funding mechanism does not imply a mandatory funding mechanism.

COMPLIANCE: The RUSSIAN FEDERATION, opposed by the PHILIPPINES, requested deleting the section. PSIDS preferred referring to “compliance,” rather than “issues of compliance.” SWITZERLAND supported retaining the section. IRAN proposed changing the title to “compliance and enforcement” or “compliance and implementation.”

DISPUTE SETTLEMENT: Stressing that dispute settlement is already included in UNCLOS, the RUSSIAN FEDERATION requested deleting this section, opposed by PSIDS, who noted it should be linked to compliance. ARGENTINA and IRAN, opposed by COLOMBIA, argued against referencing the UN Charter and UNFSA. The EU recommended drawing on existing international law.

RESPONSIBILITY AND LIABILITY: The RUSSIAN FEDERATION and the US, opposed by PSIDS, ARGENTINA and CARICOM, recommended deleting the section. CHINA proposed addressing issues relating to responsibility and liability based on UNCLOS Articles 304 (responsibility and liability for damage), 205 (publication of reports) and 263 (responsibility and liability).

The PHILIPPINES supported establishing a rehabilitation fund, as proposed by PSIDS. The REPUBLIC OF KOREA, opposed by the PHILIPPINES, suggested deleting reference to the International Law Commission’s Articles on the responsibility of states for internationally wrongful acts and customary international law, as well as other international legal instruments.

REVIEW: THE PHILIPPINES suggested reviewing the ILBI effectiveness “taking into consideration best available scientific knowledge to facilitate adaptive management.”

RECOMMENDATIONS TO THE GENERAL ASSEMBLY

DRAFT ELEMENTS: The RUSSIAN FEDERATION stated that reference to non-consensus elements “could or could not be indicated,” urging inclusion of alternative, even conflicting, viewpoints in a possible separate paper. SOUTH AFRICA underscored, with INDONESIA, that a section in the report can accommodate non-consensus issues. The EU considered that sufficient progress has been achieved in “unpacking the elements.” MEXICO proposed clarifying that the draft elements are “not exclusive or exhaustive.”

STREAMLINED NON-PAPER: The AFRICAN GROUP, with PSIDS, CARICOM, MEXICO and GUATEMALA, proposed including a reference to the Chair’s streamlined non-paper. AOSIS recommended including the streamlined non-paper in the PrepCom report, and MOROCCO attaching it to the PrepCom report. NORWAY opposed, with ICELAND emphasizing that it is a background document that has never been discussed, and with JAPAN recalling Iceland’s proposal to post it on the UNDOALOS website. CANADA proposed a brief reference to acknowledge its existence, without altering its status.

INTERGOVERNMENTAL CONFERENCE: The AFRICAN GROUP, with COSTA RICA and GUATEMALA, suggested reference to a “proposed,” rather than “possible,” intergovernmental conference (IGC) start date of 2018. LDCs urged all delegations to support the IGC and not use outstanding issues as a pretext for opposing it. PSIDS recalled the “Future We Want”; stated that the PrepCom has fulfilled its mandate; and stressed the importance of launching an IGC for ocean conservation. CARICOM recommended stronger language on convening an IGC. The EU noted overwhelming support for convening an IGC as soon as possible. COSTA RICA appealed to delegates to show flexibility and conclude discussions in a constructive spirit, urging, with SOUTH AFRICA, PAKISTAN and INDONESIA, convening an IGC in 2018.

MEXICO, supported by IRAN, underscored that: an overwhelming majority asked for a procedural recommendation, in even stronger language, considering the revised draft as “the minimum threshold acceptable for us”; and, with the PHILIPPINES, nothing in Resolution 69/292 precludes the PrepCom from making a procedural recommendation, which would not prejudice a decision by the UN General Assembly. Emphasizing the importance of substantive recommendations and the need to “establish the necessary comfort for everybody,” NORWAY affirmed that “this format has exhausted its function.” CANADA expressed hope that that the IGC would begin in 2018.

Acknowledging overwhelming support for an IGC, the US recalled that he does not have a mandate to take a position on this and proposed, supported by JAPAN, eliminating reference to 2018 as a possible starting date for the IGC. ICELAND preferred, with the RUSSIAN FEDERATION, deleting reference to convening an IGC, stressing that this is beyond the PrepCom’s mandate.

IN THE CORRIDORS

As soon as BBNJ delegates, having shifted into fifth-gear, completed a first reading of the Chair’s revised draft, they rushed to secure a seat in the over-crowded room for the informal discussions on the thorniest elements. One participant lamented, “it’s a pity that we are not all in the same lane after all,” referring to the gulf between the vast majority in favor of convening an IGC and the few maintaining that the PrepCom does not have a mandate to make this call. “But I really hope we’ll find a way forward,” commented a veteran, pondering if a vote in plenary, for which some delegations are rumored to be gearing up for, is the ideal way to get the IGC off the ground.