

PREPCOM 3 HIGHLIGHTS: MONDAY, 3 APRIL 2017

On Monday, 3 April, the informal working group on capacity building and technology transfer (CB&TT) met in the morning, followed by the informal working group on cross-cutting issues, facilitated by Chair Duarte.

INFORMAL WORKING GROUP ON CB&TT

On listing specific capacity-building activities, the EU stressed the need to be flexible and focus on a broad framework for effective CB&TT, with COSTA RICA saying the list should be non-exhaustive and could be included in an annex.

MODALITIES: The INTERGOVERNMENTAL OCEANOGRAPHIC COMMISSION (IOC) reported on its Guidelines on technology transfer, the Ocean Biogeographic Information System (OBIS), as well as projects, regional training and research centers, regional centers of excellence, and courses designed to facilitate CB&TT. FAO reported on the ABNJ capacity project, regional ABNJ leaders' fellowship programmes and communities of practice in key ABNJ issues. UN ENVIRONMENT described projects relevant to ABNJ, focusing on CB&TT.

COSTA RICA and FIJI noted the usefulness of activities of institutions other than the IOC, with ARGENTINA stressing the importance of CB&TT modalities for specific elements of the package, like MGRs and EIAs. CANADA prioritized identifying institutional needs under the international legally binding instrument (ILBI) before discussing whether existing arrangements can fulfill these needs.

Clearinghouse: The IOC acknowledged that the clearinghouse mechanism (CHM) foreseen under the IOC Guidelines is not fully operational, stressing the need to partner with other organizations. The AFRICAN GROUP and CARICOM proposed developing the IOC's CHM modalities to serve the ILBI. CARICOM favored a network of CHMs and a one-stop shop, calling on the IOC to advise on whether their current structures could be adapted to the ILBI's needs.

JAPAN, the US and PERU requested the IOC to produce a report on CB&TT, especially on the CHM, for PrepCom's consideration. CHILE highlighted that the IOC produced a report on its capacity-building development strategy in 2015. The AFRICAN GROUP said that support for a report should be contingent on it being ready by PrepCom 4 and focused on the CHM, including the reasons for it not being fully operational.

Stressing the need for political will to operationalize a CHM, the EU called on the PrepCom to define the role of the CHM under the ILBI, including what information it could cover. NORWAY favored a regional approach, with FIJI supporting regional centers as established by UNCLOS Article 276 (establishment of regional centers) serving as the CHM, arguing that they would be more

responsive to national needs. The EU favored further exploring the PSIDS proposal for a central CHM linked to regional ones, as well as an inventory and gap assessment of existing mechanisms. IUCN suggested a "data ambassador" to ensure the CHM is responsive to needs, and gathering the most relevant, up-to-date information.

Linkage with MGRs: The PHILIPPINES called for capacity building to be linked to ABS, taking into account, *inter alia*, the special needs of adjacent states, public and private stakeholder participation, defined performance indicators, and monitoring and evaluation systems. COSTA RICA suggested a section on ABS and a CHM as a virtual mechanism to share CB&TT-related information made available by parties.

INFORMAL WORKING GROUP ON CROSS-CUTTING ISSUES

SCOPE: The G-77/CHINA called for the ILBI to regulate activities impacting BBNJ. ARGENTINA, opposed by NORWAY, proposed including activities occurring within national jurisdiction but having impacts in ABNJ. The AFRICAN GROUP and MEXICO suggested focusing on implementation gaps by addressing activities not regulated by other instruments.

ICELAND favored an ILBI regulating activities in ABNJ, reaffirming parties' national jurisdiction over the continental shelf. The AFRICAN GROUP, the PHILIPPINES, TONGA and others recommended that the ILBI does not apply to the extended continental shelf. The EU noted that the ILBI's geographic scope covers the high seas and the Area as defined under UNCLOS. COSTA RICA suggested including the Area and the water column in ABNJ. SOUTH AFRICA, SINGAPORE and COLOMBIA stressed that all activities in ABNJ should be within the ILBI's scope and should be regulated. CHINA said the ILBI should only cover activities related to the conservation and sustainable use of BBNJ. VIET NAM supported including UNCLOS non-parties. SENEGAL welcomed the participation of civil society organizations. MAURITIUS, supported by the HIGH SEAS ALLIANCE and others, called for the ILBI to regulate activities not specifically covered under UNCLOS, for instance MPA establishment.

RELATIONSHIPS WITH OTHER INSTRUMENTS: Many called for not undermining existing frameworks or prejudicing the rights and duties of states under UNCLOS. CARICOM argued that the ILBI should build on UNCLOS, support and strengthen existing arrangements, and facilitate engagement at the regional level. CARICOM, the EU and others called for including a provision, similar to Article 4 (relationship with UNCLOS) of the UN Fish Stocks Agreement (UNFSA). NORWAY also drew attention to UNFSA Article 44 (Relation to Other Agreements). AUSTRALIA supported the approach to cooperation under the Fish Stocks Agreement. IRAN called for respecting UNCLOS non-parties' rights.

JAPAN emphasized that the ILBI should: consider conservation and sustainable use of BBNJ holistically, developing policy guidelines on area-based management tools and environmental impact assessments for consideration by other instruments, which was supported by AUSTRALIA; be “on an equal footing” with other instruments, without assessing their effectiveness or instructing them; defer the adoption of management measures to relevant regional or sectoral organizations, which will remain accountable to their institutional arrangements and share the outcome of their deliberations with the ILBI structure; and not impose obligations on third parties. He suggested, with NEW ZEALAND, setting up new regional management organizations in the absence of frameworks for adopting conservation and management measures, with PSIDS also supporting global decision-making and implementation.

The EU recommended that the ILBI does not manage issues under the purview of existing mechanisms. NEW ZEALAND stated that the ILBI should provide overall guidance to states, relying on existing mandates within regional and sectoral bodies for the ILBI implementation. The AFRICAN GROUP cautioned against prioritizing regional arrangements over a global mechanism, noting that if no gaps existed, there would have been no need to establish the PrepCom.

PSIDS stated that the ILBI can provide complementary arrangements, focusing on existing gaps and underscoring that existing regional, subregional and sectoral bodies’ efforts should not be undermined by lowering existing standards. SOUTH AFRICA pointed to: governance and regulatory gaps; limited integration, coherence, collaboration and cooperation; and the varying degrees of effectiveness of different regional bodies.

SINGAPORE argued that the relationship should not be hierarchical and involve no reporting requirements. The US opposed an oversight mechanism for the review of MPAs, preferring that the ILBI work with the regional and sectoral bodies to fulfill their mandates. IUCN argued for global-level cooperation, outlining the need for a COP and a secretariat under the ILBI for monitoring and review, CB&TT coordination, outreach and stakeholder involvement, and long-term planning.

Cautioning against leaving implementation to regional bodies with limited geographical mandate and limited ability to regulate multiple activities, the HIGH SEAS ALLIANCE emphasized that “not undermining” existing instruments and frameworks should be interpreted as not reducing their effectiveness, but enhancing and complementing them, to mainstream biodiversity into regional and sectoral organizations. WWF underscored the need to give effect to UNCLOS obligations to apply international minimum environmental standards, such as under the CBD, the Convention on the Conservation of Migratory Species and respective COP decisions.

INSTITUTIONAL ARRANGEMENTS: The G-77/CHINA, supported by the HIGH SEAS ALLIANCE, proposed: a secretariat; a decision-making body, like a COP; a scientific and technical body, with an advisory component; a CHM; and an ABS mechanism for MGRs. The AFRICAN GROUP pointed to: a combination of existing and new institutions, for cost efficiency; a compliance mechanism, as a science-based, publicly available and inclusive review, peer-review or dispute-settlement mechanism; and an ABS mechanism and a CHM as drivers for CB&TT, noting the ISA’s potential role and the opportunity for UNDOALOS to assume secretariat functions.

AOSIS recommended crafting institutional arrangements to ensure equitable participation in the ILBI’s implementation, guided by best practices and lessons learned in existing mechanisms, under the principles of efficiency, transparency and ease of access, without disproportionate burdens on developing countries.

PSIDS envisaged: a global decision-making and executive body; implementation at the regional level, establishing regional and subregional expert committees; integration of traditional knowledge; and a global-level compliance mechanism. The FSM called for: a contingency fund to address marine pollution and the destruction of the marine environment; agreement on the peaceful use of BBNJ; and ILBI provisions on climate change impacts, particularly concerning SIDS.

COSTA RICA favored a CHM, CB&TT and benefit-sharing mechanisms, a scientific body elected for six to eight years by a COP, and a secretariat, noting that UNDOALOS could play this role. MEXICO supported: a COP, making recommendations on improving the ILBI, developing guidelines for the ILBI implementation, approving the establishment of MPAs, promoting coordination and cooperation with other organizations, preparing work programmes, and being open to non-parties and NGOs; a technical and scientific body, considering also legal and financial issues; and a secretariat facilitating communications between states. CARICOM proposed a decision-making body with a scientific forum and a CHM, and highlighted the ISA’s role.

MONACO preferred a decision-making body providing overarching guidance, a scientific body responsible for considering ABMT establishment, and a cost-effective secretariat enhancing communications. NEW ZEALAND supported a hybrid approach with: a COP at the global level, regional and sectoral bodies reporting on implementation, and national entities implementing the ILBI. The EU called for granting observer status to relevant organizations in the ILBI decision-making body and encouraging non-parties’ involvement in attaining the ILBI objectives; and highlighted cost effectiveness, using existing mechanisms and establishing new institutions only when necessary.

CANADA opposed creating a “global oversight function,” as it would undermine other instruments. NORWAY cautioned against: duplicating existing initiatives, preferring to make current arrangements, in particular regional seas conventions and RFMOs, more effective and facilitating cooperation and cooperation; and creating a “supra-national instrument,” arguing that holding other bodies and instruments accountable to ILBI structures could be seen as undermining them. The RUSSIAN FEDERATION opposed establishing a supra-national authority, adding that it would be impractical to create a global scientific forum. UN ENVIRONMENT reported on an ongoing study of the operations of five regional seas conventions.

IN THE CORRIDORS

Following the weekend, delegates dipped their toes once more into the choppy waters of cross-cutting issues. The notion of relationships shaped the existential questions around a new instrument: will the implementing agreement be placed above or at the same level as regional and sectoral mechanisms? And will the ILBI serve to manage, oversee, coordinate efforts on and/or mainstream marine biodiversity in ABNJ? “These sum up the main challenges to making substantive progress across all elements of an ILBI,” commented a seasoned observer, experiencing a strong sense of déjà vu stemming from discussions at previous sessions. “Could we be running out of time to make progress on this?” wondered another. A veteran, however, felt more optimistic after hearing new, helpful suggestions coming also from delegations that are still warming up to the idea of an ILBI. At the end of the day, a number of participants pointed to the expected intervention of the UN General Assembly President at the start of Tuesday’s deliberations as an opportunity to inject the process with a renewed sense of urgency.