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PREPCOM 1 HIGHLIGHTS: WEDNESDAY, 30 MARCH 2016

On Wednesday, 30 March, the PrepCom plenary convened throughout the day to consider: MGRs, including benefit-sharing questions; area-based management tools (ABMTs), including MPAs; and EIAs.

MARINE GENETIC RESOURCES

The G-77/CHINA, AUSTRALIA and others underscored the need for defining MGRs, with FIJI highlighting that the CBD definition includes language on actual or potential use or value for humanity. The G-77/CHINA stated that: legal gaps on ABS for MGRs sourced from ABNJ allow some countries to exploit them unilaterally; common heritage is the applicable legal regime; benefit-sharing should be monetary and non-monetary, considering IPRs; and an institutional mechanism should manage ABS and ensure compliance. The AFRICAN GROUP, supported by CHILE: pointed to ambiguity in UNCLOS' narrow definition of "resources" in the Area, which excludes MGRs because of limited scientific knowledge at the time of UNCLOS drafting; and argued that such a definition does not affect the applicability of common heritage, as UNCLOS Article 136 (Common Heritage of Mankind) applies to the Area itself. VIET NAM argued that the water column and the seabed should be considered as a whole, underscoring that the Area and its resources are common heritage.

P-SIDS suggested reflecting common heritage and equity in a benefit-sharing regime, and considering synergies with the Nagoya Protocol and other relevant instruments. CARICOM suggested covering under the ILBI MGRs in the high seas and the Area, and considering: *ex situ* MGRs; ABS obligations, types of benefits and the institutional framework; and the relationship among ABS, MSR, EIAs and capacity building. JAMAICA recommended: promoting regulatory coherence through a single regime for the Area and high seas; avoiding a contractual approach to ABS; conducting MSR for the benefit of humankind; and considering Nagoya Protocol Article 10 (Global Multilateral Benefit-sharing Mechanism).

CAMEROON favored addressing in the ILBI procedures for access, information exchange, capacity building and technology transfer. The FEDERATED STATES OF MICRONESIA called for an equitable ABS regime, granting exploration rights to developed countries in exchange for payments into an ABS fund to support developing countries. TRINIDAD AND TOBAGO supported: considering under the ILBI the conservation and sustainable use of MGRs in the water column; establishing an ABS fund; and developing an IPR framework to address MGRs. SRI LANKA called for careful consideration of IPRs and countries' differing scientific capabilities. ZAMBIA called for the ILBI to support MSR by LLDCs.

BANGLADESH stated that MGRs do not respect jurisdictional boundaries, and the ILBI should encourage benefit-sharing throughout the chain of discovery, research and development (R&D), with additional benefit-sharing from commercialization. PAPUA NEW GUINEA cautioned against a definition of MGRs overlapping with fisheries or biological resources, suggesting consideration of mechanisms similar to the ISA or RFMOs to regulate access to MGRs. ARGENTINA suggested concrete norms and modalities for effective benefit-distribution. The PHILIPPINES pointed to the relevance of the Nagoya Protocol, the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGR), and ecosystem-based approaches utilized by RFMOs. PERU called attention to the ITPGR and the Pandemic Influenza Preparedness (PIP) Framework under the World Health Organization (WHO).

Referring to the ITPGR and the Nagoya Protocol as potential models, the EU called for: minimal administrative burdens and cost-effective institutions; due regard to the interest of all states and future generations; and ABS that is facilitative and conducive of research. SWITZERLAND called for a pragmatic approach to MGRs in the high seas to increase legal certainty, while maintaining the freedom of MSR. AUSTRALIA preferred an ABS model that would not restrict access to MGRs and a light approach to benefit-sharing to support conservation objectives.

INDONESIA highlighted the need to develop a pragmatic, *sui generis* regime, taking into account monetary and non-monetary benefits, and bridging the gap between common heritage and high seas freedoms. NEW ZEALAND favored encouraging R&D of MGRs of ABNJ and data- and knowledge-sharing. ICELAND expressed skepticism over suggestions that minerals and living resources be treated similarly, or that existing ABS regimes serve the needs of MGRs in ABNJ, suggesting a hybrid or alternative solution. Underlining that IPRs should be considered by the World Intellectual Property Organization (WIPO), CANADA supported a *sui generis* regime that would not provide disincentives for access. NORWAY favored a pragmatic approach promoting research and use of MGRs, and distinguishing genetic material from organisms as such.

The US: stressed that the high seas regime applies to MGRs of ABNJ; listed differences between mineral and genetic resources; and favored promoting R&D benefiting humanity without further administrative and financial burdens. JAPAN underlined that minimum access restrictions should be considered on a case-by-case basis; cautioned against including commodities in the definition of MGRs; and called for further discussions on the grounds for benefit-sharing. The RUSSIAN FEDERATION stressed that the CBD and its Nagoya Protocol regulate resources within national jurisdiction.

COSTA RICA recalled that: patents on MGRs have been issued in 31 countries, with 90% of these patents belonging to 10 technologically advanced countries and representing 10%

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of coastal areas globally; and suggested extending the ISA mandate to cover MGRs, to develop codes for exploitation and exploration. MEXICO proposed: a pragmatic approach to benefit-sharing at different steps of R&D and commercialization; international cooperation for MSR, marine technology transfer and information-sharing on scientific programmes; and the extension of the ISA mandate. ALGERIA called for a pragmatic approach based on common heritage, facilitating access and clarity of procedures, and focused on non-monetary benefits, including technology transfer and capacity building.

IUCN invited delegates to explore “how, not if” enhanced benefit-sharing can be based on scientific best practices. WWF supported a *sui generis* regime recognizing that MGRs “know no boundaries” within or beyond national jurisdiction, and respecting freedom of MSR, as well as UNCLOS conservation obligations.

AREA-BASED MANAGEMENT

The G-77/CHINA called for a global institutional mechanism to coordinate ABMTs, on the basis of a science-based approach, precaution, transparency and accountability, without undermining existing MPAs. Noting that existing regional and sectoral bodies have limited mandates, CARICOM called for the ILBI to: ensure cooperation, funding and compliance regarding MPA management; multilaterally monitor MPAs; and make available research results on MPAs, while notifying and reporting on experimental activities. The AFRICAN GROUP suggested that the ILBI provide a more unified approach to MPA establishment. P-SIDS recommended effective management, monitoring, control, financing and capacity building concerning MPA systems.

The EU recommended: the ILBI create a mechanism to establish and manage a global MPA network; a list of general criteria for MPA identification; recognition of existing MPAs fulfilling the criteria, through a simplified procedure; and relevant organizations be responsible for management measures and report to an overarching mechanism that will review effectiveness of MPAs and their management plans. SWITZERLAND supported building upon tools from other bodies, such as IMO, RFMOs, international shipping associations and NGOs, adding that EBSAs should also be considered. MONACO highlighted the need to prioritize areas for protection, adopt standards on permanence and conservation goals, as well as a framework and criteria for MPA establishment, monitoring and control, and stakeholder participation. NEW ZEALAND expressed concern over the lack of an overarching framework for MPAs in ABNJ, calling for developing common understanding of ABMTs.

The RUSSIAN FEDERATION stated that: a universal standard for MPA establishment is not possible; MPAs should be reconsidered when issues are resolved; and rights over the outer continental shelf should be respected when establishing MPAs. ICELAND expressed skepticism over the need for a global body to designate MPAs in the high seas. NORWAY called attention to the cost-effectiveness of relying on existing structures, such as IMO, RFMOs and regional sea organizations, rather than establishing a new structure. JAPAN noted discussions should also focus on ways to decide the location and range of MPAs, and monitoring.

The US favored MPAs that are science-based and work in concert with other ABMTs. AUSTRALIA cautioned against ABMTs that require global management and review, or that duplicate existing bodies’ efforts. CHINA stressed that MPAs should balance conservation and sustainable use, without compromising coastal states’ activities on the continental shelf; and opposed a one-size-fits-all approach to ABMTs. CANADA emphasized best available science in determining MPAs, as well as the precautionary approach.

The FEDERATED STATES OF MICRONESIA recommended: avoiding disproportionate burdens on coastal states, especially for measures regulating living resources that are crucial for livelihoods in developing countries and SIDS; and, with TRINIDAD AND TOBAGO, creating or identifying a permanent scientific committee to inform the placement, character and scope of ABMTs. PAPUA NEW GUINEA argued that MPAs are to be defined against current practices, such as on vulnerable marine ecosystems (VMEs). ARGENTINA emphasized the need for a coherent mechanism going beyond merely complementing existing mechanisms. ALGERIA stressed that ABMTs require an institutional framework for standardizing criteria. COSTA RICA proposed that the ILBI include a list of scientific criteria for MPA establishment and a global mechanism to monitor, review and ensure compliance. The PHILIPPINES called for provisions on Particularly Sensitive Sea Areas (PSSAs), EBSAs and RFMOs to avoid overlapping mandates and ensure coordination and monitoring. BRAZIL called attention to unregulated activities in the high seas.

IUCN, PEW, GREENPEACE and NRDC urged for the ILBI to require the identification, designation and effective management of a global MPA network, with IUCN calling for binding principles, objectives and obligations for states and competent organizations to adopt ABMTs.

ENVIRONMENTAL IMPACT ASSESSMENTS

The G-77/CHINA called for the ILBI to develop a definition of EIA, noting the need to reflect on the nature of activities to be assessed, and optimize assessments giving due consideration to all relevant stakeholders. The AFRICAN GROUP called for the ILBI to address governance mechanisms for EIA, including a process for assessing previously unexamined activities and their impacts in ABNJ. CARICOM lamented the lack of global requirements or frameworks for cumulative EIAs or SEAs for ABNJ, suggesting that the ILBI address: thresholds for activities triggering EIAs; SEAs’ role and use; and monitoring mechanisms. P-SIDS called for integrating EIAs in approval processes of extractive activities, coherence, transparency, information sharing, and provisions on how to conduct and evaluate assessments. The FEDERATED STATES OF MICRONESIA suggested that the ILBI establish a fund to respond to pollution. JAMAICA and TRINIDAD AND TOBAGO recommended that the ILBI establish a competent authority to review and monitor implementation of relevant obligations.

The EU called attention to the information that EIAs and SEAs can provide for designating and managing MPAs; and noted that the ILBI should establish screening thresholds and a follow-up procedure for completed assessments. MONACO highlighted cumulative effects, SEAs and long-term strategies, EIA thresholds, stakeholder participation, monitoring, and independent and publicly available decisions. INDONESIA suggested a mechanism for addressing transboundary impacts.

IN THE CORRIDORS

As the PrepCom collegially got down to business on the different elements of the 2011 “package,” BBNJ veterans confirmed their initial impressions that the tone is more constructive and the exchanges more detailed than they were in the Working Group: the proponents of a new instrument are offering a host of specific ideas, and those less enthusiastic are, on the whole, constructively identifying challenges and areas that require further preliminary exploration. Looking forward, speculation was rife on the possible dynamics of the “informal working groups” scheduled to start on day 4, with some hopeful that this novel setting will maintain the current momentum.