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PrepCom 1

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PREPCOM 1 HIGHLIGHTS: MONDAY, 28 MARCH 2016

On Monday, 28 March, the plenary of the first session of the Preparatory Committee (PrepCom) on the elements of a draft text of an international legally binding instrument (ILBI) on the conservation and sustainable use of BBNJ convened throughout the day to address administrative matters and hear general statements.

OPENING PLENARY

Chair Eden Charles (Trinidad and Tobago) opened the session, noting the full-capacity attendance reflects the importance of the PrepCom which, following more than a decade of work, is no longer a consultative process. On behalf of UN Secretary-General Ban Ki-moon, Miguel de Serpa Soares, Under-Secretary-General for Legal Affairs and UN Legal Counsel, noted that full rooms indicate commitment, stressing that a turning point has been reached in relation to the future of the oceans. He emphasized that time is of the essence and that negotiations should be conducted in a spirit of cooperation.

Chair Charles reviewed the PrepCom's mandate, underscoring that consensus should be used in a constructive way and that elements on which consensus is not reached may be included in the recommendations to the General Assembly. He encouraged open, transparent and flexible deliberations.

ORGANIZATIONAL MATTERS: Delegates approved without amendment the provisional agenda (A/AC.287/2016/PC.1/L.1) and the programme of work (A/AC.287/2016/PC.1/L.2). Regional groups nominated two members each to the Bureau. Chair Charles introduced, and delegates agreed to appoint, a facilitator for each of the informal working groups proposed to be convened during PrepCom 1.

GENERAL STATEMENTS: Thailand, on behalf of G77/CHINA, called for "unpacking" the 2011 "package," pointing to the principle of common heritage of mankind as the basis of the new legal regime for BBNJ and to the need for capacity building for developing countries on BBNJ issues. He suggested identifying new elements for the instrument, including dispute settlement and funding mechanisms; and expressed concern about the status of the Voluntary Trust Fund, noting that wider participation is key for an inclusive process.

South Africa, on behalf of the AFRICAN GROUP, called for the common heritage principle to be applied to MGRs to promote sustainable management of biodiversity and benefit-sharing. He recalled Amb. Pardo's reflections on "intolerable injustices," where the "the strong gets stronger and the rich gets richer," underscoring that the common heritage principle is based

on the pursuit for a more equitable framework to ensure a just and resilient regime for all humanity. ALGERIA recommended addressing gaps in existing conventions on BBNJ conservation and sustainable use, together with institutional and legal gaps.

Noting that the common heritage principle and high seas freedoms are not mutually exclusive, Barbados for the Caribbean Community (CARICOM) called for a constructive, open and inclusive process; suggested a Chair's summary after each PrepCom meeting to assist countries to engage in intersessional discussions; and proposed that the PrepCom discuss additional issues including governance, compliance, dispute resolution and financial mechanisms. Lamenting a lack of funding for developing countries' participation, Nauru for PACIFIC SMALL ISLAND DEVELOPING STATES (SIDS) called attention to the link between conservation and sustainable use of the oceans and to the health and productivity of SIDS populations; and welcomed the stand-alone SDG on oceans. Papua New Guinea for the PACIFIC ISLANDS FORUM noted the region's commitment to the sustainable use and conservation of BBNJ.

JAMAICA outlined that: the PrepCom outcome should be the body of ILBI draft text; other elements include definition of terms, wide scope of application, as well as assessment, monitoring and enforcement mechanisms, with dispute settlement provisions to be addressed later in the PrepCom process; and the overarching objective is oceans protection for present and future generations in light of the SDGs and the Paris Agreement on climate change.

Drawing attention to the ILBI objectives, the European Union (EU) underscored the need to focus on substantive issues to unpack the 2011 package and address the different elements in an integral manner. MONACO emphasized: best scientific information to guide all decisions; the need for an ecologically connected MPA network; the precautionary approach; standardization and exchange of information and data, in particular on MGRs; and good governance.

Reiterating that high seas fisheries should not be part of the scope of the new ILBI, ICELAND underscored: openness, inclusiveness and transparency; the need for balance between conservation and sustainable use; and caution against reopening settled issues and undermining existing frameworks and instruments. NORWAY suggested that the ILBI: include global principles for enhanced conservation and sustainable use of BBNJ at sectoral, regional and national levels; be fully integrated into the law of the sea, without altering established rights and obligations; balance competing interests; empower regional frameworks, and provide an umbrella for sectoral ones; and avoid layers of bureaucracy.

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Emphasizing the importance of oceans for global sustainable development, food security, climate change and decent work, EL SALVADOR recalled that the General Assembly recognized that participation in the negotiations or their outcome do not affect the legal status of non-parties to UNCLOS. PERU noted that scientific research and technological progress have expanded in remote ocean areas that still need to be fully explored. COSTA RICA suggested devoting PrepCom 1 to developing a tentative list of issues to be included in the ILBI, including: governance and institutional frameworks, funding mechanism, dispute settlement, and regional and bilateral cooperation. MEXICO called for ensuring full certainty in the governance of the deep seas and for expanding the common heritage to include MGRs of ABNJ. ECUADOR called for wide ratification of the ILBI encompassing all elements of the 2011 package as a whole.

SINGAPORE considered the PrepCom a landmark in the process, cautioning against repeating the Working Group's discussions. He suggested respecting UNCLOS integrity, while dealing with complex and interrelated issues, and ensuring the widest possible acceptance of recommendations to endure the test of time. INDONESIA underscored the need for a balanced, possibly *sui generis*, system. THE FEDERATED STATES OF MICRONESIA stressed as threats for the oceans: IUU fishing, marine pollution, hazardous waste, and ocean warming and acidification; and pointed to conservation and sustainable use of BBNJ as a deep-rooted cultural obligation for her people. CABO VERDE highlighted the need for: a robust legal framework for oceans governance; a body to oversee implementation; lessons from past experience under other instruments; and the right balance between conservation and sustainable use of MGR of ABNJ. He stressed that capacity building and technology transfer are the cornerstones of the new instrument. VIET NAM proposed that the ILBI include capacity building, technology transfer, facilitation of MSR, and information-sharing mechanisms.

CHINA emphasized: the need for the ILBI not to conflict with other global and regional instruments and not to deviate from UNCLOS principles; the importance of consensus; and the need for a reasonable balance between conservation and sustainable use of BBNJ. Calling for caution in discussing the management of MGRs of BBNJ, the RUSSIAN FEDERATION objected to the inclusion of any provisions pertaining to fisheries, as they are governed by existing agreements and RFMOs; and stated that common heritage cannot apply to MGRs and that MPAs should not be permanent. CANADA called for respecting the mandates of global and regional instruments and processes, while supporting better collaboration and cooperation among them; and on MGRs, cautioned against creating disincentives for MSR, underscoring that intellectual property rights (IPRs) be addressed in the proper forum. JAPAN stressed that: the ILBI should not overlap with the mandates of RFMOs and other existing instruments; any measures restricting the high seas freedoms should be carefully considered; and the ILBI cannot regulate MSR. He also stated that MPAs are not marine reserves and should not be permanent; and suggested formulating EIA guidelines.

TONGA underscored efforts to ensure the preservation of marine ecosystems for future generations, and called for an agreed and coordinated conservation approach based on equity and fairness, without undermining progress under existing frameworks. SRI LANKA noted the importance of BBNJ conservation, capacity building and marine technology transfer, emphasizing that UNCLOS was built upon the common heritage principle and calling for the ILBI to complement UNCLOS

and other oceans-related instruments, without undermining them. NEW ZEALAND underlined: enhanced coordination and cooperation, including on information- and data-sharing, for improving conservation and sustainable use of BBNJ; the precautionary and ecosystem approaches, and the use of best scientific information; and the importance of civil society participation in this process.

BANGLADESH called for capacity building for least developed countries, highlighting the role of the private sector in this regard. VENEZUELA recommended that delegates heed the precautionary principle, and the ILBI address governance gaps on BBNJ. BRAZIL prioritized access to and equitable benefit-sharing from MGRs of ABNJ, argued that common heritage must apply to biodiversity in the Area, and called for improved coordination among organizations designating MPAs. ARGENTINA highlighted: consensus-based decisionmaking; the common heritage principle, noting that living and non-living resources should not be distinguished; and the need for a universal international body responsible for implementing the BBNJ regime.

TRINIDAD AND TOBAGO called for: an open, inclusive discussion with industry and civil society; a new institution, similar to the International Seabed Authority (ISA), to implement the ILBI, including dispute settlement and access and benefit-sharing (ABS); and governing MGRs by the common heritage principle. CHILE highlighted the role of MPAs, pointing to nationally established ones and urging the creation of MPAs through RFMOs or new, smaller institutions. INDIA underscored that: the ILBI should take into consideration international law principles such as common heritage and high seas freedoms, with MPAs not restricting existing rights; and IPR issues need to be addressed in relation to ABS from MGRs.

The US welcomed discussion of topics such as MPAs and EIAs as part of an ecosystem-based approach to address adverse impacts on BBNJ, underscoring that EIAs are an important part of international law, including UNCLOS. On MGRs, he expressed doubts on whether a benefit-sharing regime can be successfully negotiated, cautioning that it should not impede entrepreneurship, IPR practices, and innovation. He emphasized that all major activities, including fisheries, should be covered by the scope of the ILBI, for the meaningful protection of BBNJ, without undermining or duplicating existing instruments, frameworks and bodies.

IN THE CORRIDORS

The appearance of many new faces characterized the first day of the PrepCom on deep-sea biodiversity: so many, in fact, that a separate room was designated to accommodate the over-flow. With several delegations having grown in size and including higher-ranking diplomats within their folds, several participants felt from the onset that, after 10 years of informal deliberations in the context of the former Working Group on BBNJ, the new formal negotiating mode has required everyone to step up their game.

While some welcomed the crowded room as a sign of commitment to the protection of the oceans, others lamented that due to shortfalls in financial support for developing countries, not all nations are able to contribute to this crucial phase of the process. Yet others expressed hope that the frequent references in plenary to openness and transparency would bode well for the inclusion of NGOs in negotiations on a matter that many consider of great importance to the whole international community, as well as future generations.