

SUMMARY OF THE THIRD SESSION OF THE PREPARATORY COMMITTEE ON MARINE BIODIVERSITY BEYOND AREAS OF NATIONAL JURISDICTION: 27 MARCH – 7 APRIL 2017

The third session of the Preparatory Committee (PrepCom) on the elements of a draft text of an international legally binding instrument (ILBI) under the UN Convention on the Law of the Sea (UNCLOS) on the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction (BBNJ) began on Monday, 27 March 2017, at UN Headquarters in New York. During the two-week session delegates met in informal working groups and in plenary to consider: marine genetic resources, including questions on benefit-sharing; measures such as area-based management tools, including marine protected areas; environmental impact assessments; capacity building and marine technology transfer; and cross-cutting issues, such as the scope of an ILBI, its relationship with other instruments, and its institutional arrangements.

PrepCom 3 continued the constructive exchange of increasingly detailed proposals on the possible elements of the ILBI. Largely seen as a positive step forward, PrepCom 3 concluded with delegations requesting the preparation of an updated Chair's non-paper structuring and streamlining submissions, as well as draft substantive recommendations for consideration by PrepCom 4 in July 2017, which is expected to recommend to the General Assembly whether to convene an intergovernmental conference to finalize negotiations of an ILBI.

A BRIEF HISTORY OF MARINE BIODIVERSITY BEYOND AREAS OF NATIONAL JURISDICTION

The conservation and sustainable use of BBNJ is increasingly attracting international attention, as scientific information, albeit insufficient, reveals the richness and vulnerability of such biodiversity, particularly in seamounts, hydrothermal vents, sponges and cold-water corals, while concerns grow about the increasing anthropogenic pressure posed by existing and emerging activities, such as fishing, mining and bioprospecting in the deep sea.

UNCLOS, which entered into force on 16 November 1994, sets forth the rights and obligations of states regarding the use of the oceans, their resources, and the protection of the marine and coastal environment. Although UNCLOS does not refer expressly to marine biodiversity, it is commonly regarded as establishing the legal framework for all activities in the oceans. The Convention on Biological Diversity (CBD), which entered into force on 29 December 1993, defines biodiversity and aims

to promote its conservation, the sustainable use of its components, and the fair and equitable sharing of the benefits arising from the use of genetic resources. In areas beyond national jurisdiction (ABNJ), the Convention applies to processes and activities carried out under the jurisdiction or control of its parties. The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization, which entered into force on 12 October 2014, applies to genetic resources within the scope of CBD Article 15 (Access to Genetic Resources) and to traditional knowledge associated with genetic resources within the scope of the Convention.

59TH SESSION OF THE GENERAL ASSEMBLY: In resolution 59/24, the General Assembly established an *ad hoc* open-ended informal working group to study issues relating to the conservation and sustainable use of BBNJ (hereinafter, the Working Group), and called upon states and international organizations to urgently take action to address, in accordance with international law, destructive practices that have adverse impacts on marine biodiversity and ecosystems.

FIRST TO THIRD MEETINGS OF THE WORKING GROUP: The Working Group met three times between 2006 and 2010 (13-17 February 2006, 28 April - 2 May 2008 and 1-5 February 2010, New York) to exchange views on institutional coordination, the need for short-term measures to address illegal, unregulated and unreported fishing and destructive fishing practices, marine genetic resources (MGRs), marine scientific

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research (MSR) on marine biodiversity, marine protected areas (MPAs), and environmental impact assessments (EIAs).

FOURTH MEETING OF THE WORKING GROUP: The fourth meeting of the Working Group (31 May - 3 June 2011, New York) adopted, by consensus, a set of recommendations to initiate a process on the legal framework for the conservation and sustainable use of BBNJ, by identifying gaps and ways forward, including through the implementation of existing instruments and the possible development of a multilateral agreement under UNCLOS. The recommendations also include a “package” of issues to be addressed as a whole in this process, namely: MGRs, including questions on benefit-sharing; measures such as EIAs and area-based management tools (ABMTs), including MPAs; and capacity building and marine technology transfer (CB&TT).

FIFTH MEETING OF THE WORKING GROUP: The fifth meeting of the Working Group (7-11 May 2012, New York) recommended that the General Assembly task it to continue to consider all issues under its mandate as a package with a view to making progress on ways forward to fulfill its mandate. The Working Group also adopted terms of reference for two intersessional workshops to improve understanding of the issues and thus lead to a more informed and productive debate at its next meeting.

UN CONFERENCE ON SUSTAINABLE DEVELOPMENT (RIO+20): The UN Conference on Sustainable Development (20-22 June 2012, Rio de Janeiro, Brazil) expressed the commitment of states to address, on an urgent basis, building on the work of the Working Group and before the end of the sixty-ninth session of the General Assembly, the issue of the conservation and sustainable use of BBNJ, including by taking a decision on the development of an international instrument under UNCLOS.

SIXTH MEETING OF THE WORKING GROUP: The sixth meeting of the Working Group (19-23 August 2013, New York) resulted in a consensus recommendation on establishing a preparatory process within the Working Group to fulfill the Rio+20 commitment by focusing on the scope, parameters and feasibility of an international instrument under UNCLOS, calling upon the Working Group to be convened twice in 2014 and at least once in 2015, with a view to preparing a decision on BBNJ by the General Assembly before the end of its sixty-ninth session.

SEVENTH TO NINTH MEETINGS OF THE WORKING GROUP: The Working Group met three times between 2014 and 2015 (1-4 April 2014, 16-19 June 2014 and 20-23 January 2015, New York) and engaged in interactive substantive debates on the scope, parameters and feasibility of an international instrument under UNCLOS. At the ninth meeting, the Working Group reached consensus on recommendations for a decision to be taken at the sixty-ninth session of the UN General Assembly to develop a new ILBI on BBNJ under UNCLOS, and to start a negotiating process to that end. This meeting effectively concluded the mandate of the Working Group.

69TH SESSION OF THE GENERAL ASSEMBLY: In its resolution 69/292, the General Assembly decided to develop an ILBI under UNCLOS on the conservation and sustainable use of BBNJ. To that end, the Assembly established a Preparatory Committee (PrepCom), to make substantive recommendations to the General Assembly on the elements of a draft text of an ILBI, taking into account the various reports of the Co-Chairs on the Working Group’s work; and for the Assembly to decide at its seventy-second session whether to convene an intergovernmental conference to elaborate the text of the agreement. The resolution also indicated that negotiations will address topics identified in the 2011 “package.”

PREPCOM 1: The first session of the PrepCom (28 March – 8 April 2016, New York), chaired by Eden Charles (Trinidad and Tobago), met in plenary and informal working group settings, with delegations outlining detailed positions on the various elements related to the 2011 “package.” Delegates agreed to a procedural roadmap outlining the structure of PrepCom 2, and on having a Chair’s summary of the meeting and an indicative list of issues circulated during the intersessional period.

PREPCOM 2: During the second session of the PrepCom (26 August – 9 September 2016, New York), chaired by Eden Charles, delegations offered detailed proposals on the possible elements of an ILBI, and engaged in a preliminary identification of possible areas of convergence of views and of issues requiring further discussion. Delegations requested the preparation of a Chair’s non-paper drawing from the statements made at PrepCom 2 and from electronic submissions made until early December 2016, in order to guide intersessional preparations for PrepCom 3.

REPORT OF THE MEETING

On Monday, 27 March, PrepCom Chair Carlos Sobral Duarte (Brazil), supported by many, paid tribute, to former PrepCom Chair Eden Charles (Trinidad and Tobago), and recommended building on the work done at prior sessions. Stephen Mathias, Assistant Secretary-General, Office of Legal Affairs, expressed appreciation for the contributions to the Voluntary Trust Fund from Finland, Ireland, the Netherlands and New Zealand.

ADMINISTRATIVE MATTERS: Delegates approved the provisional agenda (AC.287/2017/PC.3/L.1) and the programme of work (AC.287/2017/PC.3/L.2). Chair Duarte drew attention to the Chair’s non-paper on elements of a draft text of an ILBI, based on submissions received up to December 2016, and a supplement with submissions received after that date.

MARINE GENETIC RESOURCES

This item was addressed in an informal working group, facilitated by Janine Coyo-Felson (Belize), on Monday and Tuesday, 27-28 March; and in plenary on Tuesday, 4 April, based on an oral report from the Facilitator and a list of written questions circulated by the Chair. Discussions focused on: scope and definitions; principles and approaches; access; benefit-sharing; intellectual property rights (IPRs); and a clearinghouse mechanism (CHM).

SCOPE AND DEFINITIONS: The Group of 77 and China (G-77/China) called for defining access and benefit-sharing (ABS) and compliance. Mexico, speaking on behalf of Argentina, Brazil, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras and Uruguay, highlighted: common heritage as the guiding principle, supported by Pacific Small Islands Developing States (PSIDS); including fish as MGRs, supported by the European Union (EU); monetary and non-monetary benefit-sharing; CB&TT to facilitate access and utilization of MGRs; IPR considerations; and, with PSIDS and the African Group, traceability of MGRs. The Caribbean Community (CARICOM) noted that there is no consensus on the principles applying to MGRs of ABNJ.

The African Group considered a definition of MGRs necessary, noting that definitions should be consistent with UNCLOS, the UN Fish Stocks Agreement (UNFSA) and the CBD. Mauritius noted that MGRs in the water column above the extended continental shelf are not sufficiently covered by existing instruments, so the ILBI should clarify their legal regime.

Fisheries: Several delegations recommended distinguishing between fish as genetic resources, used for research and development purposes, and fish used as a commodity, with Fiji calling for also including geographical considerations. CARICOM

called for the definition of MGRs to include fish used for their genetic properties. Argentina, supported by Mexico, called for including mollusks in the definition of MGRs. Brazil underscored the need for flexibility for using genetic components of MGRs to improve food security.

The EU stressed that fish as biological resources are outside the mandate of the ILBI. Japan and China, opposed by Indonesia, favored excluding fish used as commodities, with Eritrea recommending establishing a scientifically defined threshold for MGRs as a commodity. Cautioning against prejudicing existing agreements, the Russian Federation opined that MGRs do not include fish and marine mammals.

The World Wide Fund for Nature (WWF) recommended including fish as a key component of biodiversity and all research, including fisheries research. The International Union for Conservation of Nature (IUCN) noted that fish are sometimes harvested as a commodity but subsequently used for research purposes. The Food and Agriculture Organization of the UN (FAO) pointed to distinctions on commodities and genetic resources under the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) and the FAO Commission on Genetic Resources for Food and Agriculture.

Derivatives and data: The African Group, the Philippines, Colombia, Mexico and the FSM, opposed by China, Japan, the Republic of Korea and Canada, noted that definitions should cover derivatives. Costa Rica, supported by Argentina, proposed relying on the Nagoya Protocol definition of genetic resources including derivatives, and also addressing digital data. Brazil and IUCN, opposed by the Republic of Korea, recommended addressing digital sequence information.

Switzerland and Japan cautioned against discussing digital sequence information before concluding discussions in other fora, particularly the CBD. The US opposed sharing benefits from *ex situ* MGRs or genetic sequence data, cautioning against importing CBD negotiations into the BBNJ process. Brazil favored a dialogue between the PrepCom and the CBD. Argentina argued that the CBD Conference of the Parties (COP) is looking into digital sequence data within national jurisdiction.

PRINCIPLE AND APPROACHES: The G-77/China observed that the principle of common heritage must underpin the ILBI given its crosscutting nature and its benefit-sharing obligations. Bangladesh drew attention to UNCLOS Articles 312 (Amendment) and 314 (Amendments relating exclusively to activities in the Area) to allow consideration of MGRs under the common heritage regime. Argentina reiterated that MGRs in the Area fall under the common heritage regime. PSIDS underlined that MGRs of ABNJ are part of common heritage, with the FSM noting that MGRs of ABNJ should not be reserved for those with the capacity to explore and exploit them, and that future generations should also be considered. Nigeria called for flexibility to accommodate future scientific progress.

The US, the Russian Federation and Japan observed that mineral resources in the Area are part of common heritage but it would not be appropriate to apply this principle to MGRs of ABNJ. South Africa suggested that high seas freedoms apply to high seas MGRs, including benefit-sharing, while common heritage governs MGRs of the Area. Indonesia supported a *sui generis* regime. Nepal and others, opposed by Iceland, emphasized that freedom of the high seas and common heritage are not mutually exclusive. The EU called for setting aside discussions of the legal status of MGRs of ABNJ, calling, with Australia, Chile and New Zealand, for a practical focus.

Mexico highlighted the sustainable use of resources, equitable benefit-sharing, transparency in access to information, and

no claims for sovereignty in ABNJ. Iran pointed to the CBD principles of prior informed consent, and fair and equitable benefit-sharing. IUCN emphasized: the principle of common concern of humankind, with CARICOM noting that the common concern for humankind principle does not “go far enough”; the need for a clear set of rules and legal certainty for ABS and scientific research; and the opportunity to make access to MGRs of ABNJ for scientific research contingent on making data available.

ACCESS: The G-77/China supported developing a code of conduct for bioprospectors. CARICOM, PSIDS and the African Group recommended including MGRs accessed *ex situ* and *in silico* in the ABS regime. CARICOM noted the need for requiring notifications to ensure traceability and monitoring, without hindering MSR, with Argentina saying that this could be done by issuing “passports” for MGRs in ABNJ or relying on the Nagoya Protocol’s internationally recognized certificate of compliance. Jamaica and PSIDS noted that this would support the flow of information and strengthen marine technology transfer.

The Alliance of Small Island States (AOSIS) noted that regulating access to MGRs may be of value. Peru stated that access should not be left unregulated, stressing the need to distinguish between “access to” and “ownership of” MGRs. India underscored the need to regulate MGR access and use to prevent over-exploitation and promote benefit-sharing. The Federated States of Micronesia (FSM) referred to different access requirements for different actors, noting that access should be facilitated for collecting and using samples.

The African Group favored an ABS mechanism under the ILBI COP to receive obligatory prior notification of bioprospecting in a centralized database, with Japan welcoming openness to consider notification, rather than prior informed consent. PSIDS: stressed the link between access and CB&TT; pointed to emerging consensus that MSR should be promoted and not impeded; underscored the need for reporting obligations for scientists; proposed a benefit-sharing trust fund to promote access and utilization of MGRs by developing countries, particularly small island developing states (SIDS); and supported a mechanism facilitating CB&TT in MGR analysis and utilization.

The EU said that access to MGRs for MSR should not be restricted. Australia, with New Zealand, highlighted that the ILBI should not stifle access for research and innovation. Japan recalled numerous unsuccessful attempts to define MSR, cautioning against unnecessary restrictions. Singapore preferred less regulation of access and expressed interest in exploring a notification obligation. The Russian Federation cautioned against establishing artificial barriers to accessing MGRs. China favored an open-access system of MGRs *in situ*, noting that states may provide, on a voluntary basis, notification through the CHM on the MGRs collected.

BENEFIT-SHARING: The G-77/China called for both monetary and non-monetary benefit-sharing, expressing willingness to discuss different monetary benefit-sharing modalities, pointing to the Nagoya Protocol annex and to different triggers, with: AOSIS requesting capacity building specifically targeted to SIDS and special consideration for SIDS in creating a benefit-sharing fund and recommended relying on royalties and mandatory payments to replenish an ILBI trust fund; PSIDS suggesting that mandatory monetary benefit-sharing could contribute to a trust fund to facilitate capacity building in developing countries, adding also voluntary contributions; and Peru drawing attention to the mechanisms under FAO and the World Health Organization (WHO).

The African Group called for: a benefit-sharing mechanism administered by the secretariat of the ILBI, and benefit-sharing to support the designation and management of MPAs and for CB&TT related to ABNJ. He further favored: compulsory monetary benefit-sharing upon commercialization; a sector-specific approach related to the added value of the commercialized product; and the channeling of proceeds through a benefit-sharing fund to support CB&TT, and training in developing countries.

CARICOM proposed sharing non-monetary benefits through a repository for samples from ABNJ, which should be open access, and for results of derivatives' analysis, which would become open access at a later stage, without prejudice to certain notification measures. CARICOM also supported, with Norway, Singapore, New Zealand and the Philippines, exploring different stages triggering monetary benefit-sharing; and suggested, with Brazil, that monetary benefits should arise upon commercialization. The FSM envisaged benefit-sharing upon sample collection, a fee to ensure exclusive access, and additional monetary benefit-sharing upon commercialization. Costa Rica supported advance fixed-amount payments or license fees, in addition to royalties.

The African Group said benefit-sharing should be inspired by Nagoya Protocol Article 10 (global multilateral benefit-sharing mechanism). Mexico said that the Nagoya Protocol, the CBD, the International Seabed Authority (ISA) and the ITPGRFA could provide inspiration. Bangladesh suggested extending and modifying UNCLOS Article 82 (payments and contributions with respect to the exploitation of the continental shelf beyond 200 nautical miles).

Expressing willingness to address a monetary benefit-sharing mechanism, China called for a pragmatic approach, prioritizing non-monetary benefit-sharing. The Russian Federation, the US, Canada, the EU, Switzerland and Japan called for focusing on non-monetary benefit-sharing, with the EU referring to readily available options for non-monetary benefit-sharing in UNCLOS provisions on MSR and marine technology. Canada clarified that focusing on the significance of non-monetary benefits does not mean excluding monetary ones from the discussion. The US, Japan and Norway cautioned that monetary benefit-sharing could be a disincentive to MSR, with Iceland noting that non-monetary benefit-sharing could encourage relevant investment. Norway and New Zealand noted that non-monetary benefits also have financial value. Australia proposed a functional, cost-effective benefit-sharing regime that encourages research, underscoring the importance of non-monetary benefits. Japan cautioned against discussing benefit-sharing modalities based on assumptions.

The Republic of Korea said the regime should be conducive to the conservation and sustainable use of MGRs. Switzerland emphasized the link between the ILBI objectives and an effective benefit-sharing system. Mauritius proposed priority for coastal states in benefit-sharing from MGRs in the water column above their extended continental shelf. Jamaica highlighted that common heritage is not intended to stifle innovation or focus exclusively on non-monetary benefits, and underlined that the ILBI should reflect the potential for benefits accruing from MSR. Singapore pointed to the clearinghouse under the Nagoya Protocol that could address non-monetary benefits and facilitate knowledge-sharing.

The Holy See proposed relying on contractual "earnout" provisions for MGRs, to provide additional compensation in the future if certain non-financial and financial milestones are reached, when it is difficult to estimate the value of MGRs at the time of access.

El Salvador and Japan called for the inclusion of private-sector actors in BBNJ discussions, with Japan stressing that the

private sector, rather than governments, would share benefits. The African Group suggested that the private sector should be governed by relevant national legislation in ABNJ. PSIDS noted that the private sector may need incentives to engage.

WWF recommended viewing benefit-sharing as a continuum, where non-monetary benefit-sharing is applicable early in the process and monetary benefit-sharing at the commercialization stage. IUCN pointed to the need to include developing states, and safeguard the interests of the research and private sectors; and suggested sharing benefits through open access to raw data, targeted training and sharing of best practices, information on species identification, and MSP in ABNJ.

IPRs: Arguing, with Honduras, that the ILBI should include IPRs, the African Group supported: with CARICOM and Nepal, developing a *sui generis* system; and, with Iran and Brazil, but opposed by Canada, establishing mandatory disclosure of the origin of MGRs in patent applications. Recognizing the World Intellectual Property Organization's (WIPO) key role, Mexico stressed that inventions, processes and products can be subject to IPRs, but MGRs *per se* cannot; and drew attention to potential changes of use.

Japan, Canada, the EU, Switzerland, Norway, Chile, Singapore and the US cautioned against IPR-related provisions in the ILBI, noting that they are addressed in other fora. Chile noted that WIPO focuses on IPRs in relation to genetic resources within national jurisdiction.

Traditional knowledge: CARICOM and Iran supported respect for traditional knowledge in the conservation and sustainable use of BBNJ. PSIDS noted that the use of traditional knowledge requires free prior informed consent, highlighting the opportunity to guarantee certain levels of benefits for traditional knowledge holders. Argentina highlighted the need to clarify the implications of including traditional knowledge under the ILBI.

Clearinghouse mechanism: The G-77/China called for establishing a CHM, with AOSIS recommending an accessible and easy CHM including a network or platforms for knowledge sharing. Canada supported a CHM for information sharing and for matching needs and available expertise. Brazil favored a CHM for sharing data and information, pointing, with Venezuela, to the Nagoya Protocol CHM. Argentina suggested sharing through the CHM information and genetic resources' samples, research results, training and study programmes, data analysis and publications. The FSM underscored the need for standardizing data collection and facilitating access to samples. Venezuela reflected on the CHM's role in managing information, and sharing best practices and lessons learned.

CARICOM noted that the ISA may have a role to play, supported by Tonga, who also recommended that the CHM: be accessible online, simple and user-friendly; include timely information; support transparent traceability; and address SIDS' needs. Canada pointed to taking optimal advantage of existing tools.

The EU drew attention to interlinkages between the different elements of the package, noting the CHM's potential role in promoting international collaboration and coordination on capacity building. Japan requested further discussion of the kind of data to be provided through a CHM and of recipients, as well as of the Intergovernmental Oceanographic Commission (IOC) Criteria and Guidelines on the Transfer of Marine Technology (IOC Guidelines), to prevent duplication. The IOC emphasized information-sharing as an enabler of benefit-sharing, pointing also to the Ocean Biogeographic Information System's (OBIS) existing network of institutions, quality control and standardization.

AREA-BASED MANAGEMENT TOOLS

This issue was discussed in an informal working group, facilitated by Alice Revell (New Zealand) on Tuesday and Wednesday, 28-29 March, and in plenary on Wednesday, 5 April, based on an oral report by the Facilitator and a list of written questions circulated by the Chair. Discussions focused on: objectives; principles and approaches; relationship with existing mechanisms; definitions; and governance. Delegates also engaged in discussions on governance models, considering three options suggested by Chair Duarte.

OBJECTIVES: The African Group suggested that ABMTs should aim at enabling cooperation and coordination among regional and sectoral bodies. AOSIS and others highlighted that ABMTs should contribute to the oceans' resilience, including to climate change. PSIDS proposed that ABMTs contribute to healthy, productive and resilient oceanic ecosystems, including through restoration. The EU stressed that: specific features of ecosystems may require different levels of protection; and a process to establish and manage a coherent MPA network in ABNJ will also contribute to the Aichi Targets and Sustainable Development Goal (SDG) 14 (life below water). CARICOM noted that the objectives of ABMTs must be linked to conservation and sustainable use, which are complementary.

Mexico proposed creating a global MPA network aimed at contributing to conservation and sustainable use. Costa Rica pointed to conserving the biomass of marine resources. Tonga and Fiji called for restoration and rehabilitation as key objectives. Venezuela supported addressing marine biodiversity stressors. Greenpeace noted that MPAs are effective tools for reversing current biodiversity loss trends.

Japan highlighted MPAs as a tool for long-term conservation, which should not be limited to marine reserves, and balancing conservation and sustainable use, which was supported by Norway, Nigeria and the Philippines. Canada prioritized identifying vulnerable marine ecosystems and building resilience to climate change. Australia said ABMTs should balance conservation with a diversity of sustainable uses. IUCN said there is a role for sectorally-focused ABMTs and comprehensively managed MPAs.

DEFINITIONS: The G-77/China emphasized the need to: consider definitions, including adapting existing ones to the ABNJ context; and to develop ABMTs criteria on the basis of existing international criteria, including uniqueness, ecological sensitivity and biological productivity, noting that varying needs may require measures of different stringency. China suggested including in an ABMT definition an objective, geographical scope and a function element. The FSM noted that each ABMT should take a holistic management approach, stressing that ABMTs in ABNJ should: not cause disproportionate burdens on coastal states; respect national and regional ABMTs; and, with Saudi Arabia, not affect coastal states' sovereign rights.

PSIDS and the EU called for defining ABMTs, noting that there is no universally-agreed definition, with the African Group proposing that ABMTs be defined as "spatial management tools to manage activities in the pursuit of conservation and sustainable use objectives." Tonga, with Monaco, urged that definitions include sectoral and cross-sectoral measures. Canada called for recognizing the range of ABMTs. The FSM suggested that ABMTs be considered a broader concept, of which MPAs are a subset. FAO stressed that: ABMTs need to be combined with other management measures to avoid negative impacts, such as overfishing in adjacent areas; and, with Fiji, the definition needs to be broad and flexible to cover different objectives, encompassing both ecological and socio-economic elements.

Norway stressed that the purpose of an MPA definition should be clear. PSIDS, with Monaco, suggested that the definition of MPAs include their long-term objectives and, with the EU, Argentina, Uruguay and Morocco, proposed using CBD Article 2 (Use of Terms) as a basis. Morocco also supported using the IUCN definition, and Monaco called for consideration of Costa Rica's paper on working definitions in defining MPAs. Greenpeace, the Natural Resources Defense Council (NRDC) and the High Seas Alliance defined an MPA as a designated geographically-defined marine area where human activities are regulated, managed or prohibited, to achieve long-term nature conservation. The CBD noted that 71 out of 279 ecologically or biologically significant areas (EBSAs) are located in ABNJ, covering 21% of total surface area of ABNJ.

Reserves: PSIDS supported defining marine reserves, opposed by Argentina, who opined that their characteristics would be included under the ABMT definition. Greenpeace, NRDC and the High Seas Alliance argued that a separate legal definition of marine reserves is unnecessary if the MPA definition includes the option of areas where extractive and destructive human activities are prohibited.

PRINCIPLES AND APPROACHES: Many referred to the precautionary approach, ecosystem approach and best scientific evidence. The G-77/China highlighted transparency, accountability, and integrated management. The African Group and PSIDS highlighted inclusiveness, participatory approaches and transparency. Iceland suggested: increasing coordination and cooperation by establishing common guidelines and standards; and addressing threats at source and directly regulating economic activities, because closing parts of the ocean to human activity may shift unsustainable practices elsewhere.

PSIDS, Jamaica and Singapore highlighted flexibility and an adaptive management approach. The Cook Islands prioritized the need to balance long-term conservation and sustainable use, calling for an inclusive and flexible system, incorporating traditional knowledge and respecting coastal states' rights.

China highlighted proportionality in matching conservation measures with objectives and taking socio-economic factors into consideration. The Russian Federation emphasized cooperation, coordination and harmonization of competent international organizations, as well as high seas freedoms.

Monaco prioritized a coherent and integrated network to ensure the most fragile and important areas of marine ecosystems are fully conserved, based on best scientific evidence. Stressing that despite increasing threats, only 0.8% of the oceans are currently identified as MPAs, Eritrea highlighted socio-economic concerns in addition to ecological significance, underscoring distributive implications of ABNJ replenishment effects and stressing the need to address "who will benefit, by how much and why." WWF called for deploying the full range of tools in the ABMT toolbox, including integrated ocean management and MSP. Greenpeace and the High Seas Alliance pointed to the principles of stewardship, good governance, sustainability, equity and science.

GOVERNANCE: The G-77/China recommended review and monitoring of ABMTs, without undermining existing regional and sectoral organizations. Venezuela called for a compliance committee for MPAs. Sri Lanka preferred a horizontal approach to ABMT management, calling for a permanent scientific body. Tonga emphasized that climate change considerations should be incorporated in ABMT designation. Fiji called for science-based decision-making that takes into account special regional circumstances, consent by adjacent states, compatibility, and flexibility to anticipate future stresses, and includes traditional knowledge. Mauritius requested reference to different ABMT

types, and consent of adjacent coastal states on ABMT establishment. CARICOM emphasized the need for: scientific criteria for designating ABMTs; modalities for consultation; with Tonga, interlinkages with capacity building and technology transfer; and recognition of other bodies deploying ABMTs in ABNJ, to address fragmentation.

The EU proposed inviting regional and sectoral organizations to submit proposals on the consultation process and for establishing a procedure for complementary measures or recognition of existing ABMTs, provided they comply with ILBI criteria. Singapore queried recognition modalities and possible effects of non-recognition, cautioning against substituting other organizations' decision-making with decision-making under the ILBI, and, with Fiji, called for a flexible process to allow coverage of future activities and incorporation of MSP.

Canada and the Russian Federation cautioned against a global approach and duplication of efforts, preferring implementation at the regional or sectoral levels following the UNFSA model. Japan warned against overriding the mandates of existing bodies like the International Maritime Organization (IMO) and regional fisheries management organizations (RFMOs), calling for consultation, cooperation and collaboration, with Iceland proposing to strengthen cross-sectoral cooperation and build RFMOs' capacity. Highlighting the role of the ILBI in contributing to coherence and coordination, Norway called for activating, utilizing and challenging existing mechanisms, including RFMOs. Argentina, with Greenpeace, underscored that RFMOs have a limited mandate and, with Costa Rica, did not support strengthening this mandate. FAO stressed that only a few ABNJ are not under RFMOs' management, calling for extensive consultations when establishing ABMTs under RFMOs' jurisdiction.

Submission of ABMT proposals: AOSIS, with Peru and Mexico, suggested that joint or individual proposals be made by states and relevant organizations. The EU recommended that MPA designation be triggered either collectively or individually by states, which should launch an initial time-bound consultation process. Japan, Argentina and China favored states submitting proposals, with Japan preferring that states share these proposals with other states, and China noting that submissions should be in consultation with stakeholders. Monaco called for the widest possible consultative process prior to states' submissions. Switzerland suggested that state parties triggering the designation process take into account existing processes, including the CBD EBSAs. Fiji cautioned against a cumbersome process for developing states, particularly SIDS.

Assessment of ABMT proposals: PSIDS recommended involving adjacent coastal states in decision-making. Indonesia suggested assessing proposals on technical, scientific and legal grounds, through an inclusive and transparent process. Switzerland and Fiji called for state parties to make decisions, preferably by consensus or qualified majority. Morocco emphasized that scientific assessments should precede any consensus decision by state parties on designation. Japan supported an ILBI COP, consensus-based decision-making, and a scientific committee composed of experts. CARICOM emphasized the need for a scientific or technical advisory committee, suggesting that it include representation from sectoral bodies and, supported by Tonga and Argentina, draw from the ISA Legal and Technical Committee. AOSIS supported a scientific process informing policy-making, ensuring full inclusivity of SIDS and recognizing traditional knowledge. PSIDS said the scientific committee must include traditional knowledge holders, pointing to relevant practice in the description of CBD EBSAs. The FSM added that a scientific body could be global or regional,

and build upon the knowledge and expertise of the EBSA process. The EU called for creating a scientific subsidiary body to technically assess proposals. Mexico favored a technical and scientific subsidiary body, recommending, supported by Nepal, that it approve proposals following consultations and studies on existing MPAs, and make legally binding decisions for parties.

Argentina supported a technical body reporting to a consensus-based COP. New Zealand proposed: a COP providing process guidance for MPA designation; regional bodies, in consultation with others, involved in MPA implementation; and states reporting on implementation. Australia preferred a regional action-oriented process, including regional decision-making. Norway supported RFMOs and the ISA designating and implementing MPAs, through public hearings and consultations with adjacent coastal states, with the ILBI COP providing feedback to RFMOs.

In plenary, Chair Duarte proposed focusing on three options: a global model, establishing a global institution to consider and decide on ABMT proposals; a hybrid model, reinforcing regional and sectoral organizations' mandates through regional coordination mechanisms, and providing global guidance and oversight; and a regional and sectoral model, recognizing regional and sectoral bodies' authority for decision making, monitoring and review of ABMTs, with the ILBI providing general policy guidance to promote cooperation, without global-level oversight.

The African Group called for global-level, consensus-based decision-making on ABMTs and, supported by the EU, identifying and consulting regional and sectoral bodies with mandates on ABMTs or MPAs to assess criteria, modalities and best practices. The EU, supported by the High Seas Alliance, emphasized the need for a global MPA network and a global mechanism establishing MPAs, arguing that: stricter protection measures do not undermine existing agreements; coherence, consistency, and inclusiveness are lacking in the current patchwork system, with ABMTs adopted under different criteria; and capacity building to ensure implementation of ILBI measures on ABMTs is needed. Mexico, with El Salvador, emphasized the added value of a global system facilitating greater coordination, using existing tools. Favoring a global approach, Iran called for measures similar to UNFSA Article 17 (non-members of organizations and non-participants in arrangements). Argentina stressed that: UNFSA is limited to management of fisheries resources and thus cannot always provide a point of reference; decision-making under the ILBI should be based on consensus; and, with Pakistan, the role of regional and sectoral bodies should be decided on a case-by-case basis at each stage of the process. Stressing the need for coordination, Costa Rica called for a global structure and a network of ABMTs according to standardized criteria. Peru favored a global decision-making body, and a scientific body modeled on CBD or UN Framework Convention on Climate Change subsidiary bodies. IUCN supported a global model enhancing regional effectiveness; and called for an examination of the regional and sectoral instruments in ABMT management. Indonesia called for the ILBI to enhance regional-level coordination and coherence, respecting states' rights over outer continental shelves.

Norway favored a hybrid approach. Noting that this model could help achieve compromise, Japan reiterated that the ILBI should identify concrete measures in consultation with relevant bodies and consider establishing MPAs from a holistic viewpoint, and refer guidance to regional bodies for their final decision, which would be binding on ILBI members, including those that are not members of regional organizations. New Zealand supported regional coordination, questioning whether an ILBI

COP would have better understanding of measures required than regional and sectoral bodies. Expressing interest in a hybrid approach, Australia favored a COP advising on and reviewing state obligations, and enhancing cooperation, pointing out that the ILBI could bring together regional-level ABMTs in ABNJ. PSIDS advocated designating and managing ABMTs at the regional level under globally harmonized standards and oversight, avoiding a disproportionate burden on SIDS in terms of BBNJ conservation and implementation of management measures. The FSM cautioned that global decision-making could be slow, and regional approaches could create implementation gaps, calling for more information on decision-making under the hybrid approach.

Iceland supported a regional approach, recommending capacity building for RFMOs and regional seas conventions. The Russian Federation preferred global guidelines on ABMT management under the ILBI, noting that rapid action to designate, review or terminate MPAs should be taken at the regional level to ensure responsiveness to regional needs. The International Commission for the Conservation of Atlantic Tunas (ICCAT) underscored the need for coordination and cooperation before establishing MPAs, respecting RFMOs' mandates. UN Environment recommended linking future ABMTs in ABNJ to coastal states' management measures under the regional seas programmes, promoting connectivity and representativity.

The High Seas Alliance called for a binding global approach to provide accountability, with the Pew Charitable Trusts arguing that global and regional decision-making are not mutually exclusive, and Greenpeace warning about "vastly underestimated" costs of administering and participating in regional coordination mechanisms.

Monitoring and review: Switzerland called for a review process allowing for adaptive management plans. CARICOM emphasized the need for guidelines on monitoring of implementation, which could be delegated to regional bodies. Peru favored monitoring through sectoral and regional organizations, and creating a compliance system. The Philippines requested concrete enforcement measures.

Proposing that MPAs could be terminated when their objectives have been achieved, Japan supported MPA review, with monitoring not imposing additional financial requirements on parties. China noted that MPAs should be time-bound, with the review process proposing renewing or extending MPA timelines. The EU proposed requiring state parties to report regularly, in a standardized format, on activities pursuant to a management plan; and indicated that MPAs should be designated for an indefinite time period, with Nepal pointing to the opportunity to make amendments after the original designation. Monaco noted that amendments could be made based on scientific evidence, including terminating ABMTs if objectives are met. Mexico emphasized, supported by Fiji, that relevant international organizations should be tasked with implementing and respecting ABMTs; and an ILBI subsidiary body for ABMT review on a case-by-case basis within a timeframe, with options to maintain, modify or terminate an MPA.

Relationships with other instruments: Canada suggested delineating the roles of the ILBI and existing sectoral and regional bodies, and discussing measures where regional or sectoral expertise is absent. The Russian Federation prioritized respecting the mandates of existing regional and sectoral bodies, like the IMO and RFMOs.

New Zealand called for a consistent approach, developing ecological criteria for MPAs and standards for the development of proposals and the design of flexible systems. The Philippines called for strengthening existing frameworks, including under

the IMO, the CBD, the Convention on Migratory Species (CMS) and RFMOs; and bridging implementation gaps. The North East Atlantic Fisheries Commission pointed out that ABMTs already exist in ABNJ so the focus should be on strengthening cooperation and coordination among entities with a mandate to establish ABMTs.

Non-parties: The EU suggested inviting non-party states to consider adopting measures in line with an ABMT management plan. The Russian Federation cautioned against addressing non-parties.

ENVIRONMENTAL IMPACT ASSESSMENTS

This item was addressed in an informal working group, facilitated by René Lefebvre (the Netherlands), on Wednesday and Thursday, 29-30 March; and then in plenary on Wednesday and Thursday, 5-6 April, based on an oral report prepared by the Facilitator and a list of written questions circulated by the Chair. Discussions focused on: scope, thresholds, transboundary EIAs (TEIAs), strategic environmental assessments (SEAs), governance, transparency, costs, monitoring, a clearinghouse, EBSAs, guidelines and capacity building.

SCOPE: The EU, China and Indonesia said EIAs should focus on activities taking place in ABNJ. The FSM, Argentina and Norway, argued that activities within national jurisdiction that have an impact in ABNJ should be governed by national legislation. The FSM, with Canada, maintained that affected states should be consulted and involved in EIAs for activities in ABNJ that have an impact on areas within national jurisdiction.

CARICOM suggested that the ILBI address all activities with an impact on ABNJ, including transboundary impacts, and that coastal states have the right to approve activities in ABNJ affecting them. PSIDS recommended also covering adjacent areas, including areas within national jurisdiction. Indonesia, with the Philippines, suggested explicitly addressing impacts beyond and within national jurisdiction, including the outer continental shelf. Greenpeace emphasized that all human activities should be assessed for potential adverse effects regardless of where they take place. IUCN cautioned against conflicting and duplicative processes, if EIA triggers do not include activities within national jurisdiction with potential impacts on ABNJ and do not use the threshold of significant adverse impacts.

THRESHOLDS: The EU and the Philippines supported a threshold for triggering EIAs. PSIDS, CARICOM and Viet Nam said the threshold should consider socio-cultural and economic factors, with a regularly updated and reviewed list of activities requiring EIAs.

New Zealand supported a tiered threshold approach and an indicative list, stressing the need for a case-by-case assessment. Fiji preferred a hybrid between a list of activities and a threshold, calling for further discussion on the activities that the list could contain. Australia supported an illustrative, non-exhaustive list, noting that no activity should be exempt from threshold requirements. Chile proposed evaluating, revising and regularly updating the list, stressing compatibility and cooperation with adjacent coastal states. Mexico suggested: supported by the Dominican Republic, relying on general principles rather than an indicative list; developing flexible minimum standards for triggering EIAs; and including transboundary impacts in all stages of EIAs, rather than in a separate evaluation.

The African Group opposed listing activities requiring EIAs, with Japan proposing case-by-case assessments of the need and modalities of EIAs, and with China emphasizing that in addition to the type of activities, their scale, location, and environmental impacts should also be taken into account. Canada, supported by NRDC, favored establishing criteria that could evolve over time.

The Republic of Korea proposed requiring, in case of: less than a minor impact, no EIA; minor impacts, a preliminary procedure without reviewing or monitoring modalities; and significant harm, a comprehensive EIA. Costa Rica, IUCN and Australia opposed a list of activities not requiring EIAs.

GUIDELINES: The EU, Japan, New Zealand and Norway suggested further elaborating EIA criteria in Article 206 (assessment of potential effects of activities) as guidelines for decision-making regarding potential thresholds. New Zealand pointed to the FAO Deep-sea Fisheries Guidelines and the need for a holistic approach, covering also potential impacts from climate change. China requested considering EIA regulations for ABNJ that already exist in different fora, cautioning, with Norway, Japan and the Russian Federation, against duplication. The US preferred elaborating non-binding guidance on EIAs.

The African Group, CARICOM and PSIDS supported a special provision on EIAs in EBSAs. New Zealand, the EU and Japan argued that guidelines and screening criteria are sufficient.

Transboundary Environmental Impact Assessments (TEIAs): The African Group supported including TEIAs in the ILBI. Norway favored the ILBI including activities in ABNJ with impacts on areas within national jurisdiction. The FSM, with Australia and Indonesia, proposed notifying adjacent coastal states on potential impacts arising from activities in ABNJ, allowing input and comments during the EIA process. Fiji underscored the need for extensive consultations with potentially affected states before finalizing TEIAs. Viet Nam called for obtaining concerned states' consent where necessary. New Zealand considered it unnecessary to establish a separate procedure for TEIAs under the ILBI, with Australia and Indonesia noting they are already covered by domestic processes.

Strategic Environmental Assessments (SEAs): The EU, CARICOM, PSIDS, New Zealand, Australia, Canada and Norway supported including SEAs in the ILBI, with Norway noting links to MPA establishment and the EU highlighting a role for the ILBI in promoting cooperation between states at the regional level conducting SEAs in ABNJ. PSIDS asserted that SEAs are complementary to EIAs, and expressed openness to linking them to MSP. WWF highlighted that bio-regional SEAs considering cumulative and cross-sectoral impacts would provide a broad information framework within which individual EIAs could be conducted in a faster, cheaper and easier manner.

Japan underscored lack of common understanding of SEA-related obligations, and China reiterated that SEAs do not fall under the scope of UNCLOS.

GOVERNANCE: PSIDS proposed a global decision-making body, supported by WWF, and using the CBD Akwé: Kon Guidelines to integrate traditional knowledge in the EIA process. CARICOM proposed a scientific committee to conduct, review, and make recommendations to the COP, as well as an appeals process. Tonga suggested designating an international body responsible for ensuring fairness and transparency in the EIA process through uniform guidelines, as well as a monitoring and review mechanism. Venezuela added that an intergovernmental, science-based, technical and scientific committee should mitigate potential damages, including socio-economic impacts, through reparation activities. Iran proposed drawing on the Antarctic Treaty for guidance.

The Russian Federation expressed skepticism regarding a centralized body conducting EIAs, cautioning against duplication of mandates, bureaucratization and delays. The US, Japan, China, Norway and New Zealand preferred that states make decisions on EIAs, with the US preferring the ILBI set standards, consistent

with UNCLOS, to guide states in conducting them. The EU proposed that: a state party decides, based on a threshold, whether an EIA is required and ensures monitoring of the effects of activities; and the ILBI provides a follow-up procedure.

Australia proposed binding minimum standards for conducting EIAs, with decision-making and financing resting with the flag or sponsor state. Canada noted that decision-making should rest with sponsor states or the proponents, adding the need to consult with adjacent coastal states. IUCN stressed that responsibilities for conducting an EIA and decision-making are connected to liability for potential damage, cautioning against allocating such a task to individual states. The High Seas Alliance emphasized the need for transparency, and accessible compliance and dispute-resolution mechanisms.

Calling for further collaboration, the North Pacific Fisheries Commission, supported by the Russian Federation, noted that RFMOs have been following the FAO Deep-sea Fisheries Guidelines, adhering to standards for establishing ABMTs and conducting EIAs.

Costs: Calling for support to developing countries, the African Group, with CARICOM, Venezuela, Canada and Norway, recommended that the proponent of an activity bear the costs related to the EIA, with PSIDS suggesting that proponents also bear the consultation costs. The EU noted that decisions on EIA costs fall within state parties' national competence. Uruguay called for a financial mechanism for EIAs for countries that lack necessary capacities.

Monitoring: PSIDS proposed EIA oversight by a scientific and expert committee; as well as a compliance, monitoring and reporting mechanism, and a potential rehabilitation fund, with Fiji adding that the proponent should foresee rehabilitation needs. India noted that EIA activities should be reviewed by a competent body, drawing on the ISA experience. The African Group supported a compliance and liability clause in the ILBI, and called for a dispute settlement mechanism. WWF highlighted the need for a global oversight process through the ILBI COP and its subsidiary bodies, for both EIAs and SEAs.

CARICOM suggested mandatory monitoring and review, and a self-reporting element to reduce the burden on the evaluating body. Mexico highlighted monitoring, compliance, enforcement, and environmental auditing, underscoring that monitoring obligations should address medium- and long-term impacts and not be limited to sponsoring states, with other states flagging instances of non-compliance. Senegal stressed the need for a transparent process, including: basic requirements; evaluation criteria for assessment of direct, indirect, cumulative, short- and long-term impacts; and a follow-up mechanism.

New Zealand supported: a common set of reporting and monitoring requirements, noting that the proponent should prepare a monitoring plan, reporting to the sponsor state to ensure compliance; a central repository of information, to ensure cumulative impacts are taken into account; and adaptive management to strike a balance between the best short-term outcome and the need to improve limited scientific knowledge. Peru considered the IOC a point of reference for conducting independent scientific reviews of EIAs. IUCN called for: supplementary EIAs, if an activity is expanded in scale; and a global review, especially in cases of significant harm or high uncertainty, adding that the process should be subject to consideration by a scientific body. Iceland and Canada opposed review of EIAs under the ILBI.

Clearinghouse mechanism: AOSIS supported an EIA information registry for publishing EIA reports. PSIDS proposed that a central repository for EIA information be hosted by the

ILBI secretariat, which could be used for, *inter alia*, baseline data on ABMTs, including MPAs. Australia supported a central repository such as a web-based platform, including baseline data, with Tonga adding that cumulative impacts, as well as information on negative effects of climate change and ocean acidification should be included. The High Seas Alliance suggested establishing a CHM, including baseline data, for exchanging information and best practices, with well-defined exemptions for commercial confidentiality.

CAPACITY BUILDING: The G-77/China stressed the need for financial assistance and capacity building for developing countries. The EU suggested the establishment of voluntary peer-review mechanisms, and twinning arrangements to build developing countries' capacity. The African Group recommended voluntary and mandatory financing for capacity building through a benefit-sharing fund. Costa Rica favored an online compilation of good practices, noting that financing for capacity-building activities could be provided by a fund with voluntary contributions or through fines under the polluter pays principle.

CAPACITY BUILDING AND TECHNOLOGY TRANSFER

This item was addressed in an informal working group, facilitated by Rena Lee (Singapore), on Friday, 31 March, and Monday, 3 April; and in plenary on Thursday, 6 April, based on an oral report by the Facilitator and a list of written questions circulated by the Chair. Discussions focused on: scope; principles and approaches; modalities; linkage with MGRs and ABS; a clearinghouse; IPRs; funding; and monitoring and review.

SCOPE: Several delegations emphasized that CB&TT is a crosscutting issue, with Fiji underscoring its critical role for ILBI implementation for developing countries. The G-77/China stressed the need to establish a legal framework for international cooperation at all levels, and proposed including: scientific support; educational and technical assistance, including for individual capacity building; exchange of experts; research cooperation programmes; awareness raising; knowledge sharing, including on MGRs, ABMTs and EIAs; and development of technology and infrastructure. China suggested including equipment.

CARICOM cautioned against listing CB&TT activities, with Tonga and the Cook Islands adding that, if created, the list should be flexible and subject to periodic reviews. Singapore cautioned against being overly prescriptive, to adapt to changing needs and technology. Mexico and Costa Rica favored an indicative and non-exhaustive list. The EU stressed the need to focus on a broad framework for effective CB&TT. Fiji suggested categorizing CB&TT needs.

The US advocated focusing on MSR, EIAs, efforts to protect the marine environment, and MSP. The Philippines provided a list of critical areas for capacity development, including marine taxonomy, bioinformatics, and implementation of EIAs and ABMTs. Senegal noted that capacity building should support developing countries' legislative, technical and scientific frameworks. Mexico emphasized the need to ensure that states have the capacities to: access MGRs *in situ*, *ex situ* and *in silico*; develop their own research on MGRs for the benefit of humanity; and preserve the marine environment.

PRINCIPLES AND APPROACHES: The G-77/China called for CB&TT on fair and reasonable terms and conditions, with AOSIS adding it should be country-specific, and drawing attention to the SIDS Accelerated Modalities of Action (SAMOA) Pathway, particularly references to the adverse effects of climate change and the need for access to appropriate and affordable technology. Thailand stressed that technology transfer should

be free of charge. Tonga, supported by Australia, highlighted that CB&TT results can be mutually beneficial for donors and recipients.

Switzerland, with Canada, Japan and the US, noted that technology transfer should be voluntary, based on mutually agreed terms. The Republic of Korea noted that CB&TT should be conducted in a cooperative and voluntary manner, in accordance with UNCLOS Article 266 (promotion of marine technology development and transfer). South Africa called for meaningful and binding capacity building, pointing, with Tonga and Chile, to the ISA capacity-building activities. Calling, with the Dominican Republic, for needs-driven CB&TT, the EU favored capacity building on a voluntary basis and technology transfer on mutually agreed terms.

The African Group underscored the duty to provide scientific and technical assistance to developing countries, in addition to relevant UNCLOS principles. CARICOM noted duties to: cooperate and collaborate; promote technological capacity; provide scientific assistance; and provide preferential treatment to developing countries. Chile proposed implementing CB&TT under the principle of cooperation at scientific, multi- and bilateral levels. The FSM illustrated the interactions of traditional knowledge and capacity building, as well as with all other elements of the ILBI. IUCN stressed that CB&TT are aspects of the common concern of humankind.

MODALITIES: The G-77/China noted that needs and priorities for capacity building could be reviewed by an ILBI advisory or decision-making body, and should be related to areas requiring further scientific knowledge. The African Group preferred deferring the identification of CB&TT activities to the ILBI ABS mechanism and scientific body, emphasizing that states involved in bioprospecting should provide CB&TT to developing countries. Honduras supported the promotion of an effective mechanism to implement CB&TT through a subsidiary scientific body, promoting cohesive cooperation with other mechanisms. Senegal called for the ILBI to support coordination of bilateral CB&TT.

PSIDS observed that CB&TT should: be voluntary and mandatory; connect regional centers of excellence; and reach the national level through a targeted trust fund. The Republic of Korea emphasized cooperating within, harmonizing and building upon existing programmes. The Cook Islands suggested: taking into account existing knowledge, including traditional knowledge; operationalizing UNCLOS technology transfer commitments; and avoiding conditionality. Bangladesh lamented limited implementation of UNCLOS technology-transfer obligations.

New Zealand proposed drawing from examples of CB&TT provisions from other instruments, supported by AOSIS, and, with Bangladesh, retaining flexibility in considering the full range of desirable activities. 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. Eritrea prioritized the principles of the Istanbul Programme of Action for the Least Developed Countries (LDCs) and the need to eliminate trade barriers. Canada prioritized identifying institutional needs under the ILBI before discussing whether existing arrangements can fulfill these needs.

Zambia, for the Land-Locked Developing Countries (LLDCs), underscored that most MSR and data-sharing initiatives are currently North-led and involve limited cooperation. IUCN suggested an updated assessment of CB&TT needs, which could involve stakeholders including the private sector.

Linkage with MGRs and ABS: The EU and Canada stressed that the CB&TT regime depends upon discussions on other aspects, including MGRs. Fiji proposed linking CB&TT to access to MGRs, similar to the ISA. Argentina and others stated that CB&TT are linked to benefit-sharing from MGRs. Calling, with Bangladesh, for adequate and sustainable funding for the ILBI, the FSM cautioned against making funding for CB&TT conditional upon access to and use of MGRs.

The African Group stressed that a clear, single-access regime to MGRs found both in the Area and the water column could incentivize private-sector contributions for CB&TT, recommending an integral link between CB&TT, a global ABS mechanism and a benefit-sharing fund. 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.

Clearinghouse mechanism: The G-77/China proposed a CHM and a capacity-building network, using open-access, web-based tools to enable evaluation, publishing and information dissemination. AOSIS called for a central repository of information, integrating traditional knowledge, also accessible to international organizations and private entities, and noting that existing mechanisms may be used as long as they comply with the ILBI conditions and special needs. CARICOM suggested that the clearinghouse be accessible and not overly burdensome, and match needs with CB&TT opportunities. Mexico, for a group of Latin American countries, proposed a user-friendly, accessible and comprehensive CHM, with Costa Rica suggesting a CHM as a virtual mechanism to share CB&TT-related information made available by parties. PSIDS, supported by Singapore, proposed a globalized clearinghouse hosted by the ILBI secretariat, as well as a network of CHMs at regional and national levels, highlighting storage and dissemination of traditional knowledge.

The EU called for defining the clearinghouse objectives, pointing, with Nepal, to the usefulness of a gap analysis of international information systems. Norway, supported by Iceland, drew attention to the FAO Port State Measures Agreement having established a working group on capacity building, with FAO adding that it is also tasked to oversee the funding mechanism.

Favoring a single CHM, Mexico supported using the ISA as a model, proposing the creation of accessible databases, managed by the ILBI secretariat, offering options to obtain infrastructure and software. Tonga supported a single global CHM, playing a coordinating role among existing CHMs, as well as reviewing the CHM content following a pilot phase. Bangladesh called for a global information flow to maximize the benefits of scientific and technical knowledge.

Australia supported creating a new CHM and proposed using it for, *inter alia*, compliance, review, and benefit-sharing from MGRs. New Zealand noted that the clearinghouse could be used for: collecting information on relevant activities; recording needs and matching offers; expanding knowledge on available assistance; identifying gaps; and catalyzing new assistance.

The Republic of Korea, with the US, supported a voluntary, online information-sharing mechanism. China advocated making use of existing platforms and organizations. Japan queried the type of information to be shared, with the EU, and the way similar information is currently shared at the regional and global levels. 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. Peru highlighted the need to develop regional networks between

institutions. Fiji clarified that the regional marine scientific and technological centers foreseen under UNCLOS could perform clearinghouse functions. CARICOM proposed building on existing CHMs to develop a one-stop-shop mechanism, supported by Norway, Pakistan, Bangladesh and IUCN. Japan favored making information on needs and priorities only accessible to states. IUCN proposed a “data ambassador” to ensure the CHM is responsive to needs, and gathering the most relevant, up-to-date information.

IOC: Canada noted that a central CHM could assist in providing prioritized lists of CB&TT needs, supporting, with Thailand, Chile and China, the need to make use of existing guidance, such as the IOC Guidelines. The US prioritized considering the ISA’s and the IOC’s related work, and expressed interest in working with the IOC for developing technology-transfer modalities. Senegal noted the need for additional support for the IOC to play a coordinating role.

The EU preferred: using existing CHMs, noting the IOC’s role in exchanging scientific information, and providing transparency; relying on a one-stop-shop CB&TT mechanism, linked to regional arrangements; and further exploring the PSIDS proposal for a central CHM linked to regional ones, as well as an inventory and gap assessment of existing mechanisms.

The IOC suggested: a “hub-and-node” CHM encompassing regional networks; dynamic integration of experts and a user-friendly online system; a tech-smart interface; engagement of both users and creators; and cost-effectiveness and non-duplication. He acknowledged that the CHM foreseen under the IOC Guidelines is not fully operational, stressing, with the Cook Islands, 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 the PrepCom’s consideration. Chile highlighted that the IOC produced a report on its capacity-building development strategy in 2015. The African Group said 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. IUCN called on the IOC to develop an international meta-database to monitor needs and foster projects that are tailored to local, national, and regional levels.

IPRs: CARICOM asserted IPRs should be factored in. The African Group, with Brazil, noted that derivatives could be patented and called for a disclosure of origin clause. AOSIS noted that IPRs should not act as a barrier to CB&TT and called for further assessing the role of IPRs for technology transfer. Eritrea noted that the ILBI could provide for eliminating barriers to technology transfer and unfavorable trading regimes.

The EU, with Mexico, the US and Japan, recommended respecting IPRs. The EU, Japan, the Republic of Korea, the US and Switzerland suggested leaving IPR discussions to other fora. Canada underscored that any approach to CB&TT must be consistent with other obligations, including IPRs.

Funding: The G-77/China, supported by Singapore, highlighted the need for a sufficient and predictable funding mechanism, to be complemented by a voluntary trust fund. In addition to a global BBNJ trust fund, PSIDS called for an additional funding mechanism or endowment fund managed by the ILBI secretariat to support CB&TT, as well as MSR in ABNJ. Nepal proposed a global fund for capacity building, taking

into account the special case of LLDCs. Eritrea emphasized funding particularly for LDCs, and using the ILBI to incentivize partnerships between recipient states and the private sector.

The African Group recommended using existing funding mechanisms and, supported by AOSIS, Argentina, Peru and Nepal, a new specific fund, with Brazil and Guyana recommending contributions also from benefit-sharing. CARICOM emphasized the need for dedicated funding, whether existing or new. Indonesia stressed the need for a funding mechanism for conserving BBNJ, not contingent on benefits deriving from MGR use. Argentina stated that a new funding mechanism should not prejudice access to existing ones. Pointing to the CBD LifeWeb initiative as a model, Tonga underscored: transparency and predictability of funding; and the need for a clear, monitored and result-based framework providing legal certainty and accountability.

Indonesia proposed a minimum mandatory funding scheme, also open to voluntary funding. Drawing attention, with Bangladesh and India, to the ISA funding mechanism, AOSIS called for a common fund, without prejudice to other financial mechanisms like a rehabilitation fund, which will: address the cross-cutting nature of capacity building; include both voluntary and mandatory contributions; and be open to the private sector and international organizations. Mexico called for innovative financing, mandatory contributions, and a percentage of funding from the commercialization of MGRs, which was supported by Thailand, who added private-public partnerships and private funding. South Africa preferred mandatory contributions to a new funding mechanism. IUCN suggested periodically assessing funding needs.

The US, Japan and Iceland supported using the Global Environment Facility (GEF), and voluntary financing. The EU preferred: with Japan and Norway, financing CB&TT through existing funds; and, with the US, establishing a trust fund for developing countries' participation in ILBI meetings. Canada underscored that contributions should be voluntary. The Russian Federation underscored challenges in generating royalties from MGRs and in attracting private funding.

Monitoring and review: AOSIS supported a periodic, transparent and comprehensive review of CB&TT support and needs, to provide recommendations in consultation with relevant actors. PSIDS lamented current minimal levels of monitoring and reporting of CB&TT. Indonesia supported a mechanism to review gaps in CB&TT. Tonga called for the review to address constraints in achieving timely implementation, utilizing both quantitative and qualitative data, and building on lessons learned from national and regional review processes. Argentina supported a periodic review process, focusing on CB&TT needs.

CARICOM, with Mexico, proposed that an annual ILBI COP assess CB&TT needs and delivery, with a review conference, similar to that under UNFSA, undertaking a periodic review of the state of implementation and providing guidance, which was supported by Norway. Tonga suggested that each party submit its report to an elected scientific body that advises an executive body, which would subsequently make recommendations to the COP for decision-making, linked to periodic review based on milestone indicators. Fiji proposed that regional centers providing information on CB&TT activities could undertake monitoring, also suggesting regular status updates on CB&TT needs and implementation, as well as regional-to-international-level recommendations.

The EU favored periodically evaluating CB&TT efforts with an outcome-focused approach, based on quantitative and qualitative data undertaken at national, regional and international

levels. Japan recommended exchanging success stories and lessons learned on CB&TT under the ILBI. The US opposed a compliance process, but welcomed a periodic review of capacity needs. The Philippines called for defined indicators for periodic monitoring and evaluation. The Cook Islands prioritized a non-onerous follow-up mechanism.

IUCN proposed periodic review of funding needs and funding sources. The High Seas Alliance: linked CB&TT with participation in MPAs, EIAs and SEAs; noted the role of a clearinghouse to share information on ABMTs, including MPAs, to ensure best available science and best environmental practices; and underscored coherence in oceans management and funding, as well as, with IUCN, acquisition of environmental information.

CROSS-CUTTING ISSUES

On Monday and Tuesday, 3-4 April, the informal working group on cross-cutting issues convened, facilitated by Chair Duarte, and continued in plenary on Thursday and Friday, 6-7 April, based on an oral report and a list of written questions circulated by Chair Duarte. Discussions focused on: the scope of the ILBI; the relationship with other instruments, including the meaning of "not undermining" as stipulated in UN General Assembly Resolution 69/292; institutional arrangements; review and monitoring; compliance; liability; and dispute settlement.

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. South Africa, Singapore and Colombia stressed that all activities in ABNJ should be within the ILBI's scope and should be regulated. 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. 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 preferred to exclude application of the ILBI 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. China said the ILBI should only cover activities related to the conservation and sustainable use of BBNJ.

PRINCIPLES: CARICOM, with the African Group, the Russian Federation and PSIDS, underscored the adjacency principle. Indonesia recommended involving states bordering relevant ABNJ to prevent impacts on the extended continental shelf, and developing "due regard" obligations. The EU considered defining adjacency unnecessary, with Chile pointing to UNCLOS provisions on the need for compatibility between measures in the exclusive economic zone (EEZ) and the high seas.

RELATIONSHIPS WITH OTHER INSTRUMENTS: 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 UNFSA Article 4 (relationship with UNCLOS). Norway also drew attention to UNFSA Article 44 (relation to other agreements). Australia supported the approach to cooperation similar to the UNFSA.

Japan emphasized that the ILBI should:

- consider conservation and sustainable use of BBNJ holistically, developing policy guidelines on ABMTs and EIAs 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. Singapore argued that the relationship should not be hierarchical and should not envisage reporting requirements. Argentina stated that where there are no competent organizations, the ILBI should not encourage their establishment.

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. The EU recommended that the ILBI should 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. PSIDS stated that the ILBI could 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. 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.

WWF underscored the need to give effect to UNCLOS obligations to apply international minimum environmental standards, such as under the CBD, CMS and respective COP decisions.

Not undermining: The African Group argued that addressing recommendations to regional or sectoral bodies does not constitute “undermining,” especially when these bodies can participate in decision-making. PSIDS proposed interpreting “not undermining” as not reducing or eroding the effectiveness of existing instruments, as in the UNFSA. CARICOM opined that “not undermining” involves non-duplication, coherence and coordination, addressing existing gaps. The EU stressed that the ILBI should respect the balance of rights and obligations under UNCLOS, and the competence of other bodies. Morocco emphasized that the ILBI should not affect existing instruments’ effectiveness. Canada indicated that “not undermining” does not mean “no contact” with existing instruments. Guatemala, with Mexico, proposed “not contradicting or weakening” existing instruments’ mandates. The FSM pointed out that the ILBI will address issues that are not yet regulated.

China affirmed that the ILBI should be consistent with UNCLOS and not contradict, contravene or undermine existing legal instruments and regional and sectoral bodies’ mandates. El Salvador emphasized that to “contradict” would be more appropriate than to “undermine” previous instruments. Tuvalu underscored that the ILBI should complement, supplement and support existing instruments and frameworks, and not duplicate, contradict and hinder their efforts.

Norway said the ILBI should complement, but not take over the management functions of, regional bodies, noting the need to raise standards and catalyze further action through cooperation and coordination. Argentina emphasized that the issue could be addressed on a case-by-case basis, suggesting focusing on potential synergies.

Highlighting that any overlapping legal authority or review function of the ILBI undermines existing instruments, Iceland stressed that the ILBI should “adapt to the landscape, but not change it,” developing, strengthening and better using these instruments. Japan considered “undermining” giving the ILBI legal authority to override other bodies’ decisions, take decisions on issues that belong to their purview or ignore their professional expertise and legal authority. Australia suggested that the ILBI facilitate cooperation and coordination, setting global standards for environmental protection in ABNJ, without overruling or directing existing bodies in their areas of competence.

Cautioning against leaving implementation to regional bodies with limited geographical mandates 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.

INSTITUTIONAL ARRANGEMENTS: Several supported establishing an ILBI COP and a secretariat. The G-77/China, supported by the High Seas Alliance, proposed also: a scientific and technical body, with an advisory component; a CHM; and an ABS mechanism for MGRs. The African Group favored: 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; with the FSM and Saudi Arabia, an ABS mechanism covering monetary and non-monetary benefit-sharing; and, with Nepal and Bangladesh, a CHM as a driver for CB&TT. The African Group noted, with CARICOM, the ISA’s potential role and, with Costa Rica, Mexico and Fiji, the opportunity for UN Division of Ocean Affairs and the Law of the Sea (UNDOALOS) to assume secretariat functions.

PSIDS, supported by Nepal, envisaged: a global decision-making and a smaller executive body; implementation at the regional level, establishing regional and subregional expert committees; integration of traditional knowledge; and a global-level compliance mechanism. 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. Highlighting potential financial implications, Japan favored a simple institutional structure.

New Zealand supported a hybrid approach with regional and sectoral bodies reporting on implementation, and national entities implementing the ILBI. Norway preferred a hybrid approach of global and regional elements, with: a COP where states and stakeholders exchange views, to provide direction to the regional level; a scientific function, potentially at the regional level; a secretariat role performed by a strengthened UNDOALOS; and a CHM drawing from the ISA or the IOC, which could be managed by UNDOALOS. He cautioned against, *inter alia*, creating a “supra-national instrument,” arguing that holding other bodies and instruments accountable to ILBI structures could be seen as undermining them. Agreeing on a hybrid approach, Chile proposed focusing global regulations on existing gaps, based on cooperation, coordination, compatibility, transparency and

accountability. Tonga observed that a hybrid approach captures the accumulated expertise of regional and sectoral organizations and the need for coherence and international regulation of areas that fall outside their mandates; and favored an elected technical and scientific body.

Mexico supported: a COP, making recommendations on improving the ILBI, developing guidelines for ILBI implementation, approving the establishment of MPAs, promoting coordination and cooperation with other organizations, preparing work programmes, and open to participation by non-parties and NGOs; a technical and scientific body, also considering legal and financial issues; and a secretariat enhancing communications between states. Japan supported a COP providing policy guidance on MPAs and EIA guidelines; and a scientific committee, to be discussed at a later stage. Monaco preferred a decision-making body providing overarching guidance, a scientific body responsible for considering ABMT establishment, and a cost-effective secretariat enhancing communications. IUCN argued for global-level cooperation, outlining the need for a COP for monitoring and review, CB&TT coordination, outreach and stakeholder involvement, and long-term planning.

Noting the need for an efficient and transparent institutional arrangement, which would not place a disproportionate burden on SIDS, Tuvalu stressed the need for a global overview mechanism, leaving certain aspects of implementation, including ABMTs and EIAs, at the regional level. 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; recommended leaving the competence of establishing subsidiary bodies with the ILBI COP, supported by Nepal and Singapore; and highlighted cost effectiveness, using existing mechanisms and establishing new institutions only when necessary. The Philippines suggested establishing a scientific advisory committee, a regulatory committee, a CB&TT committee, a monitoring and compliance committee, and a review conference.

Recalling the weak international institutional structure for conservation, the Holy See: stressed the political nature of establishing an MPA network in ABNJ requiring a global perspective, as well as the need for MSP and SEAs; favored ILBI provisions stimulating measures at the regional level and ensuring their implementation; and suggested a scientific advisory body for each region, coordinating with existing ones, to provide a single information repository. Supporting sectoral organizations participating in a scientific forum, Fiji proposed an evolutionary, minimalistic approach to ILBI institutional arrangements.

Canada opposed creating a "global oversight function," as it would undermine other instruments, and, with Singapore, suggested further discussions on subsidiary bodies' functions and cost-effectiveness. The Russian Federation opposed establishing a supra-national authority, adding that it would be impractical to create a global scientific forum.

IUCN proposed that a scientific committee should coordinate scientific input and advice from global and regional structures, ensuring transparency and independence. WWF suggested that the ILBI COP establish regional integrated oceans management committees as subsidiary bodies, with delegated roles to coordinate action under regional and sectoral bodies with BBNJ-related mandates, as well as biodiversity-related conventions. UN Environment reported on an ongoing study of the operations of five regional seas conventions.

MONITORING AND COMPLIANCE: The African Group proposed: a regular reporting and review process on conservation and management measures, with Fiji pointing to the ISA's

experience; publicly-available reports; and review of reports by a scientific body. CARICOM suggested review and monitoring procedures at the international, regional and national levels, through a periodic review process, with IUCN requiring reporting on an annual basis, at the least. Singapore and NRDC favored a review conference, with Chile proposing that other bodies should scrutinize implemented measures and relevant recommendations. The EU recommended deferring the competence of establishing review and monitoring structures to the ILBI COP. Favoring the UNFSA review conference model, New Zealand envisaged reviews of the: performance of the institutional body; decisions taken under the ILBI; performance of parties' implementation; and performance of regional and sectoral bodies. Argentina and Canada proposed tasking the ILBI COP with global review and monitoring. Indonesia considered periodic review necessary, proposing detailed discussion at a later stage. Senegal called for the ILBI to oblige states to regularly report on implementation to the COP.

Compliance: The African Group, Singapore, Nepal and Guatemala supported a facilitative compliance mechanism, with New Zealand suggesting drawing from regional and sectoral bodies, like RFMOs' modalities to address illegal, unregulated and unreported fishing. Calling for taking into account regional bodies in any monitoring and compliance mechanism, CARICOM, supported by NRDC and opposed by Argentina, suggested a compliance body with both facilitative and punitive functions, based on a fast-track procedure and universal participation, with Indonesia noting the need to provide for rehabilitation and compensation for loss and damage. The EU favored a transparent mechanism to bolster cooperation and coordination. PSIDS supported a global-level compliance committee, reporting to a decision-making authority and complemented by regional and sub-regional authorities. NRDC suggested a non-punitive, fact-finding, participatory compliance procedure with a compulsory dispute resolution mechanism, which should be empowered to establish monitoring procedures for all elements of the package. Japan considered discussions on a compliance mechanism premature, suggesting use of existing compliance mechanisms under other bodies.

Mexico called for non-compliance provisions, including the polluter pays principle. IUCN called for compliance measures to be effective, timely and proportionate to the magnitude of harm.

RESPONSIBILITY AND LIABILITY: Invoking the polluter pays principle, the African Group suggested establishing a liability fund, and pointed to UNCLOS Article 304 (responsibility and liability for damage) and, with New Zealand, UNFSA Article 35 (responsibility and liability).

PSIDS, supported by IUCN and opposed by Japan, suggested establishing a rehabilitation fund and a liability fund under the ILBI, with the FSM explaining that, for the liability fund, the proponent would provide a security deposit to be used as reparation for damage. Linking the issue to the need for dedicated funding for ILBI implementation, CARICOM called for voluntary and mandatory contributions. Mexico, supported by Costa Rica, prioritized preventive measures, with liability and responsibility provisions serving as a "plan B" to address violations, reparations and mitigation. Tonga called for provisions on acts or omissions, which would result in liability for compensation, as well as provisions exempting liability.

The EU noted that there is no need for an explicit provision on responsibility, with Iran highlighting that international law on liability is sufficiently developed to address ILBI requirements. The US said that existing rules on responsibility and liability suffice. Peru referenced the International Tribunal for the Law

of the Sea (ITLOS) Advisory Opinion on deep-seabed mining on sponsoring states' responsibilities and obligations, noting that relevant principles provide the basis for an ILBI liability framework. IUCN asserted that all states should have standing to seek redress for damage.

DISPUTE SETTLEMENT: The African Group pointed to UNCLOS provisions on peaceful dispute settlement as a starting point and, with the EU and the FSM, stressed that all parties with substantial interest should have access to dispute settlement. PSIDS supported an ILBI dispute-resolution mechanism. Considering recourse to the ITLOS as a last resort, CARICOM, supported by Canada and Indonesia, favored drawing on UNFSA provisions on peaceful dispute resolution. Venezuela suggested drawing from the UN Charter.

Suggesting that access should be contingent on the ILBI membership and the type of dispute-settlement procedure, and noting opportunities for non-state actors' access, Mexico called for non-adversarial dispute settlement to address technical disputes, with Colombia suggesting they be resolved by a group of experts.

Tonga, supported by NRDC, suggested granting non-parties and stakeholders' access to the dispute-settlement mechanisms, with Greenpeace pointing to the inquiry commission under the Espoo Convention Implementation Committee and the Aarhus Convention Compliance Committee, and the possibility of establishing an ITLOS special chamber on marine biodiversity. IUCN supported: an efficient and timely dispute-resolution procedure; formal recognition of civil society's role; a facilitative compliance mechanism; and reliance on ITLOS where necessary. Indonesia proposed considering a dispute-settlement mechanism to take into account that MGRs' utilization could involve non-state actors.

New Zealand and Iran suggested providing for advisory opinions, with Greenpeace noting that non-state actors do not have access to relevant ITLOS procedures. The EU favored a simple provision on peaceful dispute-settlement means, with the Philippines suggesting allowing for regional dispute settlement. The US favored arbitration. Australia emphasized informal types of dispute resolution like reconciliation. Peru highlighted the obligation to cooperate and avoid disputes, mediation, and implementation *mutatis mutandis* of UNCLOS Part XV (settlement of disputes).

CLOSING PLENARY

On Friday afternoon, 7 April, Chair Duarte proposed: producing a Chair's overview of PrepCom 3 discussions, including the reports of the informal working group discussions, to facilitate intersessional deliberations; and convening a preparatory organizational meeting to discuss the PrepCom 4 draft agenda and programme of work. Lauding the constructive session, the G-77/China, Australia, Canada, New Zealand, Norway and the EU requested Chair Duarte to prepare and circulate well in advance of PrepCom 4: draft substantive recommendations to the General Assembly; and a streamlined, updated Chair's non-paper. CARICOM and Mexico, on behalf of numerous Latin American countries, requested retention of the structure and inclusion of additional submissions.

Mexico, on behalf of a number of Latin American countries, and Japan, opposed by the Russian Federation, recommended that the Chair's non-paper should not attribute proposals to specific delegations and should be prepared entirely under the Chair's authority. Indonesia and the US called for a concise non-paper. Eritrea supported negotiation towards an intergovernmental conference (IGC) process and a non-exhaustive Chair's non-paper capturing views from states and civil society. Norway expressed

appreciation for delegations' will to move forward and deliver on the PrepCom's mandate, noting that it may not be possible to resolve all issues in this forum.

AOSIS and Ghana suggested reflecting areas of convergence and areas requiring further discussions in the streamlined Chair's non-paper. The Republic of Korea supported the Chair developing draft recommendations to the General Assembly, with Japan and China proposing to distinguish areas of convergence in the draft recommendations. Iceland welcomed the Chair's overview including the reports of the informal working group facilitators, as well as a streamlined Chair's non-paper as useful background documents.

Considering discussions on convening an IGC premature, the US called for the draft recommendations to the General Assembly to distinguish issues of convergence, including elements on which the Chair foresees the possibility of consensus and for PrepCom 4 to exhaust all efforts to obtain consensus on the substantive recommendations. China underscored that the recommendations should reflect common understanding reached through consensus.

Highlighting divergence of views on scope, obligations, rights, and relationships with other agreements, the Russian Federation considered it premature to request the Chair to prepare draft recommendations, emphasizing that the PrepCom should exhaust every effort to reach consensus on substantive elements and questioning whether the PrepCom's mandate is being fulfilled. Thailand stressed that PrepCom 4 should not overstretch itself to achieve consensus on all issues, noting that draft substantive recommendations may contain elements where consensus has not been reached.

Japan requested circulation of recommendations by 31 May 2017 to enable consultation with relevant national stakeholders, and prioritized discussion of the draft substantive recommendations at PrepCom 4. The Dominican Republic and Viet Nam recommended that PrepCom 4 should focus on the substantive recommendations on convening an IGC. Australia expressed optimism about fulfilling the PrepCom's mandate. The IUCN and the High Seas Alliance looked forward to an IGC in 2018.

The Cook Islands called for a fair, transparent and inclusive conclusion of the PrepCom. Fiji highlighted the need for an evolutionary approach and for consistency with UNCLOS. The Philippines highlighted impacts on future generations.

Noting that the roadmap was acceptable to delegates, Chair Duarte invited participants to provide indicative suggestions for PrepCom 4 by 24 April 2017, to contribute to the streamlined Chair's non-paper. He commended participants for their hard work, spirit of cooperation, and tireless commitment to the process, gaveling the meeting to a close at 3:47 pm.

A BRIEF ANALYSIS OF PREPCOM 3

Wayfarer, the only way

Is your footprints and no other.

("Wayfarer, there is no path," Antonio Machado)

"We need cooperation, flexibility and determination...to make 2017 the turning point for the oceans!" This rallying call from UN General Assembly President Peter Thomson reminded PrepCom 3 participants of the imminent, high-profile UN Oceans Conference in June and of the need to successfully complete the PrepCom mandate in July.

Against the backdrop of heightened interest on the role of the oceans in the context of the global sustainable development agenda, the third session of the PrepCom was expected to make substantive progress on developing the building blocks of a new

international legally binding instrument on marine biodiversity in the deep seas. It was also largely seen as the last fully substantive session, because the fourth and final session in July will need to reach agreement on recommendations to the General Assembly on whether to convene an intergovernmental conference to shift the process to a final negotiating phase.

This brief analysis will examine the path traveled by PrepCom 3, along the lines of a poem read out by a passionate delegate in plenary. The analysis first discusses areas of substantive progress made over the two-week session, and then identifies key questions for PrepCom 4. It concludes by reflecting on the two-month intersessional period before PrepCom 4 and the road ahead for the BBNJ wayfarers.

MAKE YOUR WAY BY GOING FARTHER

PrepCom 3 continued the productive and, for the most part, convivial discussions that have come to characterize this process of fleshing out different positions on what a new treaty should be about. As in previous sessions, the Committee did not focus on producing a written outcome. Rather delegations worked on the basis of guidance provided by the Chair in the form of a long, but well-structured, compilation of submissions from governments and civil society, which had been produced intersessionally. In addition, during the second week's plenary, delegates heard oral reports from facilitators summarizing informal working group discussions, and received a series of written questions on issues requiring further discussion, which was circulated by Chair Carlos Sobral Duarte (Brazil). This approach, partially initiated by former Chair Eden Charles (Trinidad and Tobago) and continued by Duarte, sometimes had the effect of leaving delegations hazy about how much of the path has been covered and how much lies ahead. But at least it prevented them from getting bogged down in the minutiae of wordsmithing, seeking instead to encourage more free-flowing substantive thinking to draw out big-picture, gap-bridging concepts at this still early stage of negotiations. PrepCom 3, however, departed from the previous session, which had engaged in an identification of areas of convergence that had only been partially successful, as convergence could only be found on few, very general points and the lists of areas for further discussions were dauntingly long. Instead, PrepCom 3 delegations were asked to elaborate their vision for the backbone and key content of a new legally binding instrument.

Many found the structure provided by the Chair's non-paper very helpful, hinting that it could be the table of contents of a new treaty. In addition, most participants enjoyed the exchange of increasingly detailed and more practical ideas, inspired by real-world experiences in the marine and other sectors. For instance, delegations revealed more of what they preferred in terms of "lite/heavy" access and "lite/heavy" benefit-sharing options for marine genetic resources, in the words that the Norwegian Nagoya Protocol focal point used during events organized on the side-lines of the meeting. According to long-standing participants, PrepCom 3 also illuminated two emerging features of the process. The first was a genuinely interactive dialogue with relevant intergovernmental organizations and NGOs, both in plenary and in well-attended, substantive side-events. This resulted in explicit requests to "outsiders" to actively contribute to the process, notably a request to the Intergovernmental Oceanographic Commission to report on progress and challenges in setting up a clearinghouse mechanism and to UN Environment on an assessment of regional seas programmes. Second, the process spurred a deeper reflection on interlinkages across the package of elements to be covered by the ILBI, such as a clearinghouse mechanism that could be used to step up capacity building and

technology transfer (CB&TT), by matching resources and needs, and also contribute to benefit-sharing by pooling together marine genetic resources samples, data and publications.

Overall, the PrepCom achieved more clarity on the underlying architectural options for the ILBI. Chair Duarte offered a schematization of these during the discussions on MPAs, by labelling them "global," "hybrid" and "regional" models. And while all these models feature some degree of hybridization of global and regional elements, they served to emphasize whether the "center of gravity" lies within a new global body or existing regional ones. This appeared helpful to visualize the institutional options needed across the whole ILBI content. Who has ultimate decision-making power over the elements? What is the value added of a new global layer in a complex, multi-level landscape of oceans governance? Many supporters of the new treaty see the value in overarching global decision-making powers, recognizing MPAs set up by regional or sectoral bodies, ensuring compliance with global standards to guarantee biodiversity mainstreaming in different sectors and regions, proactively brokering CB&TT, and enabling or enforcing benefit-sharing. At the other end of the scale, others think that regional and sectoral organizations should remain the sole decision-makers, and/or should not be subject to external effectiveness assessments, with some fearful of the "slow-down effect" represented by an extra level of bureaucracy.

Several developed countries have pointed to the ultimate role of the state in "calling the shots" on environmental impact assessment (EIAs) and on CB&TT. Others, possibly in the middle ground, proposed to reflect on nuances, taking into account the disadvantages of global decision-making that may be distant from the reality of the various ecosystems, may have difficulty gathering the relevant expertise, and/or may be bogged down by geopolitical issues that have nothing to do with healthy oceans. On that basis, proposals emerged about including regional and sectoral bodies in ILBI decision-making, or setting up ILBI regional branches to reach out to other levels of action. Common ground among the myriads of possible combinations remained elusive, but for many reasonably so. As a seasoned delegated noted, "This is the type of political deal-making that characterizes an Intergovernmental Conference (IGC) rather than a PrepCom." Be that as it may, a discussion on the "nuts and bolts" of the future relationship of the ILBI with other agreements appeared to many more illuminating than the continued abstract discussion on what "not to undermine" them means.

YOU LOOK BACK ON THAT PATH YOU MAY NOT SET FOOT ON FROM NOW ONWARD

Even if overarching political questions are to be left to the IGC, there are still key substantive questions for the PrepCom to resolve, in order to demonstrate that the point of no-return has been reached for stepping up negotiations, rather than merely changing the name of discussions that keep going in circles. According to some, this has to do with setting the appropriate level of ambition for the ILBI, particularly with regard to the conservation of marine biodiversity in ABNJ. In that connection, some noticed that more delegations have been referring to strategic environmental assessments and marine spatial planning, even if those references have remained quite generic. Others considered that integrating traditional knowledge into the ILBI decision-making structures may help integrated thinking, in line with developments under the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) and the CBD. The earlier entreaty by Pacific SIDS and AOSIS of the need to include traditional knowledge holders in the ILBI has become a specific proposal for integrating different knowledge systems into the governance of MPAs and EIAs, building upon

existing international guidelines. But views are divided on whether there should be mandatory, top-down regulation to enforce conservation, or a horizontal, persuasive approach that gradually builds capacity, willingness and cooperation among disparate actors through continuous exchange of conservation success stories and lessons learned.

On the side of sustainable use, quite a few pointed to the need to devise an ILBI that can “bring on board” the private sector, be that fisheries or pharma. In a rare showing, the Holy See made an elaborate intervention on the need to build on common commercial contractual practices, such as “earnout” provisions, to develop a realistic benefit-sharing mechanism. IUCN partnered with academic researchers to propose a notification system for access to MGRs that supports scientific knowledge advancements and innovations, but also sets a new practice in motion by keeping track globally of “who goes where” in the deep seas and ensuring universal access to the samples and information so discovered. But, according to many, delegations and stakeholders will need to think harder regarding what incentives can be offered or leverage applied to the private sector for it to opt into engaging in a new regime, rather than going around it.

Another looming question concerns the costs of running a future ILBI. In addition to a COP, a secretariat and a scientific body, that now seem to be widely accepted as necessary institutional developments to bring oceans governance in line with current multilateral environmental diplomacy, proposals for new institutional structures to provide dedicated support to each and every element of the package mushroomed, with more requests for mechanisms to address multi-level connections with regional and sectoral actors. On the one hand, however, none of the donor countries has pledged financial support to the new agreement. Rather many are beating the drum on the need for cost-effectiveness. This may be seen as a common negotiating strategy, as funding may be the last bargaining chip to drop on the table, commented a seasoned delegate. But in the current climate of plummeting funding across multilateral environmental processes (as discussed at length at the recent IPBES Plenary), the lack of commitment to invest in the ILBI was considered a worrying sign by NGOs. They argued that the availability of funding is directly proportional to the eventual inclusiveness of the ILBI process, particularly insofar as reaching out to regions and sectors is concerned.

ONLY WAKE-TRAILS ON THE WATERS

Whether the PrepCom has covered sufficient substantive ground to unearth the necessary “elements of a draft text” for the ILBI to fulfil its enigmatic mandate may become clearer during the intersessional period. The closing plenary gave Chair Duarte the formidable task of promptly developing a much shorter yet still inclusive compilation of submissions to date (an updated and streamlined non-paper) to highlight areas of convergence and ideally, as the US put it, other areas that foreshadow “the possibility of consensus.”

The amount of time to be devoted at PrepCom 4 to exploring the extent of substantive convergence, however, remains a matter of speculation. “It’d be a pity if we don’t have an exchange on the substance at the next session,” a delegate remarked, “We need more time to reflect on the new proposals emerged at PrepCom 3 and an opportunity to share our revised positions before the conclusion of this process.” Chair Duarte has also been asked to prepare draft “substantive” recommendations to the General Assembly. Many participants, however, were unclear about what that qualification may mean, and the extent to which the recommendations will endorse or forward the PrepCom’s substantive work as a departure point for negotiations under

the IGC. While the vast majority thinks that the PrepCom has worked out sufficient substantive content, a few still need to be convinced. The Russian Federation and the US have specifically pointed to the need to exhaust all efforts by the PrepCom to reach consensus, even if the General Assembly resolution allows it to include outcomes on which consensus could not be reached. Others like Japan have hinted that non-consensus elements should be distinguished in the outcome. “Does that mean that non-consensus elements should not be included in the recommendations? Will some of the hard work we have done vanish, like trails in the water?” a nonplussed participant wondered, noting the limited time available and the little room for the Chair to maneuver and move the process forward.

As the UN Oceans Conference fast approaches, many appear skeptical that the high seas will receive the needed attention to help raise the profile of what some see as the “highbrow, and not sexy” BBNJ process. While there are issues that are already grabbing headlines, like ocean plastics, some will nevertheless work hard to ensure that sufficient ministerial attention is paid to BBNJ, in the hope that some media hype, a general sense of urgency, and creative partnerships may galvanize BBNJ stakeholders in the crucial phase ahead.

UPCOMING MEETINGS

Second Intergovernmental Consultations on the UN Ocean Conference Call for Action: The second round of consultations will be convened by the Permanent Representatives of Portugal and Singapore, and will provide an opportunity for the co-facilitators of the preparatory process to conclude the intergovernmental consultations on a Call for Action for the UN Conference to Support the Implementation of Sustainable Development Goal 14 (conserve and sustainably use the oceans, seas and marine resources for sustainable development). **dates:** 24-27 April 2017 **location:** UN Headquarters, New York **www:** <https://oceanconference.un.org/>

16th Session of the Permanent Forum on Indigenous Issues (UNPFII): The UNPFII is an advisory body to the UN Economic and Social Council, with the mandate to discuss indigenous issues related to economic and social development, culture, the environment, education, health and human rights. **dates:** 24 April - 5 May 2017 **location:** UN Headquarters, New York **contact:** PFII Secretariat **email:** indigenous_un@un.org **www:** <https://www.un.org/development/desa/indigenouspeoples/unpfii-sessions-2/sixteenth-session.html>

International Whaling Commission Scientific Committee: The International Whaling Commission (IWC) will hold the annual meeting of its Scientific Committee, one of its two major meeting forums, in Bled, Slovenia. **dates:** 9-21 May 2017 **location:** Bled, Slovenia **contact:** IWC Secretariat **phone:** +44 (0) 1223-233-971 **fax:** +44 (0) 1223-232-876 **www:** <https://iwc.int/sc67a>

Ninth Session of the Regional Commission for Fisheries: The purpose of the Regional Commission for Fisheries is to promote conservation, rational management and best utilization of living marine resources, as well as the sustainable development of aquaculture within its area. **dates:** 9-11 May 2017 **location:** Kuwait City, Kuwait **contact:** Fersoy Haydar, FAO **phone:** +202-333-16000 Ext: 2801 **fax:** +202-333-78563 **email:** Haydar.Fersoy@fao.org **www:** <http://www.fao.org/fishery/rfb/recofi/en>

18th Meeting of the UN Open-ended Informal Consultative Process on Oceans and the Law of the Sea: The 18th meeting of the UN Open-ended Informal Consultative Process on Oceans and the Law of the Sea (ICP

18) will focus on the effects of climate change on the oceans.
dates: 15-19 May 2017 **location:** UN Headquarters, New York **contact:** UNDOALOS **phone:** +1-212-963-5915 **fax:** +1-212 963-5847 **email:** doalos@un.org **www:** http://www.un.org/depts/los/consultative_process/consultative_process.htm

The Marine Environment and UN Sustainable

Development Goal 14: The 41st Annual Conference of the University of Virginia Center for Oceans Law and Policy will convene under the theme, "The Marine Environment and UN Sustainable Development Goal 14." **dates:** 17-18 May 2017 **location:** Yogyakarta (Java), Indonesia **contact:** University of Virginia Center for Oceans Law and Policy **phone:** +1-434-924-7441 **fax:** +1-434-924-7362 **email:** colp@virginia.edu **www:** <http://www.virginia.edu/colp/annual-conference.html>

52nd Meeting of the GEF Council: The GEF Council is the main governing body of the GEF. It is comprised of 32 Members appointed by constituencies of GEF member countries (14 from developed countries, 16 from developing countries and 2 from economies in transition). The Council, which meets twice annually, develops, adopts and evaluates the operational policies and programmes for GEF-financed activities. It also reviews and approves the work programme (projects submitted for approval). On the final day, the Council will convene as the Council of the Least Developed Countries Fund (LDCF) and Special Climate Change Fund (SCCF). The Council's meeting will be preceded by the GEF Civil Society Organizations Consultation. **dates:** 22-25 May 2017 **location:** Washington D.C., US **contact:** GEF Secretariat **www:** <https://www.thegef.org/council-meetings>

First Meeting of the Parties to the 2009 FAO Agreement on Port State Measures: The FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing entered into force on 5 June 2016. **dates:** 29-31 May 2017 **location:** Oslo, Norway **contact:** Matthew Camilleri, FAO **email:** matthew.camilleri@fao.org **www:** <http://www.fao.org/fishery/psm/agreement/en>

High-Level UN Conference to Support the Implementation of SDG 14: This high-level UN Conference, co-hosted by the Governments of Fiji and Sweden, will coincide with the World Oceans Day, and seeks to support the implementation of SDG 14. **dates:** 5-9 June 2017 **location:** UN Headquarters, New York **contact:** Permanent Missions of Fiji and Sweden **phone:** +1-212-687-4130 (Fiji); +1-212-583-2500 (Sweden) **www:** <https://oceanconference.un.org/>

HLPF 5: The fifth session of the High-level Political Forum on Sustainable Development, convening under the auspices of the UN Economic and Social Council, will be held under the theme "Eradicating poverty and promoting prosperity in a changing world." As decided in UN General Assembly resolution A/70/299, HLPF 5 will conduct in-depth reviews of the implementation of five SDGs, including SDG 14. **dates:** 10-19 July 2017 **location:** UN Headquarters, New York **contact:** UN Division for Sustainable Development, Department of Economic and Social Affairs **www:** <https://sustainabledevelopment.un.org/hlpf>

BBNJ PrepCom 4: The fourth meeting of the Preparatory Committee established by General Assembly resolution 69/292 (Development of an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction) will address marine genetic resources, area-based management tools, environmental impact assessments, capacity building, transfer of marine technology, and cross-cutting issues. The session is expected to prepare recommendations to the UN General Assembly for the Assembly to decide at its seventy-second session whether to convene

an intergovernmental conference to elaborate the text of the agreement. **dates:** 10-21 July 2017 **location:** UN Headquarters, New York **contact:** UNDOALOS **phone:** +1-212-963-3962 **email:** doalos@un.org **www:** <http://www.un.org/depts/los/biodiversity/prepcom.htm>

For additional meetings, see <http://sdg.iisd.org/>

GLOSSARY

ABMTs	Area-based management tools
ABNJ	Areas beyond national jurisdiction
ABS	Access and benefit-sharing
AOSIS	Alliance of Small Island States
Area	Sea-bed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction
BBNJ	Biodiversity in areas beyond national jurisdiction
CARICOM	Caribbean Community
CB&TT	Capacity building and marine technology transfer
CBD	Convention on Biological Diversity
CHM	Clearinghouse mechanism
CMS	Convention on Migratory Species
COP	Conference of the Parties
EBSAs	Ecologically or biologically significant marine areas
EIA	Environmental impact assessment
FAO	Food and Agriculture Organization of the UN
FSM	Federated States of Micronesia
IGC	Intergovernmental Conference
ILBI	International legally binding instrument
IMO	International Maritime Organization
IOC	Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization (UNESCO)
IPBES	Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services
IPRs	Intellectual property rights
ISA	International Seabed Authority
ITLOS	International Tribunal for the Law of the Sea
ITPGRFA	International Treaty on Plant Genetic Resources for Food and Agriculture
IUCN	International Union for Conservation of Nature
LDCs	Least developed countries
LLDCs	Landlocked developing countries
MGRs	Marine genetic resources
MPAs	Marine protected areas
MSP	Marine spatial planning
MSR	Marine scientific research
NRDC	Natural Resources Defense Council
PSIDS	Pacific Small Island Developing States
PrepCom	Preparatory Committee
RFMOs	Regional fisheries management organizations
SEAs	Strategic environmental assessments
SIDS	Small island developing states
TEIAs	Transboundary environmental impact assessments
UNCLOS	UN Convention on the Law of the Sea
UNFSA	UN Fish Stocks Agreement
WWF	World Wide Fund for Nature