

Preliminary Comments

**by the Islamic Republic of Iran in relation with the draft documents and notes
presented to the First Session of the BBNJ Agreement Preparatory Commission**

General Comments

The history of the process of elaboration of the BBNJ Agreement attests to the crucial role of developing countries in the finalization and adoption of the Agreement. The fact that the Agreement as well as relevant resolutions including resolution A/RES/78/272 establishing the Preparatory Commission have paid particular attention to the developing countries should continue to inspire and guide the discussion of the Preparatory Commission processes.

As a general approach and in principle, the Commission should take into account in the special and self-identified interests, needs, challenges and priorities of developing countries including in the arrangement with GEF and Clearing-House Mechanism. Such approach conforms with the provisions of the BBNJ Agreement and its very letter and spirit. Also, arrangements need to ensure equitable representation of developing countries in various processes and mechanisms including in the bureau of the Conference and the subsidiary bodies as well as in the secretariat that would in turn require due attention to underrepresented and unrepresented developing States in future. In the same vein, similar observations should also be applied when considering, *inter alia*, the Terms of Reference in the Access and Benefit-Sharing Committee, Capacity-Building and Transfer of Marine Technology Committee, Finance Committee, Implementation and Compliance Committee; and Scientific and Technical Body.

As has been reiterated in the preamble of the Agreement, provision of support to developing States through capacity-building and the development and transfer of marine technology are essential elements for the attainment of the objectives of the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. Promotion of international cooperation in marine scientific research and in the development and transfer of marine technology are among the important elements within the Agreement. In light of this and given the fact that these essential elements have been addressed in various provisions of the Agreement, appropriate consideration should also be given to this matter with a view to ensuring enhanced and expedited transfer of technology and assistance to developing countries, upon their request, in implementing the Agreement while addressing the challenges that such countries face in accessing these technologies and assistance.

Arrangement for the Secretariat

Regarding the Arrangement for the secretariat, while we concur with the fact that part of the parcel thereof should be dedicated to the privileges and immunities of officials and experts of the secretariat to ensure their efficient performance of functions, it is also imperative to have due regard to the privileges and immunities of representatives of States participating in the proceedings related to the Agreement and its Conference of Parties.

Additionally, obligations of the host state for facilitating the presence and participation of representatives including granting visas required on an equal basis, without delay and without charge should also be addressed. Such matters have been well-established under relevant international law and constitute as rudimentary requisite to safeguard and ensure independent exercise of functions of representatives. It is acknowledged that establishing a standing channel and framework within the Conference to advise the host state on pertinent matters would be of practical value.

As to the issues surrounding the legal capacity of the secretariat, it seems that all facets of conferring upon the secretariat specific capacities need to be thoroughly examined so as to decide whether there would be a need to address this matter in the arrangements. In any event, if the Conference deemed it appropriate to address this matter *stricto sensu*, the requirement for approval of the Conference should also be considered, as appropriate. This matter needs further and in-depth consideration. Similarly, as regards the relation of the secretariat with the United Nations, more information should be provided on the part of the Secretariat to facilitate discussions and consideration of the utility of a standalone secretariat linked to or otherwise administered by the United Nations.

While specific areas for cooperation and the forms that the arrangements envisaged under Article 50(4)(d) of the Agreement could be considered by the Conference of Parties, it is noted that in the event of such determination by the Conference, the arrangement would still be subject to the approval by the Conference as per the abovementioned provisions on a case by case basis, consequently, these provisions of the document should not be considered as *ex ante* approval by the Conference. We believe that the mandates of the secretariat need to be addressed in a balanced manner. For example, Article 50(4)(f) stipulates that the secretariat shall also “provide assistance with the implementation of ...(the) agreement”; further discussions could be made on the ways and means that the secretariat could assist Parties, upon their request, in the implementation of the Agreement.

Rules of Procedure

The Rules of Procedure should primarily aim to facilitate the conduct of business of the Conference of Parties providing for legal clarity and certainty. While we understand that the draft rules of procedure have relied mostly on that of similar forums and see merits in benefiting from past experiences and lessons of various relevant frameworks, whenever difficulty and ambiguity arises, improvement could be made, as appropriate and necessary. Legal certainty necessitates the determination of the rules of procedures for the extraordinary meetings of the Conference, in this respect, similar to relevant frameworks, the rules of procedure of ordinary meetings could be applied, *mutatis mutandis*, to the former.

Contending and conflicting rules for various frameworks within the Conference might impede the smooth flow of work and may result in a situation of uncertainty wherein prevailing rules could not be determined appropriately. Hence, questions of consistency and predictability among various processes of the Conference need to be addressed, to the extent possible and as required for the relevant context. This is without prejudice to the need to address specificities of each body where required either in the form of rules or arrangements. Regarding the participation of observers, it is essential to distinguish as between non-party States and stakeholders including when it comes to the question of status. Such distinction does not prejudice the participation of various stakeholders in the Conference in accordance with the Agreement rather arises from the very status conferred upon States under international law.

It is noted that the secretariat could prepare the provisional agenda of the Conference meetings in agreement with the President of the Conference, discussions could be made whether it would be of utility to also involve the bureau on this matter particularly given that the bureau would represent a wider geographical area thereby better corresponding to the respective views of regional groups constituency and finally ensuring a more inclusive process. Following the established practice and provision of rules of various Conferences, at each session of the Conference of Parties, the provisional agenda should be submitted to the Conference for consideration and approval as soon as possible after the opening of the session.

At the present stage, we remain circumspect regarding entitling the chair of a subsidiary body the right to vote; we believe that the critical task that chairs of subsidiary bodies will be entrusted with, demand effective independent chairmanship assuring all States that irrespective of the preferences of chair, the process would be led independently and on the basis of good faith. This is also consistent with the long-established practice of various international frameworks such as commissions and committees within the United Nations.

We highlight the specific attention of the Agreement to publicity of the works of the Conference and the regard made as to this topic in the draft documents; to that end, the practice of making provisional agenda of meeting of the Conference available on the official website of the Conference should continue.

Clearing- House Mechanism

Pursuant to article 51(5), in the management of the Clearing-House mechanism, the special circumstances of developing States Parties are to be fully recognized. While we welcome the consideration of this matter in the respective draft, amongst others, in addressing user-friendliness of the platform and accessibility via internet, as well as financial support mechanism and capacity-building workshops, we opine that the needs of developing countries could be addressed in a broader scope so as to delineate specific needs and special circumstances of developing States in the area of technical assistance and capacity building.

Relevant to this topic we would like to refer to the very mandate of the said Mechanism in facilitating international cooperation and collaboration, including scientific and technical cooperation and collaboration. These mandates could be seen in tandem and complementarily. Given that in accordance with 51(4) of the Agreement, the secretariat shall manage the Mechanism, further consideration may be made as to duties and mandates of the secretariat specifically with regard to the Mechanism including in facilitating international cooperation and addressing related challenges.

Arrangement with GEF

The funding mechanism under article 52 of the Agreement is responsible to assist developing States Parties in implementing the Agreement, including through funding in support of capacity-building and the transfer of marine technology. Pursuant to the mentioned article, it also includes a voluntary trust fund established by the Conference of the Parties to facilitate the participation of representatives of developing States Parties in the meetings of the bodies established under this Agreement. As two important duties of the funding mechanism, it is similarly important to analyze how the Conference could promote effective implementation of these provisions. As stipulated in article 52(12) of the Agreement, the eligibility to access to funding thereunder is open to developing Parties on the basis of needs. The concept of eligibility in the Agreement should be taken into account as a means to consider the specific self-identified needs of developing States Parties and should not be construed as to exclude such States Parties from efficient access to the funding.

The Islamic Republic of Iran reserves the right to provide further comments, observations, and proposals on the draft documents and notes related to the work of the BBNJ Preparatory Commission as well as on matters that have not been addressed in the said documents and notes.
