

**Intervention by Tuvalu on behalf of Pacific Small Islands Developing States**  
**IGC2 – April 3, 2019**

**6. Capacity-building and the transfer of marine technology**

Thank you Madam Facilitator, PSIDS aligns ourselves with the views shared by G77 and China and those shared by AOSIS. On the chapeau provision, PSIDS prefer Option I but would like to propose some modifications to paragraph (1) and (2) especially to reflect the need to build a strong foundation for a CB+TMT mechanism which ensures that SIDS can benefit from the BBNJ instrument.

PSIDS finds that the paragraphs as provided limit the mandatory nature of CB+TMT and do not include the special circumstances of SIDS. In paragraph (1) we prefer some modifications be made to replace the word “promote” with “ensure” or “facilitate” and perhaps the incorporation of “SIDS” into this paragraph.

In Paragraph (2), PSIDS find value here because of its obligatory nature, however note the limited scope in highlighting that the provision of assistance on a multilateral basis. With your indulgence Madam Facilitator, we suggest the following amendment that multilateral basis be deleted from subparagraph (2) so that it reads ‘(2) Capacity-building and the transfer of marine technology shall be provided to assist developing countries in particular SIDS and LDCs in achieving the objectives of this instrument.’

**6.1 Objectives of capacity-building and the transfer of marine technology**

**[General objectives and principles]**

In 6.1, sub-section on General objectives and principles, we envision that this will be discussed more elaborately in the cross-cutting session and note its placement in this section. The PSIDS have argued for a special case of SIDS in the general objectives and principles of this instrument and we see the same for the special circumstance of SIDS to be reflected in this section as well.

On the Options provided, PSIDS like Option I and Option II to be merged with some modifications, for instance:

Under Option I paragraph (1)(d), the sentence as it stands seems to set out a rather aspirational aim of "promoting and encouraging" rather than "ensuring" access to technology. So PSIDS would like to propose to make that modification here.

In Paragraph (2), PSIDS prefer Option A because the wording set out in it for instance "....undertake to provide and/or facilitate...." may prove a better option in ensuring CB+TMT.

**[Specific objectives]**

Under the sub-section on specific objectives in page 45, PSIDS sees value in Option I, but proposed modification to specifically enumerate SIDS and LDCs. For instance, in paragraph (3) which reads “Ensuring that developing countries have: we would like to insert the words in particular SIDS and LDCs. So with consideration of the modifications, the revised sentence in Paragraph (3) should read as follow: “Ensuring that developing countries in particular SIDS and LDCs have:

***[Categories of States and special requirements of developing countries]***

Under the sub-section of categories of states and special requirements of developing countries in page 46 to 47.

In paragraph (1), we note that the chapeau are placing all the categories of States therein under a single chapeau and we would like to propose some modification here. Our preference to the reference of SIDS is to add the special case of SIDS and LDCs. By doing so, we are proposing some modification to paragraph (1) to insert ... ‘*the diverse needs and challenges of developing countries in particular to:*’ We propose to delete sub-paragraph c and g but on sub-paragraph (g) we want to seek more clarification on what does ‘Environmentally challenged and vulnerable states means.

*On sub-paragraph e, we want to add ‘special circumstances of’ in front of small islands developing states. So the subparagraph (e) will read as follow: (e) special circumstances of small island developing states;*

In paragraph (2), PSIDS prefer Option I with preference of merging Option B and Option C. PSIDS sees value in prioritising small island developing States in any capacity-building and transfer of marine technology given the special circumstances of small island developing States.

**Reactions**

Madam Facilitator, just wish to make some reaction remarks given some of the positions which have shared by other delegates in the earlier session, with your indulgence, we wish share some comments in relation to IPR as in under Section 6.2, sub-section on Modalities, in Paragraph 8 and the why Option C is the preferable choice for PSIDS. This will be shared on PaperSmart for the reference of all delegates.

*The following are the comments on that particular Paragraph:*

Madam Facilitator, in relation to Paragraph 8 on Section 6.2, on sub-section Modalities, in Paragraph 8 in relation to IPR, we wish to share that bearing in mind that large parts of the world are in effect excluded from participating in the development of marine technology, it seems very likely that intellectual property protected technologies will be monopolised by developed countries, and perhaps only by the few developed countries that have embarked on MSR in earnest; making the rest of the world passive consumers of technology. Poorer

nations, do not have the capacity now or in the foreseeable future to participate and benefit from scientific research. LDCs in particular are not even obligated to implement the TRIPs agreement and domestic IP laws until 2021.

And yet the need to access technology permeates every aspect of our four themes including developing the right tools and conducting EIAs, dealing with climate change and developing climate resilience. Developing country positions on intellectual property rights are supported by at least the following:

- .The Human Right to Science – Art 15 (International Convention on Economic Social and Cultural Rights) which aims to raise material and spiritual standards of living of all members of society, both for individual emancipation and collective economic and social progress;
- Equity embedded in Art 143 UNCLOS (which demands that MSR benefit of mankind as a whole);
- Art 241 that says MSR will not form the basis of legal claims to any part of marine resources (which has to mean MGRs and technologies developed directly from those MGRs)
- The development agenda of the UNSDGs
- The interaction between the human right to science and its impact on the enjoyment of other human rights such as the rights to food and health, and therefore the realisation of SDG 2 (hunger) and 3 (health and well-being).
- In addition, the right to science contributes to ‘[protecting] and [enabling] each person to develop his or her capacities for education and learning, to form enduring relationships with others, to take equal part in political, social and cultural life and to work without fear of discrimination.’ It therefore contributes to the implementation of SDGs 4 (education), 8 (decent work) and 10 (inequality).

Contrast this with a private property driven regime premised on the notion of exclusive, monopoly rights to innovations in marine technology, developed from Areas Beyond National Jurisdiction, using resources that are part of the common heritage of mankind. It is very difficult to see such monopolies on technology (which is essentially what IPRs give) as anything other than an imposition on resources governed by the CHM. Art 143 in particular and its stricture that marine scientific research be for the ‘benefit of mankind as a whole’ behoves us to find a balanced solution.

Let’s look to the good example provided by the latest international treaty on IP – the Marrakesh Treaty that allows countries to institute an limitation or exception in copyright laws to facilitate books to be converted into a format that is accessible to people who are visually impaired. This removes barriers faced by persons with visual impairments from accessing published works, ending a book famine for people with such disabilities, when less than 5% of all books ever published in the world were available in formats that could be accessed by the visually impaired.

That process, like the one we are contemplating here was driven by the need to achieve ‘equal opportunities including the freedom to seek, receive and impart information and ideas of all

kinds on an equal basis with others, including through all forms of communication of their choice, their enjoyment of the right to education, and the opportunity to conduct research and to share scientific progress and its benefits' (From the preamble to Marrakesh).

There are lessons in the way the world came together then, for us now, as we try to tackle an impending 'marine technology famine'. Acknowledging that IPRs are a key driver of economic growth in many developed countries, I want to suggest an alternate text based on specific, limited limitation on IPRs to aid the transfer of technology to developing and least developed countries. (It explains Option C under sub para 8, but does so with new text that hopefully gives us more to discuss)

***IPRs related to the resources of the ABNJ, shall be subject to specific limitations in furtherance of capacity building and technology transfer related to marine technologies.***

Contracting parties shall provide in their national laws for a specific limitation or exception to the right to use, manufacture and sell (in the case of patent laws); and a limitation to the rights of reproduction, the right of distribution and the right of making available to the public (in the case of copyright laws) to facilitate capacity building and technology transfer.

These could be automatic limitations (copyright) or subject to specific nonexclusive licensing terms (patents).

These limitations or exceptions could be used in a time-limited way – granting LDCs and SIDS a longer period to benefit from these limitations than other developing countries taking into account their special circumstances.

These could be worked on inter-sessionally and by delegates coming together to put forth broad-principles based proposals on appropriate non-exclusive licensing terms, drawing for instance on the WIPO's technology licensing training, or the OECD's guidelines on licensing of genetic inventions. We urge delegations to explore if this new text provides aspects they may be able to support.