



# Earth Negotiations Bulletin

PrepCom 1

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## PREPCOM 1 HIGHLIGHTS: TUESDAY, 29 MARCH 2016

On Tuesday, 29 March, the PrepCom plenary convened throughout the day. Gabriele Goettsche-Wanli, Director of the UN Division for Ocean Affairs and the Law of the Sea (UNDOALOS), reported on lack of contributions to date to the Special Voluntary Trust Fund established by General Assembly Resolution 69/292 to assist developing, least developed and landlocked countries' and SIDS' participation in the PrepCom. The NETHERLANDS announced a US \$200,000 contribution to the Fund for PrepCom 2.

### GENERAL STATEMENTS

IRAN recommended incorporating in the international legally binding instrument (ILBI) the common heritage principle, and using as an example the ISA structure and function. MOROCCO suggested capitalizing on the Working Group's work, formulating an outline for subsequent discussions, and holding informal intersessional meetings on issues attracting divergent views. The PHILIPPINES underscored the need to fill gaps in governance of biodiversity in areas beyond national jurisdiction (BBNJ) and avoid unilateral actions through the ILBI, and to clarify the relationship with other legal instruments and RFMOs' work concerning high seas fisheries.

AUSTRALIA expressed optimism about a balanced set of recommendations to the General Assembly, calling for: a pragmatic outcome regarding MGRs; and best-practice standards on EIAs, without undermining or duplicating regional or sectoral management efforts. SWITZERLAND noted the need for the ILBI to fill gaps and promote coherence, contributing to the CBD implementation and achievement of Aichi targets. Encouraging delegates to do their utmost to reach agreement by consensus, the REPUBLIC OF KOREA stressed that the ILBI should strike a balance between conservation and sustainable use, without undermining existing legal frameworks, and global and regional bodies.

FIJI highlighted that the ILBI should: take into account all MGRs of ABNJ; respect UNCLOS core principles, while addressing current gaps and new challenges; and prioritize capacity building and technology transfer. NEPAL underscored that landlocked developing countries (LLDCs) suffer the consequences of over-use and over-exploitation of BBNJ. PALESTINE prioritized capacity building, technology transfer, and ABS from BBNJ. Underlining that BBNJ is part of the common heritage, the DOMINICAN REPUBLIC urged considering developing countries' national capacities in discussions on MSR.

The UN Environment Programme (UNEP) called attention to, *inter alia*, relevant regional seas conventions, the Convention on Migratory Species and treaties on hazardous chemicals

affecting the marine environment globally. The CBD reported on ecologically or biologically significant marine areas (EBSAs), major stressors on BBNJ, marine spatial planning, and the Nagoya Protocol on ABS from genetic resources. The Intergovernmental Oceanographic Commission (IOC) of the UN Educational, Scientific and Cultural Organization (UNESCO) reported on relevant work on MSR, capacity development, technology transfer and global data-sharing. The Food and Agriculture Organization (FAO) pointed to international hard and soft instruments on enforcing conservation measures in ABNJ, as well as data-sharing on management measures concerning deep-sea fisheries. The International Maritime Organization (IMO) underscored his mandate on shipping and its effects on the marine environment.

IUCN emphasized as elements of the ILBI: precautionary and ecosystem approach; enhanced benefit-sharing from MGRs; identification, designation and effective management of a global MPA network; comprehensive prior EIA and strategic environmental assessment (SEA); facilitated global and regional cooperation for effective monitoring, compliance and enforcement; and institutional and financial mechanisms for participatory and effective implementation.

OCEAN CARE urged comprehensive and mandatory EIAs for all activities in ABNJ, and large MPAs to address underwater noise. Natural Resources Defense Council (NRDC) and the HIGH SEAS ALLIANCE recommended including all activities, including fisheries, in the ILBI scope. Pew Charitable Trusts (PEW) and GREENPEACE called for the inclusion in the ILBI of identification and designation mechanisms for MPAs, particularly marine reserves, for building ecosystems' resilience. WORLD OCEAN COUNCIL noted that the ocean business community can contribute practical experience, data collection and information-sharing on ocean systems.

### SCOPE OF THE ILBI

Recalling Resolution 69/292, COSTA RICA argued for a broad scope including fishing and all activities and processes with direct and indirect impacts on BBNJ, and for defining applicable terms. The G-77/CHINA noted that the scope depends on the definition of terms, including MGRs, area-based management tools and MPAs; and should address all activities that can impact on BBNJ, without undermining the scope and mandates of existing relevant bodies, instruments and frameworks.

P-SIDS called for a broad scope covering all living resources in ABNJ, cautioning against regulating the continental shelf where coastal states have rights. PAPUA NEW GUINEA noted that the definition of MGRs "goes to the heart" of the ILBI, and called for discussing how fisheries will be affected by the ILBI. Belize, for CARICOM, supported covering all BBNJ, and noted that the scope needs to be ambitious but also maintain a delicate

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balance. The FEDERATED STATES OF MICRONESIA called to address the conservation and sustainable use of BBNJ, without undermining the UN Fish Stocks Agreement (UNFSA) or the ISA mandate. JAMAICA called for including fisheries, as the ILBI should adopt an integrated approach to BBNJ management.

The EU underscored that the ILBI should implement and strengthen UNCLOS obligations, addressing regulatory gaps, and, supported by PERU, that states non-party to UNCLOS should be entitled to become parties to the ILBI, like the UNFSA. He stressed the role of civil society and other stakeholders, and the need to include international organizations like the ISA, IMO and regional seas conventions in the ILBI implementation. AUSTRALIA urged engaging collaboratively with existing instruments and bodies, without undermining their mandates. NEW ZEALAND suggested that the ILBI complement existing agreements, to ensure a comprehensive global framework, noting that excluding specific sectors such as fisheries would undermine governance coherence.

Noting that the Working Group could not reach agreement on the issue of scope, ICELAND reiterated that high seas fisheries fall outside the scope. JAPAN stressed that fisheries are addressed under the UNFSA, by RFMOs and FAO instruments. The RUSSIAN FEDERATION urged more detailed discussions on scope, focusing on “real legal gaps” and noting that fishing is not among these. With JAPAN, he suggested involving RFMOs in the PrepCom discussions. Chair Charles observed that all RFMOs have been invited to the PrepCom, but only the South East Atlantic Fisheries Organization (SEAFO) has registered.

CANADA highlighted the role of science in defining the scope, supporting the inclusion of RFMOs and other bodies with relevant expertise in further discussions. The US called for a clear and broad scope, without excluding fishing, welcoming the expertise of global fisheries instruments and RFMOs in the process. ARGENTINA underscored the need for a global approach to provide a coherent and comprehensive universal mechanism for BBNJ conservation. The AFRICAN GROUP stated that RFMOs: are often limited to a particular oceanic area; have mandates limited to a specific resource; do not address marine biodiversity in general; and have varying degrees of effectiveness. He stressed the need for a comprehensive global regime, including fisheries, to address fragmentation and lack of coordination. NORWAY, PERU and INDONESIA supported including fisheries in the ILBI. CHILE clarified that including fisheries would not modify RFMOs’ mandates, but serve to coordinate with them. He added that the ISA could, with a new, broader mandate, manage MGRs.

IUCN suggested the scope include: processes and activities under parties’ jurisdiction and control, regardless of where their effects occur; and activities related to MGRs sourced from ABNJ. She stressed that fish are part of biodiversity and cannot be excluded from the ILBI. GREENPEACE, PEW, NRDC and the HIGH SEAS ALLIANCE argued for a comprehensive ILBI, establishing a framework for cooperation and coordination between states and institutions, complementing other regimes, and addressing parties and non-parties similarly to the UNFSA.

### **GUIDING PRINCIPLES AND APPROACHES**

The EU suggested as general principles: protection and preservation of the marine environment, cooperation and coordination, precautionary and ecosystem approach, polluter pays principle, sustainable and equitable use, and transparent and open decisionmaking. MONACO pointed to: a universal and holistic ILBI, close links between conservation and sustainable use, capacity building together with effective participation and transparency in decisionmaking, and science-based and precautionary approaches.

The G-77/CHINA favored as principles: common heritage of mankind, high seas freedoms subject to the conditions set under UNCLOS, protection and preservation of the

marine environment, precautionary and ecosystem approach, transparency and public participation. The AFRICAN GROUP argued that the common heritage of mankind is both a foundational and fundamental principle of UNCLOS and cannot be derogated from. CARICOM opined that MGRs are common heritage of mankind. TRINIDAD AND TOBAGO, with MEXICO, underscored the importance of including the common heritage principle in the governance of marine resources of ABNJ. P-SIDS pointed to the: common heritage, precautionary and ecosystem approach, and decisionmaking according to best available scientific knowledge; with the FEDERATED STATES OF MICRONESIA stressing that the ILBI must be guided by legal principles ensuring integrity and effectiveness. FIJI proposed including reference to SIDS’ special circumstances and vulnerabilities. JAMAICA proposed reflecting guiding principles both in the preamble and in an operative provision of the ILBI; and explained that common heritage includes: conservation and sustainable use of all resources of ABNJ, including MGRs and MSR; inter- and intra-generational equity; and monetary and non-monetary benefit-sharing. The PHILIPPINES called for balancing different States’ interests. VENEZUELA and ALGERIA highlighted intergenerational concerns.

MEXICO, NEW ZEALAND, FIJI and AUSTRALIA referred to the international cooperation principle. NEW ZEALAND suggested also good governance, with FIJI, VENEZUELA, the PHILIPPINES and JAMAICA referring specifically to transparency and accountability. AUSTRALIA proposed referring to UNFSA Article 5 (General Principles) as a model for the ILBI. COSTA RICA proposed including also principles on: common but differentiated responsibilities; sustainable and equitable use of natural resources; availability of information; and state liability for damage to the marine environment in line with the polluter pays principle. CHILE recalled the Paris Agreement preamble on the importance of the oceans for adaptation and mitigation, and General Assembly Resolution 2749 (1970) in connection with the common heritage principle.

Opining that the discussion on principles is premature, the RUSSIAN FEDERATION opposed inclusion of the common heritage principle, and supported inclusion of the ecosystem approach when the ILBI is “more concrete.” The US stated that MGRs fall under the high seas regime, which does not provide for benefit-sharing. NORWAY proposed as principles: respect for existing instruments, by stating that the ILBI does not enter into management if other frameworks already have responsibility for it; an obligation for the ILBI parties to cooperate in other fora; and institutional efficiency and cost-effectiveness.

GREENPEACE, PEW, NRDC and the HIGH SEAS ALLIANCE highlighted: the protection and preservation of the marine environment, cooperation, science, stewardship, sustainability and equity, and good governance.

### **IN THE CORRIDORS**

To include or not to include fisheries? To nobody’s surprise, the second day of the PrepCom was dominated by this Hamletic dilemma regarding the scope of a new legally binding instrument. The same question had already haunted the Working Group on BBNJ, with the lack of consensus on this issue being pointed out, time and again, by certain countries that remained half-hearted about the need for a new treaty. Seasoned delegates, however, inferred a significant defection from the “group of the non-convicted” from the increasing number of supporters of including fisheries under the ILBI at PrepCom 1. Many thus wondered whether the question should be “how,” rather than “if,” the new treaty will address fisheries, considering the countless appeals to complement, and not undermine, existing regional management frameworks.