

SUMMARY OF THE FOURTH SESSION OF THE PREPARATORY COMMITTEE ON MARINE BIODIVERSITY BEYOND AREAS OF NATIONAL JURISDICTION: 10-21 JULY 2017

The fourth 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) convened from 10-21 July 2017, at UN Headquarters in New York.

This was the last session scheduled by the UN General Assembly, which, according to Resolution 69/292, was expected to finalize substantive recommendations on the elements of a draft text of an ILBI, so that the Assembly can decide, before the end of its seventy-second session, whether to convene an intergovernmental conference (IGC) to elaborate the text of the agreement. The session continued consideration of: the scope of an ILBI and its relationship with other instruments; guiding approaches and principles; marine genetic resources, including questions on benefit-sharing; measures such as area-based management tools, including marine protected areas; environmental impact assessments; and capacity building and marine technology transfer.

Amidst diverging views among a wide majority and a minority of countries as to whether the PrepCom had exhausted all efforts to reach consensus and whether it could recommend that the General Assembly convene an IGC, the PrepCom outcome was eventually adopted by consensus, following informal, closed-door negotiations, informal bilateral consultations with Chair Carlos Sobral Duarte, and regional coordination meetings that continued into the evening of the last day. The outcome includes non-exclusive elements of a draft ILBI text that generated convergence among most delegations, a list of main issues on which there is divergence of views, with the indication that both do not reflect consensus; and a recommendation to the UN General Assembly to take a decision, as soon as possible, on the convening of an IGC. Most delegations considered that the PrepCom had completed its mandate, although a few cautioned against prejudging the General Assembly's decision on convening an IGC.

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, with growing concerns over 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 expressly refer to marine biodiversity, it is commonly regarded as establishing the legal framework for all activities in the ocean. 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

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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 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 fulfil 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, the issue of the conservation and sustainable use of BBNJ, building on the work of the Working Group and before the end of the sixty-ninth session of the General Assembly, 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 fulfil the Rio+20 commitment by focusing on the scope, parameters and feasibility of an international instrument under UNCLOS. The Working Group recommended being reconvened 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 during the sixty-ninth session of the General Assembly to develop a new ILBI under UNCLOS on BBNJ, 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 Resolution 69/292, the General Assembly decided to develop an ILBI under UNCLOS on the conservation and sustainable use of BBNJ. To this end, the Assembly established a Preparatory Committee (PrepCom), to make substantive recommendations to the 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, before the end of its seventy-second session, whether to convene an IGC 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.

PREPCOM 3: During the third session of the PrepCom (27 March – 7 April 2017, New York), chaired by Carlos Sobral Duarte (Brazil), delegates met in plenary and informal working group settings on the basis of a Chair’s non-paper on elements of a draft text of an ILBI. Delegations supported the structure of the non-paper and engaged in a constructive exchange of increasingly detailed proposals on the possible elements of the ILBI. At the end of PrepCom 3, delegates requested the preparation of draft substantive recommendations for consideration by PrepCom 4 as well as an updated Chair’s non-paper structuring and streamlining submissions.

PREPCOM 4 REPORT

On Monday, 10 July, PrepCom Chair Carlos Sobral Duarte (Brazil) opened the session, stressing that work during previous sessions, as well as intersessionally, placed the PrepCom in a good position to fulfil its mandate. Miguel de Serpa Soares, Under-Secretary-General for Legal Affairs and UN Legal Counsel, reported on the eighteenth session of the Informal Consultative Process on Oceans and the Law of the Sea (ICP 18) and the UN Ocean Conference.

ADMINISTRATIVE MATTERS: Chair Duarte drew attention to the Chair's: indicative suggestions to assist the PrepCom in developing recommendations to the General Assembly, circulated on 31 May 2017 as a guide for discussions at PrepCom 4; and a streamlined non-paper on elements of a draft text of an ILBI, which was circulated on 6 July 2017 for reference only and not for discussion. He proposed: reconvening the informal working groups during the first week, and considering the chapeau to the draft recommendations on Friday, 14 July, in plenary; and continuing plenary discussions of outstanding issues during the second week, on the basis of a new draft of the Chair's indicative suggestions. Delegates approved the provisional agenda (AC.287/2017/PC.4/L.1) and the programme of work (AC.287/2017/PC.4/L.2), without amendments.

Chair Duarte reintroduced the facilitators of the informal working groups: Janine Coye-Felson (Belize), for marine genetic resources (MGRs) including the sharing of benefits; Alice Revell (New Zealand), for area-based management tools (ABMTs), including marine protected areas (MPAs); René Lefebvre (the Netherlands), for environmental impact assessments (EIAs); Rena Lee (Singapore), for CB&TT; and Chair Duarte for cross-cutting issues.

GENERAL STATEMENTS: Several delegations expressed appreciation for the Chair's indicative suggestions. Ecuador, for the Group of 77 and China (G-77/China), expressed confidence that PrepCom 4 would fulfil its mandate, and called for a decision on convening an IGC as soon as possible. Algeria, for the African Group, acknowledged the Chair's indicative suggestions as a "step in the right direction" to allow the PrepCom to fulfil its mandate; and, supported by Monaco, the Dominican Republic, the Federated States of Micronesia (FSM) for the Pacific Islands Forum, IUCN, and the High Seas Alliance, urged for an IGC in 2018.

Guatemala and Morocco called for capitalizing on political will engendered at the UN Ocean Conference. The Pacific Islands Forum recalled Kenya's and Portugal's offer to hold a follow-up conference. Comisión Permanente del Pacífico Sur, Sri Lanka and India considered BBNJ conservation key to achieving Sustainable Development Goal (SDG) 14 (life below water).

Bangladesh, for Least Developed Countries (LDCs), stressed that the recommendations should help strike a balance between BBNJ conservation and sustainable use. Nepal noted the need to address climate change impacts on both the ocean and mountains, and to share benefits equitably, including with land-locked developing countries (LLDCs).

Indonesia emphasized: inter-generational equity, and fair and equitable benefit-sharing; common concern of humankind; and respect for national jurisdiction over the outer continental shelf. Underscoring the common heritage principle with Thailand, the Philippines called for: good governance, transparency and public participation to inform discussions; and monetary and non-monetary benefit-sharing, as well as a non-exhaustive list of activities subject to EIAs.

Maldives, for the Alliance of Small Island States (AOSIS), considered an IGC the next logical step to urgently protect the oceans. Nauru, for the Pacific small island developing states (PSIDS), called for including traditional knowledge and a funding mechanism supporting ILBI implementation; and moving forward in the protection of marine biodiversity. Barbados, on behalf of the Caribbean Community (CARICOM), looked forward to the successful conclusion of PrepCom 4, with a recommendation to convene an IGC.

Mexico, speaking also for Brazil, Colombia, Chile, Guatemala, Costa Rica, Honduras, El Salvador, Panama, Ecuador and Peru (Like-Minded Latin American countries), expressed confidence that the session would adopt substantive recommendations for convening an IGC in 2018, and underscored the right to bring additional elements for further consideration at an IGC. Chile, also on behalf of Argentina, Peru, Venezuela, Ecuador, Uruguay, Colombia and Paraguay, expressed confidence in finalizing substantive recommendations at PrepCom 4. China recommended adhering to the mandate outlined in Resolution 69/292.

The European Union (EU) highlighted progress in reaching common ground, as well as emerging consensus on several issues, noting that intractable issues could be addressed by an IGC, to be convened ideally in 2018, as the "correct forum for consolidating work, compromising and arriving at a balanced outcome." Welcoming an IGC as soon as possible, Australia noted that work done by the PrepCom should not preclude an IGC from elaborating other elements, as required. Considering the streamlined non-paper a useful document, New Zealand suggested: focusing on recommendations reflecting areas of agreement; addressing divergences in an IGC, which should be the next step; and avoiding prejudicing the ILBI's final structure.

Norway highlighted that: although an IGC in 2018 seems ambitious, he would "not stand in the way, if it is practical and politically possible"; and the recommendations should establish the necessary confidence in the process to move to the next stage, and ensure that the different options remain open for discussion at an IGC. The Russian Federation stated that: his position was not accurately reflected in the Chair's indicative suggestions; he would not object to the indicative suggestions forming the basis for discussions, cautioning against any lack of consensus on serious issues; and another PrepCom session would be needed to reach agreement. The US underscored the need for "important adjustments" for the Chair's indicative suggestions to lead to the recommendations to the General Assembly, stating that his country will only take a decision on convening an IGC after the PrepCom process is concluded.

Iceland opined that: the Chair's indicative suggestions were in line with Resolution 69/292, as the recommendations should clearly indicate unresolved issues, in addition to those where consensus has been reached; and the streamlined non-paper was useful but only served as reference for future work. Canada stressed that: certain elements in the Chair's indicative suggestions need to be further considered, noting the need to clarify that the elements listed are not formally agreed and that the structure is indicative; a hybrid approach needs to be fleshed out; and a degree of flexibility should be maintained in the recommendations to the General Assembly. Noting that numerous issues in the Chair's indicative suggestions require further deliberation, the Republic of Korea emphasized that the ILBI should not undermine existing relevant legal instruments, and should strike a balance between conservation and sustainable use, taking into account all legitimate interests. Anticipating that not all issues will be resolved at this session, Japan recommended a fact-based discussion on monetary benefit-sharing.

The International Chamber of Commerce underscored the importance of business expertise and perspectives on MGRs and innovation. The Intergovernmental Oceanographic Commission of the UN Educational, Scientific and Cultural Organization (IOC) drew attention to an IOC *ad hoc* report to PrepCom 4 on the IOC strategy on CB&TT, as well as issues related to the operationalization of a clearinghouse mechanism (CHM) for the

purposes of an ILBI. The International Maritime Organization (IMO) welcomed efforts to further address BBNJ conservation and sustainable use, cautioning against undermining existing frameworks. UN Environment reported on the Regional Seas Programme. The CBD highlighted discussions on digital sequence information on genetic resources and consideration of developments under the General Assembly at the next meeting of the CBD Subsidiary Body on Implementation in relation to Nagoya Protocol Article 10 on multilateral benefit-sharing.

RECOMMENDATIONS TO THE GENERAL ASSEMBLY

Substantive and procedural recommendations were discussed in plenary on Friday, 14 July, on the basis of the Chair's indicative suggestions; on Monday, 17 July, on the basis of a revised Chair's text containing a chapeau to the draft elements and a procedural recommendation on convening an IGC; on Thursday, 20 July, on the basis of a further revised Chair's text; and on Friday, 21 July, in the afternoon and evening, on the basis of a draft arising from Chair Duarte's informal bilateral consultations.

SUBSTANTIVE RECOMMENDATIONS: Canada proposed, supported by the US, Australia, New Zealand and Norway, endorsing a non-exclusive list of elements, with an indicative structure for the ILBI, for further consideration. Australia, supported by Norway and New Zealand, added that "the recommendations are made without prejudice to the positions of states during future negotiations."

China said that the PrepCom report should contain recommendations for the ILBI draft elements, including indicative suggestions outlining consensus elements, and an annex containing divergent views. Iceland said that if issues on which no consensus has been reached are to be included, they should be captured in a separate section.

On Monday, 17 July, several delegations expressed support for the revised Chair's draft, which attempted to reflect those elements that had little or no opposition and those that had broad support. The African Group welcomed, with the EU, the addition of preambular language stating that "the elements are without prejudice to the positions of states during future negotiations." CARICOM welcomed language clarifying that the elements are "non-exclusive" and without prejudice to states' positions. Costa Rica indicated preference for stronger language in the chapeau.

The Russian Federation stressed that: the revised draft reflects the views of only one group of states and does not strike the appropriate balance; in accordance with Resolution 69/292, two categories of recommendations to the General Assembly may be included, those that have reached consensus and those that, despite all efforts to reach consensus, have not; and, in its current form, the revised draft is not acceptable. Japan noted that several matters included in the revised text needed fine-tuning, such as the relationship between benefit-sharing under the ILBI and existing mechanisms. The Republic of Korea underscored that any future rule on BBNJ conservation and sustainable use shall not contravene the provisions of other applicable conventions, in particular UNCLOS.

On Thursday, 20 July, delegates considered a Chair's further revised draft including: a draft recommendation to the General Assembly on the substantive elements of an ILBI, indicating that the structure and elements reflect the outcome of PrepCom discussions, and that the elements are not exclusive and without prejudice to the position of states during the negotiations; and two sections, one on elements of the draft ILBI text (Section A) and

the other on "elements that require most attention towards further progress in the development of a draft ILBI text" (Section B).

Noting that it was not easy to accommodate all the interests of delegations, the G-77/China stressed that the Chair's further revised draft does an "excellent job in finding an acceptable middle ground." The African Group, with AOSIS, underscored that the revised draft is an improvement and "captures the delicate balance of views raised in the room," urging delegations not to reopen the text for further deliberations. The Dominican Republic noted that, even though it does not capture all states' requirements, the draft still reflects that "we have fulfilled our mandate" and can move to an IGC. AOSIS emphasized that the text includes satisfactory qualifiers and caveats allowing important issues to be brought up at the next stage of the process.

Supporting the draft, Australia, with New Zealand and Argentina, welcomed the caveat that the draft does not prejudice states' positions at an IGC; noted that Section B captures areas of disagreement where more discussions will be required at an IGC; and, with New Zealand and Singapore, expressed willingness to engage in further discussions in order to exhaust all efforts to reach consensus.

Noting that the revised draft did not reflect consensus, the Russian Federation could not support it in its current state, and pointed out that Section A contains various proposals lacking consensus, including on MGRs, ABMTs and MPAs, EIAs and institutional arrangements, which should not be included in that section; and that Section B serves as a good basis for considering non-consensus elements. Acknowledging that "a very large number" of his concerns have been addressed, the US underscored the need for "at least a dozen" revisions before he could join consensus.

On Friday, 21 July, following regional consultations, plenary adopted by consensus the recommendations offered by Chair Duarte after his informal bilateral consultations. The Russian Federation stressed that nothing in the recommendations should be interpreted to prejudice the position of his delegation or to prejudge the General Assembly's decision on convening an IGC.

PROCEDURAL RECOMMENDATIONS: The G-77/China proposed recommending that the General Assembly should decide as soon as possible on convening and on setting a starting date of an IGC. Chile, also for Argentina, Uruguay, Paraguay, Peru and Ecuador, recommended that the IGC should focus on all the elements of the package and be inclusive and open to all, including non-state actors. The African Group, the EU, AOSIS, PSIDS, Mexico, Costa Rica, Guatemala, Honduras, Indonesia, the Dominican Republic, the Philippines, Thailand, Colombia and Malaysia called for convening an IGC in 2018, with Chile recommending reference to "early 2018." Mexico and PSIDS emphasized that the IGC should have at least four two-week-long rounds of negotiations in 2018 and 2019, noting, with CARICOM, that the General Assembly's rules must apply *mutatis mutandis* to the IGC. South Africa also called for a 2018-2019 timeframe for the IGC.

Canada expressed willingness to move into an IGC format, if agreed. Hoping that recommendations may be provided to the General Assembly, New Zealand noted that an IGC should then be decided as soon as possible, in 2018 if feasible, and this should be recognized in the PrepCom's report. Noting that the PrepCom had not yet agreed on the draft elements, Norway expressed readiness to move towards convening an IGC as soon as possible, even in 2018 if at all possible, if the PrepCom provides consensus elements. IUCN warned against delayed action to protect the

oceans and welcomed the overwhelming majority supporting an IGC in 2018, with the Natural Resources Defense Council (NRDC), on behalf of the High Seas Alliance, also drawing attention to the transparent and inclusive nature of the PrepCom.

Noting that consensus elements for the ILBI remain to be agreed, the US called for textual negotiations during the second week of PrepCom 4, to reach consensus on substantive elements, rather than general discussions or discussing modalities for a possible IGC. Japan emphasized that: supported by China, the Russian Federation, Iceland and the US, the PrepCom does not have a mandate to recommend convening an IGC, as this will be addressed by the General Assembly; and no proposals had been made during the preparatory meeting for PrepCom 4 to discuss convening an IGC during this session. The Russian Federation emphasized the significant level of disagreement on the Chair's indicative suggestions, including on the adoption of a global, regional or hybrid model; and opposed suggestions to move forward to an IGC, calling for additional sessions of the PrepCom.

On Thursday, 20 July, several delegates supported a Chair's draft procedural recommendation to the General Assembly to take a decision, as soon as possible, on convening an IGC, to consider the PrepCom's substantive recommendations, and to elaborate the ILBI text, starting as early as possible. Appreciating the sense of urgency in the draft, but lamenting the absence of a starting date for the IGC, PSIDS noted the document "strikes a balance among different views," giving it his "whole-hearted support." South Africa said that he was "prepared to defend the delicate balance" reflected in the revised recommendations; and stressed that the text should not be reopened since "we will not end up with something better than we have now."

The US opposed a reference to a starting date for the IGC as soon as possible, stressing, with China and Canada, the need to exhaust all efforts to reach consensus; and recalling that he does not have a mandate to join consensus on language on an IGC at PrepCom 4. Noting "the serious efforts to incorporate various comments in a balanced manner," Japan reserved his position pending consultation with his capital. Pointing to the absence of agreement, Iceland said he was willing to continue working towards achieving consensus during PrepCom 4. The Russian Federation said that it is up to the General Assembly to decide to convene an IGC, arguing that the possibility of convening additional PrepCom sessions should not be excluded. China stressed that the PrepCom should not prejudge the decision on when to start an IGC. Noting lack of consensus, the US, Iceland and Japan suggested eliminating reference to when the IGC should be convened in the recommendation.

On Friday, 21 July, Chair Duarte offered draft recommendations arising from informal bilateral consultations, which, following regional consultations, the PrepCom adopted on Friday evening.

CHAIR'S STREAMLINED NON-PAPER: Mexico, with Costa Rica, the Dominican Republic, the African Group and CARICOM, opposed by Japan and Iceland, stressed that the Chair's streamlined non-paper on elements of a draft text of an ILBI should be reflected in the final report and constitute a reference point for future negotiations. Monaco and the Philippines considered the streamlined non-paper as a useful reference tool.

The African Group added that areas of non-convergence should also be reflected, either with a reference in the chapeau or, with Mexico, in an annex. AOSIS highlighted the

importance of capturing discussions that have taken place, "not starting from scratch at the next stage." Guatemala said the streamlined document could be reflected in the PrepCom 4 report. South Africa proposed including annexes in the PrepCom report containing the Chair's indicative suggestions, the Chair's streamlined non-paper, and a section on areas of non-convergence. Argentina stressed that the Chair's streamlined non-paper should be reflected "in some way" as an input to the IGC.

Japan emphasized that the streamlined non-paper had not been discussed during the session, with Iceland adding that it was only received two days before PrepCom 4 and does not contain new proposals following PrepCom 3. Iceland, supported by Norway, suggested that the non-paper be published on the PrepCom's website, along with position papers by stakeholders to ensure accessibility and institutional memory. PSIDS underscored that while the streamlined non-paper is not referenced in the draft recommendations, it is mentioned in the draft report, stressing that work done during the PrepCom should not be lost.

Final Recommendations: The PrepCom recommends that the General Assembly consider the elements contained in Sections A and B of the report with a view to developing an ILBI draft text, clarifying that:

- Sections A and B do not reflect consensus;
- Section A includes non-exclusive elements that generated convergence among most delegations;
- Section B highlights some of the main issues on which there is divergence of views; and
- both sections are for reference purposes because they do not reflect all options discussed and are without prejudice to states' positions during the negotiations.

In addition, the PrepCom recommends that the General Assembly take a decision, as soon as possible, on convening an IGC under the auspices of the UN, to consider the PrepCom recommendations on the elements and to elaborate the ILBI text under UNCLOS.

DRAFT ELEMENTS OF AN ILBI

PREAMBLE: The preamble was discussed in an informal working group on crosscutting issues on Thursday, 13 July, and in plenary on Monday, 17 July.

The EU recommended clarifying that the ILBI is an implementing agreement under UNCLOS and, supported by Iceland, Canada, Singapore, Norway and Argentina, proposed emphasizing the central role of UNCLOS vis-à-vis the role of other existing, relevant legal instruments and frameworks. The US suggested recognizing the central role of UNCLOS "and its implementing agreements." The Russian Federation and Norway requested adding that it sets the legal framework within which all activities in the oceans and seas must be carried out. Japan, supported by Colombia and Venezuela, but opposed by the EU, Norway and Argentina, noted that the text should recognize both the role of UNCLOS and other relevant bodies, suggesting, with Australia, a recognition "of the critical role" of other existing relevant legal instruments. Singapore, supported by Norway, suggested referring to the "essential," rather than "critical," role. Japan further suggested, with Norway and Australia, recognizing the need for enhancing BBNJ conservation and sustainable use in close cooperation and coordination with relevant existing bodies. Canada, supported by Norway, proposed adding "the need for consistency with and recognition of the role played by other relevant legal instruments, frameworks and bodies." Argentina called for clarification on language recognizing the need to

enhance cooperation and coordination with regard to BBNJ conservation and sustainable use.

China, supported by the African Group and Iran, suggested recognizing that “humankind has become an indivisible community with a shared future linked to BBNJ conservation and sustainable use” and “the international community as a whole has a common interest in BBNJ.” Mexico suggested a reference to the ILBI contribution to the 2030 Agenda, especially SDG 14. CARICOM emphasized inter-generational equity and benefit-sharing by closing the marine science gap.

The African Group, with LDCs and Venezuela, and opposed by the US, the Russian Federation, and Japan, reiterated the need to include the common heritage principle, stating that its application does not impede MSR or bioprospecting. The Russian Federation indicated that BBNJ is not compatible with the common heritage principle as the freedom of the high seas applies. The US suggested, supported by Japan, Canada and Iceland, reaffirming UNCLOS Part XIII (MSR) and Article 236 (sovereign immunity). Singapore agreed on mentioning sovereign immunity, but without referencing specific UNCLOS articles.

The Russian Federation requested eliminating language recognizing the need for a comprehensive global regime to better address BBNJ conservation and sustainable use, noting that, although it contains language from Resolution 69/292, it is removed from its original context; and, supported by Norway but opposed by Argentina, referencing the UN Fish Stocks Agreement (UNFSA) on affirming that matters not regulated by UNCLOS or the ILBI continue to be governed by the rules and principles of general international law. Peru proposed adding “having considered the feasibility of developing an ILBI” to language recognizing the need for the comprehensive global regime to better address BBNJ conservation and sustainable use.

Final Recommendations: In the final recommendation, under the non-exclusive elements that generated convergence among most delegations (Section A), the ILBI would set out broad contextual issues, such as, *inter alia*:

- a description of the considerations that led to the ILBI development, including key concerns and issues;
- a recognition of the central role of UNCLOS and the role of other existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies for BBNJ conservation and sustainable use;
- a recognition of the need to enhance cooperation and coordination for BBNJ conservation and sustainable use;
- a recognition of the need for assistance so that developing countries, in particular geographically disadvantaged states, LDCs, LLDCs and small island developing states (SIDS), as well as coastal African states, can participate effectively;
- a recognition of the need for the comprehensive global regime to better address BBNJ conservation and sustainable use;
- an expression of conviction that an agreement for the implementation of the relevant UNCLOS provisions would best serve these purposes and contribute to the maintenance of international peace and security; and
- an affirmation that matters not regulated by UNCLOS, its implementing agreements or the ILBI continue to be governed by the rules and principles of general international law.

GENERAL ELEMENTS: This item was addressed in an informal working group on crosscutting issues, facilitated by Chair Duarte on Friday, 14 July, and in plenary on Monday and Tuesday, 17-18 July, during consideration of a revised Chair’s text containing draft recommendations to the General Assembly.

Discussions focused on use of terms, scope, objectives, and relationship with other agreements.

Use of terms: The G-77/China, supported by the EU, the US and the Russian Federation, considered it premature to discuss definitions. CARICOM called for pragmatic, workable and science-based definitions that are consistent with other agreements, while the Philippines added that they should be adapted to the BBNJ context.

PSIDS, opposed by Japan and the US, suggested defining MSR and bioprospecting. Japan considered definitions for ABMTs and EIAs unnecessary. The US noted that definitions for technology, biotechnology, marine technology transfer, ecosystem, biological resources and sustainable use were not required, and recommended referring to “possible” key terms.

China, with the Russian Federation, stressed that neither derivatives nor fish as a commodity should be introduced in the MGR definition, adding that fish as MGRs are covered by UNCLOS and high seas freedom. Agreeing that fishing resources should be distinguished from genetic ones, Argentina recommended defining “derivatives” similar to the Nagoya Protocol. Eritrea proposed linking the definition of “ecosystem” to the “ecosystem-based approach,” and defining “traditional knowledge” and “biocultural heritage.” Senegal added “strategic evaluations/assessments.” Mexico, opposed by Iran, requested deleting the section.

Scope: CARICOM, with Singapore, proposed discussing activities covered by, or excluded from, the scope in the context of the ILBI relationship with UNCLOS and other instruments. The EU and the US opposed reference to the ILBI material scope. PSIDS and Australia argued that the material scope refers to activities in ABNJ with potential impacts on biodiversity.

The African Group, with the US, Canada and the Philippines, proposed including reference to sovereign rights over the exclusive economic zone (EEZ), in addition to the continental shelf. The EU recommended reflecting the balance of rights of all states, including those that have not claimed an EEZ, without prejudice to states’ sovereign decision to claim an EEZ, with the US expressing difficulty. PSIDS maintained that ABNJ include the water column beyond the continental shelf. Iceland preferred referring to the outer continental shelf. The Russian Federation, with Canada, Australia and Iceland, called for mandatory language with regard to respecting rights; and opposed reference to the Area (sea-bed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction), as it is already defined under UNCLOS.

Australia and Norway, opposed by New Zealand, LDCs and Pakistan, supported a reference to respecting coastal states’ rights also within 200 nautical miles. Morocco requested referring to “sovereign rights and jurisdiction of coastal states over their continental shelf.” CARICOM emphasized the ILBI’s global focus.

Iran and the Philippines, opposed by Canada, Switzerland and New Zealand, recommended retaining language on material scope and specific reference to the “2011 package” elements (namely, MGRs, including benefit-sharing questions; ABMTs, including MPAs; EIAs; and CB&TT).

Objectives: The G-77/China underlined long-term conservation and sustainable use as the overarching objective. The Russian Federation favored “sustainable use and conservation.” The EU, with Canada and Japan, preferred, as “the one” ILBI objective, BBNJ conservation and sustainable use and, opposed by CARICOM, PSIDS, the Russian Federation and

Norway, favored deleting reference to international cooperation and coordination from this section. Japan, supported by New Zealand, proposed adding that “if agreed,” the text could set out additional objectives, such as furthering international cooperation and coordination.

The African Group, with Norway, opposed reference to effective implementation of UNCLOS “relevant provisions.” CARICOM suggested referencing BBNJ conservation “for the benefit of future generations,” and “equitable and just use” of BBNJ. The Philippines proposed as an objective facilitating developing countries’ meaningful participation in conservation and sustainable use, including SIDS and LDCs, and Kiribati recommended “adequate and coherent climate change measures for BBNJ.”

The EU, opposed by the African Group and the FSM, favored deleting reference to “long-term” conservation and sustainable use, so as not to preclude short-term conservation measures. Argentina proposed merely referring to the ILBI setting out additional objectives.

The Russian Federation, with LDCs, Switzerland and Senegal, opposed by New Zealand and Mexico, recommended deleting “long-term” conservation and sustainable use. IUCN stressed that this is UNFSA language.

Relationships with other agreements: New Zealand, Iceland, Japan, Costa Rica, Norway, Argentina, Eritrea, Iran and the US supported stipulating that nothing in the ILBI shall prejudice states’ rights, jurisdiction and duties under UNCLOS, and the ILBI shall be interpreted and applied in the context of and in a manner consistent with UNCLOS.

The African Group queried whether “not undermining” other instruments has been used in other processes. New Zealand, supported by Iceland, the US and the Republic of Korea, noted that language on “not undermining” existing instruments is not strong enough. Canada, supported by Norway and Australia, suggested adding that the ILBI should not undermine “but rather promote greater coherence with, build upon and complement existing instruments.” CARICOM proposed adding that the ILBI should not be “interpreted as” undermining existing instruments or prejudicing states’ rights and obligations under existing instruments. Argentina, with IUCN, underscored that, according to Resolution 69/292, it is the process of developing the ILBI that should not undermine other instruments. Costa Rica underscored the ILBI purpose to complement and bridge existing gaps.

Noting that many relevant legal instruments and bodies are functioning successfully, the Russian Federation pointed to the Vienna Convention on the Law of Treaties, emphasizing, with Japan, that references to regional, sectoral or bilateral agreements may be included.

The Russian Federation proposed that the ILBI “shall be without prejudice to existing relevant instruments.” Australia preferred retaining reference to “not undermining,” considering the Russian proposal useful and, with Costa Rica, Switzerland, Senegal, Peru and Malaysia, requested eliminating reference to activities covered by and/or excluded from the ILBI scope. Iceland opposed this, pointing to the usefulness of distinguishing between fish as commodity and as genetic resources.

The US, with Norway, Japan, New Zealand, Iceland, the Republic of Korea and Canada, and opposed by Mexico, Uruguay and the African Group, suggested not undermining existing legal instruments and frameworks and relevant global, regional, and sectoral bodies “including their processes and mandates.” The African Group, with IUCN, Argentina and others, underscored

that language on relationships is sufficiently broad, with Cameroon suggesting using “mutual support.”

Norway, Iceland and Japan, opposed by Mexico, proposed deleting “existing” relevant legal instruments, and, with Japan, Pakistan, Iceland and the Republic of Korea, adding a reference to “avoiding duplication” with other instruments. Japan, with Iceland and Malaysia, also suggested that the ILBI “shall” not be interpreted and applied in a manner that would undermine existing instruments. PSIDS highlighted cooperation with international, regional and sub-regional organizations.

Non-parties: Colombia, also on behalf of Iran, Turkey, El Salvador and Venezuela, supported by Eritrea, and opposed by the EU, reiterated that participation in the ILBI negotiations should not affect their legal status as UNCLOS non-parties.

Final Recommendations: Under the non-exclusive elements that generated convergence among most delegations (Section A), the ILBI would:

- provide definitions of key terms, bearing in mind the need for consistency with those contained in UNCLOS and other relevant legal instruments and frameworks;
- apply to ABNJ;
- state that the rights and jurisdiction of coastal states over all areas under their national jurisdiction, including the continental shelf within and beyond 200 nautical miles and the EEZ, shall be respected;
- address BBNJ conservation and sustainable use, in particular, together and as a whole, MGRs, including questions on the sharing of benefits, measures such as ABMTs, including MPAs, EIAs and CB&TT;
- set out that the ILBI objective is to ensure BBNJ conservation and sustainable use through effective implementation of UNCLOS;
- state that nothing in the ILBI shall prejudice the rights, jurisdiction and duties of states under UNCLOS;
- state that the ILBI shall be interpreted and applied in the context of and in a manner consistent with UNCLOS;
- promote greater coherence with and complement existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies; and
- state that the ILBI should be interpreted and applied in a manner that would not undermine these instruments, frameworks and bodies.

In addition, the ILBI could:

- set out exclusions from the ILBI scope and address, consistent with UNCLOS, issues relating to sovereign immunity;
- set out additional objectives, if agreed, such as furthering international cooperation and coordination, to ensure the achievement of the overall objective of BBNJ conservation and sustainable use; and
- recognize that the legal status of non-parties to UNCLOS or any other related agreements with regard to those instruments would not be affected.

PRINCIPLES AND APPROACHES: This item was addressed in several informal working groups on: MGRs, on Monday, 10 July; ABMTs, on Tuesday, 11 July; EIAs, on Wednesday, 12 July; CB&TT, on Wednesday and Thursday, 12-13 July; crosscutting issues, on Friday, 14 July; and in plenary on Tuesday, 18 July, under a stand-alone section on principles and approaches. Discussions focused on the precautionary approach, adjacency, and principles relating to developing countries.

Under MGRs, the G-77/China emphasized the common heritage principle as the legal basis for a fair and equitable

regime, with CARICOM acknowledging that if no agreement is reached during PrepCom 4, the issue could be considered by the IGC. Japan reiterated, with the Russian Federation, the applicability of high seas freedoms.

Under ABMTs, Monaco and Guinea supported connectivity. Canada suggested language on coherence of relevant tools and mechanisms, while avoiding duplication, and, with Japan and Norway, making reference to a science-based approach for establishing ABMTs. China elaborated on the integrated management approach, pointing to UNCLOS preamble as its legal basis.

Under EIAs, the G-77/China underscored due diligence, cautioning against implying that coastal states' rights will be prioritized over those of other states in conducting EIAs in ABNJ. Mexico suggested reference to: supported by CARICOM, PSIDS, the African Group and others, the polluter pays principle; and, supported by the Philippines, Indonesia and Iran, the prohibition of transboundary harm. The US and Japan questioned how these principles would be applied in ABNJ. CARICOM underscored compliance and liability. CARICOM, the High Seas Alliance, the EU, PSIDS and Senegal called for strategic environmental assessments (SEAs) of cumulative effects. Senegal also emphasized transboundary EIAs. The EU suggested, as EIA-specific approaches, mitigation hierarchy and no-net biodiversity loss, which was supported by Canada and IUCN, and questioned by the US and Japan. Japan supported using recognized scientific methods as a guiding approach.

The African Group, with the US and Pakistan, proposed adding respect for coastal states' sovereign rights and jurisdiction over their EEZ. Iran suggested that respect for territorial integrity and sovereignty include "all states concerned, including coastal and flag states." Noting that adjacency is not enshrined in UNCLOS, China, supported by the US, proposed "due regard" for coastal states' rights.

Under CB&TT, the G-77/China called for: CB&TT on fair and reasonable terms, and promotion of North-South, South-South, and triangular cooperation. LDCs recommended aligning preferential treatment with the Istanbul Plan of Action for LDCs. Mexico included respect for intellectual property rights (IPRs), transparency, cooperation and favorable conditions for technology transfer. Guatemala preferred a tailor-made, country-driven approach implemented on a case-by-case basis. The African Group requested eliminating references to CB&TT being "country-driven" and "resulting in co-benefits for providers and recipients," with the EU preferring a "needs-based approach." The African Group, the FSM and the Philippines noted that country-driven implies needs-driven.

Chile, supported by the African Group, suggested including high seas freedoms, subject to conditions under UNCLOS. China pointed to the principle of good faith. Canada favored: with Iceland, reference to "possible" principles; the polluter pays principle, and effective use of resources; and, supported by the US, Japan, Australia and the Russian Federation, the science-based approach. The African Group, the EU and Japan questioned the meaning of the "duty not to transform one type of pollution into another."

Precaution: The African Group, Costa Rica and the EU supported including the precautionary principle, rather than the precautionary approach. The US, Canada, New Zealand, Fiji, and Australia preferred the precautionary approach. Costa Rica called for distinguishing between prevention of known impacts, and precautionary measures for unknown impacts. Japan called for

clarity on the precautionary approach. Canada said "precaution" might suffice.

Transparency: The African Group called for mentioning transparency. Kenya underscored accountability. The High Seas Alliance suggested as one principle "transparency, public availability of EIA reports and public participation." The US preferred deleting reference to accountability. Tonga emphasized "meaningful" public participation. The Russian Federation underscored lack of consensus on references to transparency, accountability, inclusiveness, public participation, and public access to environmental information, and called for including best available and verifiable scientific data.

Equity: Costa Rica, supported by Eritrea but opposed by the US and Japan, called for including equity. CARICOM, PSIDS, LDCs and the High Seas Alliance underscored inter- and intra-generational equity, opposed by the US. The African Group proposed adding "fair and equitable benefit-sharing" in line with the CBD. Japan noted that the consequences of including equity as a guiding principle need to be better understood.

Traditional Knowledge: The G-77/China recommended including respect for traditional knowledge. PSIDS emphasized incorporating traditional knowledge in best available scientific information, drawing on the CBD Akwé: Kon Guidelines on socio-cultural and environmental assessments as a model; and providing financial assistance and capacity building for conducting EIAs. New Zealand supported reference to traditional knowledge, with the Russian Federation questioning how traditional knowledge could be applicable to ABNJ.

Balance between Conservation and Sustainable Use: The Russian Federation underscored, with Norway and Iran, balancing conservation and sustainable use. The US, with Australia, New Zealand, the EU, the FSM and Japan, opposed by Iran and Norway, preferred "promoting both" conservation and sustainable use, rather than balancing them. Senegal preferred "promoting the balance" between them. Switzerland underscored the need to maintain the link between conservation and sustainable use.

Adjacency: PSIDS, supported by New Zealand, and opposed by the US, Singapore, the Republic of Korea and Switzerland and China, requested including the adjacency principle to address the interests of adjacent coastal states, with the Cook Islands stressing that activities in ABNJ should not impact activities within national jurisdiction, illustrating the recent designation of the Marae Moana marine park. The Philippines requested inclusion of adaptive management, adjacency and connectivity as principles, emphasizing consultation with adjacent coastal states. Mauritius, with the Philippines, stressed best scientific advice and the need to ensure that ABMTs are designated in consultation with adjacent states. Samoa supported adjacency and, with Chile, compatibility. Japan argued that compatibility could undermine respect for states' sovereign rights. China reiterated the principle of due regard, which Argentina considered vague. The African Group preferred "due diligence" instead of "adjacency."

Australia, supported by Norway, highlighted that adjacency is referenced in relation to ABMTs, but could apply in other areas of the ILBI. Senegal recommended including connectivity as a separate approach, with Guinea also proposing transboundary cooperation.

Developing Countries: AOSIS, opposed by the US, proposed SIDS' special case as a principle, including equal engagement in consultations on ABMTs and special consideration in conducting EIAs. The African Group underscored the special circumstances of coastal African states.

PSIDS highlighted the special case of SIDS and Bangladesh that of LDCs. AOSIS called for preferential treatment and “access procedures” for SIDS and LDCs. The EU recommended that preferential treatment be in line with UNCLOS. PSIDS outlined “preferential treatment of SIDS” clauses in other multilateral agreements. Japan expressed difficulty with according preferential treatment to developing countries. Australia suggested, supported by the US, the EU, Japan, Canada and Switzerland, but opposed by Iran, removing reference to preferential treatment for developing countries. New Zealand proposed moving the reference to the CB&TT section. The EU emphasized, with Japan and the Russian Federation, voluntary technology transfer. The US, the Russian Federation and Japan added “under mutually agreed conditions.”

PSIDS suggested avoiding disproportionate burdens on SIDS, with the FSM and Fiji recalling UNFSA language on SIDS and LDCs’ special requirements, including avoiding disproportionate burdens. The EU pointed to the complexity of the disproportionate burden concept. The US and Japan opposed reference to disproportionate burden. AOSIS called for retaining language on SIDS’ and LDCs’ special requirements, with Japan and Australia expressing difficulty.

International Cooperation: The G-77/China suggested, opposed by the US and Japan, strengthening North-South, South-South and triangular cooperation. CARICOM suggested a reference to cooperation in MSR and technology transfer. Iceland, with Australia, Morocco, CARICOM and Norway, supported cooperation also with regional, sub-regional and sectoral bodies.

The Russian Federation queried references to triangular cooperation and partnerships with relevant stakeholders.” Costa Rica stressed that this reference reflects the 2030 Development Agenda, especially SDG 17 (global partnership for sustainable development). Uruguay preferred retaining reference to triangular cooperation, and including the “cooperation principle.”

The US, with the EU, expressed difficulty with the concept of partnership with development stakeholders and, with Japan, preferred stakeholder engagement.

Argentina, with South Africa and Cameroon, called for qualifying reference to cooperation “either directly or through the competent international organizations,” so as not to prejudge the kind of cooperation. South Africa noted that Resolution 69/292 refers to the need for a comprehensive, global regime, with the Russian Federation stating that the reference is taken out of context. Iceland, supported by the US, the Russian Federation and Japan, preferred “relevant global, regional and sectoral bodies,” instead of “competent international organizations.”

Final Recommendations: Under the non-exclusive elements that generated convergence among most delegations (Section A), the ILBI would set out the general principles and approaches guiding BBNJ conservation and sustainable use, which could include:

- respect for the balance of rights, obligations and interests enshrined in UNCLOS;
- due regard as reflected in relevant UNCLOS provisions;
- respect for the rights and jurisdiction of coastal states over all areas under their national jurisdiction, including within and beyond the continental shelf beyond 200 nautical miles and the EEZ;
- respect for the sovereignty and territorial integrity of coastal states;
- use of BBNJ for peaceful purposes only;
- promotion of both BBNJ conservation and sustainable use;

- sustainable development;
- international cooperation and coordination, at all levels, including North-South, South-South, and triangular cooperation;
- relevant stakeholders engagement;
- ecosystem approach;
- precautionary approach;
- integrated approach;
- science-based approach, using the best available scientific information and knowledge, including traditional knowledge;
- adaptive management;
- building resilience to the effects of climate change;
- duty not to transform one type of pollution into another consistent with UNCLOS;
- polluter-pays principle;
- public participation;
- transparency and availability of information;
- special requirements of SIDS and LDCs, including avoiding transferring, directly or indirectly, a disproportionate burden of conservation action onto developing countries;
- good faith; and
- public participation.

The issues on which there is a divergence of views (Section B) include the common heritage of mankind and the freedom of the high seas.

MARINE GENETIC RESOURCES: This item was addressed in an informal working group, on Monday and Tuesday, 10-11 July; and in plenary on Tuesday, 18 July, based on a revised Chair’s text containing draft recommendations to the General Assembly. Discussions focused on scope, access, benefit-sharing, IPRs, and monitoring of MGR utilization.

Scope: Singapore, with Iceland and Japan, opposed by the African Group and the EU, preferred deleting reference to scope.

Access: The EU welcomed reference to UNCLOS Articles 256 (MSR in the Area) and 257 (MSR in the water column beyond the EEZ), and Articles 238-244 (general provisions and international cooperation concerning MSR), noting that facilitated access should be linked to benefit-sharing and capacity building.

Japan, supported by the Russian Federation, Iceland and the Republic of Korea, opposed reference to specific UNCLOS provisions, and argued, with the US, that UNCLOS provides for open access and there is no need for additional rules. The US further suggested, supported by Japan and the Russian Federation and opposed by the African Group, Brazil, Iran, the Cook Islands, Switzerland and Costa Rica, eliminating references to access in the ILBI draft elements, emphasizing open access to ABNJ for MSR that should not be linked to benefit-sharing. The Russian Federation opined that the high seas freedoms apply to MGRs, as well as derivatives. The Republic of Korea noted that access should facilitate research activities.

The G-77/China stressed the importance of access and distribution of benefits. The FSM emphasized including access to samples that have already been collected in ABNJ. CARICOM suggested focusing on who is granted which type of access under what conditions, highlighting: LDCs’ and SIDS’ special circumstances, the importance of a notification and reporting mechanism, and, with PSIDS, the need to build on UNCLOS provisions on MSR and technology transfer. LDCs suggested scientifically informed thresholds to regulate access. PSIDS urged including access to information; supported the inclusion of traditional knowledge associated with MGRs in BBNJ; and stressed that bioprospecting activities should be subject to benefit-

sharing, transparency and traceability of MGRs. Guatemala proposed a multilateral system to regulate both access and benefit sharing of MGRs.

When considering the Chair's revised draft in plenary, LDCs underscored the need to ensure sharing of data and scientific knowledge, noting that access to MGRs and benefit-sharing have not been equitable. PSIDS called for identifying, at a minimum, what the ILBI provision on access will cover, highlighting, supported by Iran and the Philippines, prior informed consent of traditional knowledge holders. Peru proposed distinguishing between access and ownership. Brazil suggested adding "how to facilitate access." The Philippines underscored that capacity building should be a precondition for access.

Benefit-Sharing: Objectives: China said both conservation and sustainable use should be the objectives of benefit-sharing. CARICOM proposed language on contribution to the equitable and effective utilization of marine resources. LDCs suggested "promoting effective and meaningful partnerships for MSR and economic exploration in ABNJ, and underscoring equity." PSIDS proposed drawing from UNCLOS on supporting the realization of a just and equitable economic order, and emphasized targeting capacity-building efforts at developing countries. Japan, with the US, preferred limiting the objectives to contributing to conservation and sustainable use, and building capacity to access and utilize MGRs. The EU suggested including building capacity to access and utilize MGRs of ABNJ.

Type of benefits and modalities: The G-77/China urged including monetary benefits, expressing readiness to review modalities in a manner similar as, but not limited to, the Nagoya Protocol Annex. PSIDS highlighted the link between a benefit-sharing regime and capacity building and technology transfer, recognizing SIDS' and LDCs' special circumstances, as well as traditional knowledge and its holders. The Philippines requested a reference to the rights of adjacent states and states with extended continental shelves in relation to benefit-sharing. The FSM emphasized that: access and benefit-sharing are two essential elements that should be reflected in benefit-sharing modalities; benefit-sharing must be fair and equitable, not nominal; and a future review mechanism under the ILBI could also assess fairness and equity in benefit-sharing.

Japan and the US opposed reference to monetary benefits due to lack of consensus, with Japan noting: effective functioning of existing centers and databases for documenting and sharing biological and genetic data; and, supported by the Russian Federation, disincentives for MSR arising from a new obligation or mechanism for immediate provision of all resources and data. IUCN underscored that access to materials and data is critical for fostering science for all countries' benefit; and a CHM could coordinate existing initiatives to ensure synergies. The EU favored focusing on non-monetary benefits, but suggested, supported by Canada and Indonesia, that the ILBI set out the "types of benefits that could be shared."

CARICOM supported specifying different stages of research and development, referencing collection, analysis and utilization. Canada, with the Republic of Korea, highlighted that the phased approach had not been agreed, proposing reference to "the types of benefits that could be shared, such as at different stages."

The EU, supported by the Republic of Korea and IUCN, suggested "taking into account," rather than "drawing on," relevant instruments. Japan preferred reference to "taking into consideration, as appropriate." The Russian Federation called for

deleting the reference to relevant instruments, with the US stating that it is unclear what other relevant instruments are.

The Russian Federation, opposed by the African Group, Colombia, the Philippines and LDCs, supported the inclusion of non-monetary benefits only. Brazil preferred: with Argentina and Costa Rica, focusing on monetary benefits; and eliminating reference to the CHM. Switzerland stated that the ILBI "could" set out types of benefits, opposing reference to specific benefits. The Cook Islands stated that the ILBI "would" make provision for the CHM with regard to benefit-sharing.

Mechanism: Indonesia supported the development of a multilateral benefit-sharing mechanism. PSIDS noted the relevance of a proposed trust fund to support the equitable access and benefit-sharing mechanism, also for questions of traceability and milestone payments. The EU proposed drawing on UNCLOS Articles 242 (international cooperation in relation to MSR) and 244 (publication and dissemination of information and knowledge), as well as UNCLOS general provisions on marine technology transfer as a basis to develop a framework to promote and monitor benefit-sharing. Canada proposed mandating the COP to develop benefit-sharing modalities.

IPRs: The African Group, CARICOM, PSIDS, Uruguay, the Philippines, Guatemala and Mexico supported, whereas China, the US, the EU, Japan, Switzerland and the Republic of Korea opposed, reference to the relationship between IPRs and the ILBI. The African Group, Colombia, Peru, the Philippines, Iran, Brazil and Indonesia recommended also incorporating mandatory disclosure of origin. Argentina emphasized the need for traceability and transparency in relation to IPRs. Eritrea proposed adding "IPRs should not impede technology transfer." Canada, with Australia, suggested addressing the relationship with IPRs in a general clause on the ILBI's relationships with others instruments. Peru underlined that current talks under World Intellectual Property Organization (WIPO) do not consider IPRs over MGRs.

Monitoring: Emphasizing transparency in MGR use, the G-77/China suggested developing a protocol, a code of conduct or guidelines to ensure environmental protection. PSIDS, CARICOM, the African Group, the Philippines, Brazil and Iran supported, whereas Japan, the US, the EU, China, the Russian Federation and the Republic of Korea opposed, setting out modalities for monitoring MGR utilization, with Brazil and Costa Rica adding "including addressing traceability." PSIDS recommended establishing a bridge between the Nagoya Protocol and a potential BBNJ multilateral fund. China argued for free *in situ* access to MGRs as part of MSR, protecting trade secrets and confidentiality. The Russian Federation and Japan suggested using existing mechanisms.

The US expressed concern about monitoring and potential burdens for scientists and industry. Japan, the Russian Federation, China and the EU, opposed by the African Group, Costa Rica and Argentina, supported deleting this section due to lack of consensus.

Final Recommendations: Under the non-exclusive elements that generated convergence among most delegations (Section A), the ILBI would address access, and set out: the geographical and material scope of this section of the ILBI; that the objectives of benefit-sharing are contributing to the conservation and sustainable use of BBNJ, and building capacity of developing countries to access and use MGRs of ABNJ; the principles and approaches guiding benefit-sharing, such as being beneficial to current and future generations, and promoting MSR and research

and development; the types of benefits that could be shared; and benefit-sharing modalities, taking into account existing instruments and frameworks.

The ILBI also could: further set additional objectives, if agreed; set out its relationship with IPRs; and address monitoring of the utilization of MGRs of ABNJ.

The issues on which there is a divergence of views (Section B) include: whether the instrument should regulate access to MGRs; the nature of these resources; the kind of benefits that should be shared; whether to address IPRs; and whether to provide for the monitoring of the utilization of MGRs in ABNJ.

AREA-BASED MANAGEMENT TOOLS: Delegates discussed ABMTs, including MPAs as set out in the Chair's indicative suggestions, in an informal working group, on Tuesday and Wednesday, 11 and 12 July, and in plenary on Tuesday, 18 July, as set out in the Chair's revised draft.

Objectives: PSIDS proposed including "ecological restoration of ocean ecosystems and health." CARICOM, with New Zealand, said objectives should be indicative. AOSIS suggested language on the role of ABMTs in building resilience to climate change impacts, with LDCs highlighting that large, long-lasting and well-managed ABMTs can bolster climate resilience. Japan supported climate change as a consideration for designating ABMTs, rather than as an objective. The Cook Islands recommended including ocean ecosystem restoration and resilience among ABMT objectives.

Costa Rica and Senegal requested reference to marine reserves. Pakistan emphasized fully protected marine areas. Pointing to SEAs, Australia recommended considering a broader range of ABMTs, in a cohesive, comprehensive and coordinated way.

The African Group and Brazil proposed, opposed by the US, adding reference to the equitable distribution of benefits. The US proposed that the "text would set out objectives of ABMTs, including MPAs for long-term sustainable use."

Relationships with other Instruments: PSIDS and Chile, opposed by the US, welcomed reference to compatibility. The EU called for: including in the MPA network those MPAs established under existing bodies; and further elaborating on compatibility. Singapore, supported by New Zealand, the EU, Norway, Australia and Japan, recommended ensuring that relationships with future measures are also taken into account.

Mexico, supported by CARICOM, proposed establishing a central entity to harmonize and coordinate measures adopted under the ILBI and existing measures adopted by other instruments. Singapore, with CARICOM, argued against the ILBI superseding other existing instruments in establishing MPAs and applying ABMTs. Japan, the US and Norway opposed referring to "measures adopted" under the ILBI, with Norway noting that there was no consensus on the adoption of new measures under the ILBI.

Argentina, with CARICOM, called for avoiding duplication, noting that this section is not necessary, with Canada considering that the section is useful in introducing global/regional/hybrid models.

Iceland called for caution in relation to compatibility. Japan requested more time to scrutinize the concept and its conformity to UNFSA relevant references, noting his preference that the ILBI "could," rather than "would," address this relationship.

In reference to the relationship between measures under the instrument and measures adopted under relevant legal instruments and frameworks, "for the purpose of harmonization and coordination of efforts," Australia supported affirming the

importance of enhanced cooperation and coordination, and preferred "coherence," rather than "harmonization," in relation to coordinated efforts, with the EU preferring replacing it with cooperation, coherence or complementarity, and with Switzerland proposing "synergies." New Zealand suggested adding "avoiding duplication."

Process: The G-77/China supported: proposals from state parties and other organizations, based on the precautionary approach/principle and best available information; and assessment of proposals by an ILBI scientific and technical body. CARICOM noted agreement on proposals from ILBI parties and a scientific and technical body. PSIDS supported, with the Philippines, consultation with adjacent states, and the inclusion of traditional knowledge and indigenous peoples and local communities.

The EU suggested that: proposals include socio-economic mitigation measures; and management plans, as part of final decisions, include measures identified by competent international organizations and a communication strategy towards affected stakeholders.

New Zealand recommended ensuring flexibility to allow for different models of ABMT establishment and developing guidance for a scientific assessment. The US proposed: adding reference to relevant regional and sectoral organizations, cautioning against language presupposing a global model for ABMTs; and using "designating," rather than "establishing," ABMTs.

Emphasizing that his earlier suggestions do not appear in the text, especially regarding MPAs, the Russian Federation opposed the creation of a new global mechanism for creating ABMTs, noting that they should be established by existing specialized mechanisms without additional instructions, and that the text should address coordination and cooperation among competent instruments. Norway noted lack of consensus on creating a new organization for establishing ABMTs, cautioning against pre-empting future discussions on global, regional and hybrid options.

Canada suggested including reference to: relevant "instruments, bodies and mechanisms," in addition to measures, as well as potential gaps in ABMT proposals; and, with Norway, coordination, in addition to consultation, with relevant actors. Indonesia suggested taking into account potential transboundary impacts from ABNJ on areas under adjacent coastal states' national jurisdiction.

Noting that ABMTs in the high seas could help restore national fisheries, bringing benefits that must be distributed equitably, LDCs suggested including ecological factors in the content of proposals. Argentina proposed: including a management plan in ABMT proposals; clarifying that consultations will be fully participatory; and adding safeguards on issues of sovereignty and delimitation. The Food and Agriculture Organization of the UN (FAO) called for also considering vulnerable marine ecosystems criteria, in addition to Particularly Sensitive Sea Area (PSSA) and Ecologically or Biologically Significant Marine Area (EBSA) criteria.

Duration: Monaco, supported by Tonga, Japan and Australia but opposed by the Russian Federation and Switzerland, proposed reference to "long-term" conservation. The Russian Federation supported ABMT establishment and implementation on a case-by-case basis, taking into account the needs of specific ecosystems and species, and protecting them against particular activities based on the best available data. Switzerland and Monaco highlighted the need for a network of MPAs, based on best available scientific knowledge. IUCN stressed the importance

of distinguishing between sectoral ABMTs and MPAs, noting that MPAs focus on the long-term conservation of nature and ecosystem services, offering comprehensive protection. The US considered the duration of an MPA as an issue which had not garnered consensus.

China, with Japan, recommended that ABMTs, including MPAs, should be terminated when their specific targets are achieved. The US stressed that ABMTs should be designed to achieve certain objectives and modified when that objective is achieved, pointing to the process under the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR). The EU called for designating MPAs for an indefinite period, and establishing a regular review based on research to allow for modifying, amending or de-designating MPAs.

Decision-making: The G-77/China supported consensus-based decision-making by an ILBI COP. Canada suggested with Japan, Singapore, LDCs, Indonesia and the Cook Islands including reference to the role of adjacent coastal states in decision-making. Singapore favored, with Australia and Japan, non-prescriptive language on potential global/regional/hybrid decision-making models. Australia suggested that the scientific assessment be conducted “by a relevant body.” Japan recommended including in the proposals: the scientific basis for the standards and criteria, supported by Norway, LDCs and the Cook Islands; and a contact person to allow for consultations. Samoa, the FSM, LDCs and the Cook Islands underscored the role of traditional knowledge holders and local communities as a source of information in consultations.

Implementation: The EU, with CARICOM and the US, underscored states’ implementation responsibility. PSIDS, with CARICOM, New Zealand, Togo, Mexico and Australia, suggested including regional and sub-regional bodies. Mexico proposed a reference to port states’ responsibility to implement measures adopted for a particular area. The US preferred more general references to implementation. Singapore queried text referencing “provisions relating to competent international organizations.” Norway, with Australia, cautioned against prejudging the relationship between the ILBI and “competent international organizations.”

Monitoring and Review: The G-77/China proposed establishing monitoring and review protocols to assess effectiveness, based on best available science. Mexico proposed that competent regional and sub-regional organizations assess ABMT effectiveness. The EU, supported by Togo and CARICOM, recommended obliging states, and calling on organizations, to report on implementation. PSIDS called for a strong follow-up component. New Zealand suggested reference to research objectives and plans, and further discussion on compliance. The US preferred referring to “recommended,” rather than “required,” follow-up action. The EU cautioned against prejudging what the ILBI will require. Canada, with Norway, emphasized the need for clarifying that future assessments will not extend to ABMTs under other instruments.

In considering the Chair’s revised draft, the Russian Federation proposed deleting the sections on: relationships to measures under relevant instruments; ABMT process; implementation and monitoring; and review, stating that she could not support any global structures on ABMTs.

Final Recommendations: Under the non-exclusive elements that generated convergence among most delegations (Section A), the ILBI would:

- set out objectives;

- set out the relationship between ILBI measures and measures under existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies, for the purpose of coherence and coordination of efforts;
- affirm the importance of enhanced cooperation and coordination between these instruments, frameworks and bodies, without prejudice to their respective mandates, and address the relationship between ILBI measures and those established by adjacent coastal states, including issues of compatibility, without prejudice to the rights of coastal states;
- set out the process and the relevant roles and responsibilities, on the basis of the approach that will be developed, taking into account the various types of ABMTs, including MPAs;
- set out that the process for identifying areas within which protection may be required would be based on the best available scientific information, standards and criteria, including, *inter alia*, vulnerability, fragility, sensitivity, biological productivity, biological diversity, representativeness, dependency, connectivity, ecological processes and economic and social factors;
- contain provisions on proposals, including, *inter alia*, conservation and sustainable use objectives; the role of relevant global, regional and sectoral bodies; existing measures in the adjacent area(s); specific human activities in the area; socio-economic considerations; a draft management plan; and a monitoring, research and review plan;
- set out a process for coordination and consultations on the proposal with relevant global, regional and sectoral bodies, all states, including adjacent coastal states, and other relevant stakeholders, including scientists, industry, civil society, traditional knowledge holders and local communities;
- set out how decisions would be made, including who would make the decision and on what basis, and address the question of the involvement of adjacent coastal states;
- set out the responsibility of ILBI parties related to the measures for a particular area; and
- set out provisions for assessing effectiveness and subsequent follow-up action, bearing in mind the need for an adaptive approach.

The issues on which there is a divergence of views (Section B) include: the most appropriate decision-making and institutional set up, with a view to enhancing cooperation and coordination, while avoiding undermining existing legal instruments and frameworks, and the mandates of regional and/or sectoral bodies.

ENVIRONMENTAL IMPACT ASSESSMENTS: This item was discussed in an informal working group on Wednesday, 12 July and in plenary on Tuesday and Wednesday, 18-19 July. The main issues discussed were obligations, governance, SEAs, and monitoring and review. The Russian Federation proposed eliminating the entire section on EIAs, due to lack of consensus on, *inter alia*, EIA definitions and thresholds.

Obligations: The G-77/China and the US proposed clarifying that when states have reasonable grounds for believing that planned activities under their jurisdiction or control may cause substantial pollution of, or significant and harmful changes to, the marine environment, they should assess impacts. The EU, with Mexico and CARICOM, recommended reference to customary international law, as clarified by the International Tribunal for the Law of the Sea (ITLOS).

CARICOM suggested: addressing activities in ABNJ having an impact in areas under national jurisdiction in accordance with CBD Article 14 (impact assessment and minimizing adverse

impacts) and UNCLOS Articles 206 (assessment of activities' potential effects) and 207 (pollution from land-based sources); and governing activities in areas within national jurisdiction that have an impact in ABNJ through national legislation, with a reporting requirement under the ILBI. Japan underscored lack of consensus on referring to activities within national jurisdiction. The Philippines called for specific EIA mechanisms. New Zealand underscored developing best-practice guidance on EIAs. Canada noted that not every activity needs to be assessed, and that actors other than states may undertake EIAs.

Thresholds: The G-77/China favored a flexible and regularly updated list of activities requiring EIAs or exemptions. Australia suggested "developing" criteria. The Cook Islands underscored that all activities in EBSAs or vulnerable marine ecosystems should trigger an EIA. Fiji stressed that any activity that potentially impacts ABNJ should undergo an EIA. Japan suggested that ILBI parties develop EIA guidelines. China considered uniform EIA standards impractical.

The EU underscored the importance of thresholds and criteria for determining when an EIA should be conducted. The US proposed eliminating reference to "how to operationalize UNCLOS 206." Japan recommended clarifying that the ILBI will "address," rather than "set out," thresholds and criteria, supported by New Zealand, Argentina, Norway and Australia, as the ILBI itself will not operationalize UNCLOS Article 206, but will rather provide for developing future guidelines.

SEAs: The EU, with CARICOM, Argentina, New Zealand and Iran, opposed the US and China's proposal to delete the section. Australia, supported by Norway, suggesting a footnote, clarifying that this issue "could be considered in a different ILBI section, for example under ABMTs." CARICOM called for stronger language on SEAs. The US, supported by China and the Russian Federation, but opposed by PSIDS and Senegal, proposed deleting the section due to lack of consensus and insufficient information on how SEAs can be part of an international process.

Governance: The G-77/China favored establishing a decision-making body under the ILBI. The EU, with Australia, New Zealand, Norway, Canada, Japan, the Republic of Korea and the US, stressed that ILBI parties will be responsible for deciding to conduct an EIA and to authorize an activity.

The EU proposed eliminating reference to the ILBI "elaborating procedural steps" following an EIA. The FSM considered the state as the decision-maker as only one of the models proposed, with the High Seas Alliance arguing that decisions on geo-engineering proposals may be subject to an international process. CARICOM suggested a tiered approach like that of the Antarctic Treaty, as well as provisions for an appeal process. PSIDS suggested mandatory consultations with adjacent coastal states, taking into account traditional knowledge, and including a review by an independent expert panel.

The EU noted that the ILBI should provide for a public statement on the reasoning behind a decision. Iran proposed referring to "screening of activities, especially activities that may cause harm to the marine environment." Australia, supported by Norway, requested noting that the ILBI will consider an appropriate role for adjacent states in the context of EIAs. The US proposed: with Japan, replacing "objective scientific input" with "using best available scientific information," cautioning against an independent scientific review; opposed by the EU, eliminating reference to "consideration of reports"; and referring to "any monitoring," arguing against obligatory monitoring and review under the ILBI.

Access to Justice: The Republic of Korea, Norway and New Zealand requested eliminating "access to justice" as a procedural step, with the African Group proposing clarifying language in the context of an appeal mechanism, opposed by Canada, who noted that the appeal mechanism "raises too many questions." The African Group, Canada and Japan questioned the reference to access to justice among procedural steps. The US proposed including the publication of decision-making documents, instead of "access to information, public notification and participation, and access to justice," as these should be domestic rather than ILBI requirements. China, opposed by the EU, proposed that the ILBI "would set out that states should formulate EIA procedural steps."

Consultation: PSIDS recommended consultation with adjacent coastal states and traditional knowledge holders. The Philippines suggested including a duty for states to communicate EIA results if there are any adverse effects to adjacent coastal states in light of UNCLOS Article 206. Japan suggested: eliminating reference to public notification and consultation "at the global level"; referencing "objective," rather than "independent," scientific review; establishing a system facilitating comments from states on draft EIA reports; and further discussing the need for mandatory consultation. PSIDS, with CARICOM, recommended clarifying that costs, including those for mandatory consultations, should be borne by the activity proponent.

Content of EIA Reports: The Russian Federation proposed deleting this section. Mexico favored including information on methodology, such as alternatives. Canada proposed adding descriptions of potential environmental impacts, including cumulative impacts "and reasonable alternatives." Tonga, with New Zealand, proposed drawing from best available science. The US suggested including a description of scoping results and, with Senegal, a description of reasonably foreseeable direct and indirect environmental impacts in the EIA report. Papua New Guinea recommended that a proposed activity can be rejected. The Republic of Korea suggested: replacing "planned work" with "proposed work"; and, opposed by Iran, replacing "description of scoping results" with "description of scope."

Australia proposed that the text "address," rather than "specify," the content of EIA reports, including a point on "uncertainties and gaps in knowledge." The Philippines preferred reference to rehabilitation plans, as part of the description of mitigation measures. The US noted lack of consensus on this point.

CARICOM, opposed by the Republic of Korea, recommended including social impacts, such as on vulnerable populations and indigenous groups. Iran and the FSM supported the Philippines' proposal to include reference to socio-economic impacts.

Transboundary Impacts: PSIDS, with Mexico, called for including transboundary impacts when relevant. Senegal recommended including the description of cumulative and transboundary impacts, without stating "where relevant." The EU, Canada and Argentina opposed Senegal's proposal.

Monitoring and Review: Mexico proposed including financial and auditing measures to ensure that activities comply with the EIA results. Canada suggested referring to "impact prediction and evaluation," and to the independent scientific "input," rather than "review." The US preferred: with IUCN, "preparation of EIA documentation"; and "new publication of decision-making documentation," rather than independent scientific review.

The G-77/China, with the US, stressed that monitoring and review should be based on UNCLOS Article 204 (monitoring of the risks or effects of pollution). The US proposed setting out “states’ obligations to undertake monitoring of pollution risks of activities they permit or engage in ABNJ.” The EU emphasized that states should decide monitoring and review modalities.

CARICOM stressed that: with PSIDS, monitoring should be funded by an activity proponent; and the EIA process should include an environmental management plan, establishing monitoring timelines, and provisions for identifying breaches, decision-making on action to be taken, and potential compensation. PSIDS underscored the need for provisions on non-compliance, including a liability fund and a dispute-settlement mechanism. The FSM highlighted the need for monitoring guidelines.

The US, opposed by the FSM and supported by Canada and the Russian Federation, proposed deleting the section, considering it partially inconsistent with UNCLOS Articles 204-205 (monitoring the risks or effects of pollution and publication of reports). PSIDS recommended compliance and enforcement mechanisms, as well as provisions in case of non-compliance; and keeping adjacent coastal states informed of progress on approved activities. China recommended eliminating reference to “review,” preferring reference to “monitoring and reporting.” The Russian Federation proposed deleting this section.

Final Recommendations: Under the non-exclusive elements that generated convergence among most delegations (Section A), the ILBI would:

- set out the obligation for states to assess the potential effects of planned activities under their jurisdiction or control in ABNJ;
- set out the relationship to EIA processes under relevant legal instruments and frameworks and relevant global, regional and sectoral bodies;
- address the thresholds and criteria for undertaking EIAs in respect of ABNJ;
- address the procedural steps of an EIA process, such as: screening; scoping; impact prediction and evaluation using the best available scientific information including traditional knowledge; public notification and consultation; publication of reports and public availability of reports; consideration of reports; publication of decision-making documents; access to information; and monitoring and review;
- address decision-making following the EIA, including on whether an activity would proceed or not and under which conditions, and the question of involvement of adjacent coastal states;
- address the required content of EIA reports, such as: description of the planned activities, reasonable alternatives including non-action alternatives, scoping results, potential effects on the marine environment, including cumulative impacts and any transboundary impacts, environment likely to be affected, any socio-economic impacts, any measures for avoiding, preventing and mitigating impacts, any follow-up actions, including any monitoring and management programmes, and uncertainties and gaps in knowledge; and a non-technical summary;
- based on and consistent with UNCLOS Articles 204 to 206, set out the obligation to ensure that the impacts of authorized activities in ABNJ are monitored, reported and reviewed; and
- address the question of information to adjacent coastal states.

In addition, the ILBI could draw from UNCLOS Article 206 and customary international law, and address SEAs.

The issues on which there are divergences of views (Section B) include: whether the instrument should address SEAs, and the degree to which the EIA process should be conducted by states or be “internationalized.”

CAPACITY BUILDING AND TECHNOLOGY

TRANSFER: This item was addressed in an informal working group, on Wednesday and Thursday, 12-13 July; and in plenary on Wednesday, 19 July, based on a revised Chair’s text containing draft recommendations to the UN General Assembly. Discussions focused on objectives, modalities, funding, and monitoring and review.

Objectives: PSIDS underscored the need to operationalize UNCLOS Part XIV on technology transfer. The EU, with Japan, prioritized the objective to assist states, in particular developing ones, in fulfilling their ILBI obligations. Japan, with Canada, supported strengthening human and institutional capacities and developing marine scientific and technological capacities in BBNJ conservation and sustainable use.

The G-77/China requested specific reference to SIDS, LDCs, coastal African states, and middle-income countries’ special situation. LDCs called for including equitable participation of all states. Mexico favored including access to MGRs *in situ*, *ex situ*, and *in silico* for commercial development among CB&TT objectives.

When considering the Chair’s revised draft in plenary, the EU and Switzerland, opposed by the African Group, recommended clarifying that conservation and sustainable use are the overall ILBI objectives. The G-77/China requested that the ILBI “should,” rather than “would,” recognize developing countries’ special requirements. The EU, supported by Togo, Switzerland and Japan, proposed language on developing and strengthening the capacity of states that may need and request it, particularly developing states, in accordance with UNCLOS Article 226 (technology transfer), to assist them in implementing their rights and fulfilling their obligations. The Philippines called for reference to the special requirements of environmentally vulnerable states.

Modalities: The G-77/China stressed the need to enhance ongoing CB&TT efforts. The Philippines, Mexico, PSIDS, Guatemala and Thailand supported an indicative, non-exhaustive list of CB&TT modalities, with LDCs proposing development of human capital, legislation and policy, and promoting private sector participation. PSIDS recommended including support for developing centers of excellence. Norway questioned the rationale for a list. The Philippines, with PSIDS, noted that CB&TT should be a precondition for access to MGRs. IUCN highlighted coordinated ocean observation and monitoring to simultaneously support multiple ILBI elements. The Russian Federation said marine technology transfer should only take place on a voluntary basis.

When considering the Chair’s revised draft in plenary, the US, supported by Japan, Australia and Canada, but opposed by the African Group and Cuba, proposed referencing voluntary technology transfer on mutually agreed terms and conditions. Eritrea suggested reference to enhancing recipient countries’ ability to identify and assimilate technological know-how. Canada, with Australia, preferred referencing needs- or priority- or country-driven modalities, rather than modalities “driven by recipient countries.” PSIDS, opposed by Japan and Australia, supported reference to developing “productive capacities.”

Funding: AOSIS called for establishing a capacity-building fund. CARICOM, with PSIDS, stressed that the funding mechanism should be easily accessible by SIDS and LDCs,

and suggested a funding mechanism for CB&TT to facilitate MSR in developing countries. PSIDS noted that the ILBI trust funds may address CB&TT-specific objectives. Kenya and Ghana underscored that voluntary trust funds have proved to be unsustainable.

Mexico suggested further discussions on including donors, percentages of royalties, compulsory and voluntary contributions, and payments for technology transfer. The Philippines underscored that funding sources may include permit fees, royalties, a global fund, existing funding mechanisms, and voluntary contributions from organizations and states. The FSM stressed effective financial cooperation. Tonga emphasized “long-term” sustainable funding, as well as accountability and transparency in the funding mechanism’s modalities. Samoa called for full participation in the funding mechanism, taking into account SIDS’ vulnerabilities. Emphasizing the need to recognize LLDCs’ special requirements, Nepal called for special and mandatory CB&TT provisions for LDCs. Singapore, with Morocco, underlined the need for sustainable funding, open to contributions from the private sector and civil society. Cameroon suggested considering financing as a principle. The Worldwide Fund for Nature (WWF) called for specific reference to best available and sustainable technologies, and assessment prior to use.

The US, the EU, Canada and New Zealand stressed that a decision on the ILBI functions should precede discussions on funding. The EU and Switzerland favored using existing funding sources. Canada, with Japan, Australia and New Zealand, suggested “addressing the question of sustainable funding.” Australia expressed openness to considering monetary benefits from MGR development as a financing source for CB&TT.

When considering the Chair’s revised draft in plenary, the G-77/China, opposed by the US, Japan and Australia, welcomed reference to accessible, predictable and sustainable funding. Canada noted that “predictable funding” could point to mandatory funding requirements, considering this premature. Togo emphasized that any language that would “dilute the text would be unacceptable.” AOSIS, with Togo and Ghana, underscored referencing Resolution 69/292 and the “2011 package,” in case of changes to the Chair’s draft.

Monitoring and Review: CARICOM suggested an evaluation of CB&TT objectives. LDCs proposed establishing an expert group on monitoring, review and follow-up. PSIDS supported a qualitative and quantitative monitoring approach. The EU requested reference to “periodically assessing” CB&TT needs. Mexico supported a periodic review to align states’ needs with the CHM capacities. Iran underscored the need to measure the success of CB&TT activities.

Australia proposed setting out monitoring and review modalities and “possible” follow-up action. Japan, supported by the US, suggested an exchange of views on CB&TT activities’ effectiveness and follow-up action. Guatemala, with Costa Rica, expressed a preference for a more open-ended formulation. The Philippines favored defined performance indicators.

When considering the Chair’s revised draft in plenary, the US, opposed by AOSIS, suggested deleting the section.

Final Recommendations: Under the non-exclusive elements that generated convergence among most delegations (Section A), the ILBI would:

- address the objectives of CB&TT in supporting the achievement of BBNJ conservation and sustainable use by developing and strengthening the capacity of states that may

need and request it, particularly developing states, to assist them to fulfil their rights and obligations;

- provide modalities for CB&TT, including the possibility for such modalities to: be country-driven and responsive to needs and priorities; develop and strengthen human and institutional capacities; be long-term and sustainable; and develop marine scientific and technological capacity of states;
- elaborate on forms of cooperation and assistance in relation to MGRs, measures such as ABMTs, including MPAs, and EIAs;
- address provision of funding and resources; and
- address the issue of monitoring and review of the effectiveness of CB&TT, and possible follow-up action.

The ILBI should recognize the special requirements of developing countries, in particular LDCs, LLDCs, SIDS, geographically disadvantaged states, as well as coastal African states.

The ILBI could further include an indicative, non-exhaustive list of broad categories of types of CB&TT, such as: scientific and technical assistance; education and training of human resources; and data and specialized knowledge.

The issues on which there is a divergence of views (Section B) include the terms and conditions for the transfer of marine technology.

INSTITUTIONAL ARRANGEMENTS: This issue was discussed on Thursday, 13 July, in the informal working group on crosscutting issues, and in plenary on Wednesday, 19 July.

The US, supported by Norway, Costa Rica, Australia, New Zealand and Iceland, proposed referring to “possible” institutional arrangements. Norway and Iceland questioned the level of detail on institutional arrangements in the Chair’s suggested elements. CARICOM underscored the need to examine existing institutions as part of the ILBI institutional arrangements to increase coherence. The Russian Federation emphasized that institutional arrangements should be considered and, after concluding discussions on substantive elements, requested deletion of these sections, preferring strengthening existing bodies including regional fisheries management organizations (RFMOs).

Decision-making Body: Monaco, Norway, Canada and Greenpeace supported a conference of the parties (COP) as a decision-making body, with the EU expressing willingness to list its tentative competencies, and highlighting cost-effectiveness, with Tonga, and utilization of existing institutions.

Canada preferred broader reference to a COP’s functions. Noting that the decision-making body should ensure harmonization of BBNJ conservation and sustainable use measures, PSIDS, with the African Group, considered the elements sufficiently broad to allow focused discussions at an IGC. Norway stressed that the forum should also allow for coordination and, supported by Switzerland, New Zealand and Costa Rica, information sharing. Preferring the use of existing mechanisms, Australia and New Zealand suggested “a mechanism of cooperation with relevant regional and sectoral bodies.”

Iran supported a global platform with decision-making functions. Guinea preferred a COP to have decision-making and strong state-level follow-up functions. The EU, with the African Group, requested eliminating reference to establishing subsidiary bodies “as necessary.”

Scientific/Technical Body: The G-77/China preferred an advisory body to review EIA reports, among other tasks. Iceland recommended clarifying the relationship of the ILBI scientific body with existing scientific bodies under other instruments,

arguing against detailed arrangements at this time. Norway, with Tonga, proposed referring to the creation of subsidiary bodies “as required.”

Japan, opposed by the African Group, considered a scientific/technical body premature, suggesting leaving the decision to the ILBI decision-making forum. The US, with Norway and Australia, proposed reference to an “institutional framework for scientific/technical advice.”

Japan then proposed that this body should focus on matters related to the ILBI implementation “specified in the ILBI and such other functions as may be determined by the decision-making body.” Mexico cautioned against precluding the possibility of creating new bodies.

Norway suggested that: the ILBI “could,” rather than “would,” provide for a scientific/technical body, and a secretariat; or, alternatively, supported by the US and Australia, focusing on functions, without pre-empting the establishment of subsidiary bodies. The US proposed that the ILBI “would set out a scientific/technical body for scientific advice to the decision-making body.”

Secretariat: The US, Norway and New Zealand favored non-prescriptive language. Noting the need for secretariat functions to support an ILBI decision-making body, the EU, with Switzerland and New Zealand, considered it premature to elaborate the secretariat’s functions. The US proposed that the ILBI “would set out an institutional framework for secretariat functions, such as,” followed by the functions to be performed. Noting potential resource implications, Canada, with Australia and Mexico, suggested providing assistance for ILBI implementation as requested by parties, “if mandated by the decision-making body.”

Final Recommendations: Under the non-exclusive elements that generated convergence among most delegations (Section A), the ILBI would set out:

- institutional arrangements, taking into account the possibility of using existing bodies, institutions and mechanisms;
- a decision-making framework, as well as the functions that could be performed;
- an institutional framework for scientific advice/information, and its functions, such as providing advice to the decision-making body/forum specified in the ILBI and such other functions as may be determined by the decision-making body/forum; and
- an institutional framework for secretariat functions, such as reporting to parties on matters related to the ILBI implementation and developments related to BBNJ conservation and sustainable use, as requested by the parties, circulating information relating to the ILBI implementation, ensuring the necessary coordination with the secretariats of other relevant international bodies, and providing assistance for the ILBI implementation as mandated by the decision-making body/forum.

Possible functions that a decision-making body/forum would perform in support of ILBI implementation could include, among others:

- reviewing ILBI implementation;
- exchange of information relevant to ILBI implementation;
- promoting coherence among efforts towards BBNJ conservation and sustainable use;
- promoting cooperation and coordination, including with relevant global, regional and sectoral bodies;
- making decisions and recommendations related to implementation; and

- establishing subsidiary bodies as necessary for the performance of its functions.

The issues on which there is a divergence of views (Section B) include: institutional arrangements and the relationship between the ILBI institutions and relevant global, regional and sectoral bodies.

CLEARINGHOUSE: This item was addressed as part of the different elements of the package in informal working groups, on Tuesday, Wednesday and Thursday 11-13 July; and in plenary on Wednesday, 19 July, based on a revised Chair’s text containing draft recommendations to the General Assembly as a stand-alone section.

The G-77/China proposed: opposed by Canada, a protocol for environmental protection and transparency; and a trust fund, a central repository, and an online compilation of EIA good practices and reports. China supported an efficient, user-friendly CHM for exchanging practical information, excluding IPRs and trade secrets.

The US, supported by Japan, but opposed by the African Group, CARICOM, PSIDS, Iran and Costa Rica, recommended including provisions for crosscutting mechanisms that may be needed, such as data repositories and/or CHMs. Japan expressed concern about creating information-sharing obligations, with Switzerland recommending eliminating reference to “obligations.” Singapore recommended referring to a single CHM with different functions, rather than a multiplicity of clearinghouses. Japan supported a clearinghouse “function,” rather than a new mechanism. Canada cautioned against precluding the opportunity to identify an existing body to play a clearinghouse function. The Russian Federation questioned the value added of a CHM, cautioning against over-bureaucratization.

Regarding MGRs, CARICOM and the EU supported creating a CHM, with Vanuatu noting its role to support cooperation for the benefit of all stakeholders, and Costa Rica noting its value to coordinate existing efforts. The G-77/China suggested establishing a trust fund within the CHM, taking into account existing mechanisms, to ensure fair distribution of benefits. LDCs noted that they and SIDS should be the primary beneficiaries of a trust fund, and be exempted from monetary obligations. The EU expressed readiness to consider a CHM to ensure access to and exchange of scientific data, and match capacity-building needs with offers. PSIDS highlighted traditional knowledge associated with MGRs and regional clearinghouses. The EU, opposed by Brazil and the Philippines, requested eliminating reference to “possible information related to MGR utilization.”

On EIAs, the G-77/China, with the Republic of Korea, noted that a CHM could serve as a central repository of baseline data. PSIDS pointed to the CHM as a repository of traditional knowledge related to EIAs. The EU considered the CHM as a global repository of best practices, EIA-related information, and international and national instruments. The Philippines, opposed by the US, supported an EIA-specific CHM.

Regarding CB&TT, the G-77/China proposed using the Nagoya Protocol’s capacity-building network, advocating web-based, open-access data to match needs, and facilitate case-by-case technology transfer. PSIDS, supported by Pakistan, envisaged a global CHM for CB&TT, with a network of regional and sub-regional CHMs. The EU and LDCs suggested that the CHM facilitate access to scientific data and ensure transparency of CB&TT activities to match needs with offers.

CARICOM, the US, the EU, PSIDS and Iran recommended using existing mechanisms. Canada suggested flexibility for

creating a new CHM or utilizing existing ones. LDCs advocated building on existing mechanisms' experience. Japan cautioned against duplicating the IOC's activities, and proposed clarifying the IOC's role in the ILBI. The US, with Mexico, suggested consolidating text on the CHM and drawing on the IOC's work. Indonesia stressed the need to assess whether available CB&TT activities are adequate to address developing countries' needs. The IOC emphasized a user-friendly platform working at global, regional and sub-regional levels. The Russian Federation opposed a new global mechanism, arguing that diverse CB&TT needs require case-by-case consideration.

Japan supported a proposal by the US to take into account mechanisms under other bodies. PSIDS recommended that the CHM "would not undermine existing clearinghouse structures." Norway requested reference to ILBI implementation to frame information exchange. China proposed deleting reference to: with Japan, Pakistan and the Republic of Korea, dissemination of information, data and knowledge resulting from research and from traditional knowledge relating to MGRs in ABNJ; and, opposed by the Philippines, baseline data.

Brazil suggested adding reference to information on sharing of monetary benefits, with Japan underscoring lack of consensus on monetary benefits. Iran proposed including sharing of information on research programmes, and also on funding opportunities. Eritrea proposed additional language on safeguards for traditional knowledge holders' rights.

Final Recommendations: Under the non-exclusive elements that generated convergence among most delegations (Section A), the ILBI would set out modalities to facilitate the exchange of relevant information for ILBI implementation, and make provision for mechanisms, such as data repositories or a CHM.

Possible functions of a CHM could include dissemination of: information, data and knowledge resulting from research relating to MGRs of ABNJ, and information on traditional knowledge associated with MGRs; information relating to ABMTs, including MPAs, such as scientific data, follow-up reports and related decisions taken by competent bodies; information on EIAs, such as by providing a central repository for EIA reports, traditional knowledge, best environmental management practices and cumulative impacts; and information relating to CB&TT, including facilitation of cooperation, information on research programmes, projects and initiatives; information on needs related to CB&TT and available opportunities; and information on funding opportunities.

FINANCIAL MECHANISM: This item was addressed in an informal working group on crosscutting issues, on Thursday, 13 July; and in plenary on Wednesday, 19 July, based on a revised Chair's text containing draft recommendations to the General Assembly.

The G-77/China emphasized the need for an adequate, predictable and sustainable funding mechanism, funded from potential benefit-sharing and complemented by a voluntary trust fund. PSIDS underscored funding mechanisms also for rehabilitation and liability, and availability and access modalities. The EU, with the African Group, noted that the term "mechanism" does not necessarily imply a mandatory funding scheme. Canada proposed reference to "the possibility of a funding mechanism." Switzerland said that existing mechanisms could be utilized. CARICOM expressed openness to consider new or existing funding mechanisms. PSIDS suggested reference to: both mandatory and voluntary provisions; clearer funding modalities; and potential liability and rehabilitation funds. Noting lack of

consensus with respect to a funding mechanism, the US, Japan and Switzerland, opposed by Kenya and Nigeria, preferred eliminating reference to it. The US, opposed by Argentina, Colombia and Cameroon, proposed deleting reference to "the possibility of a funding mechanism," and instead referring to "financial issues."

Final Recommendation: Under the non-exclusive elements that generated convergence among most delegations (Section A), the ILBI would address financial issues relating to the operation of the instrument.

The issues on which there are divergences of views (Section B) include: the scope of the financial resources required and whether a financial mechanism should be established.

COMPLIANCE: This issue was raised in the informal working group on crosscutting issues on Thursday, 13 July, and then addressed in plenary on Wednesday, 19 July. PSIDS preferred referring to "compliance," rather than "issues of compliance." Iran proposed changing the title to "compliance and enforcement" or "compliance and implementation." Greenpeace called for a compliance committee. The Russian Federation, opposed by the Philippines and Switzerland, requested deleting the section.

DISPUTE SETTLEMENT: This issue was raised in the informal working group on crosscutting issues on Thursday, 13 July, and then addressed in plenary on Wednesday, 19 July. Colombia and Venezuela, opposed by Argentina and Iran, proposed language similar to UN Charter Article 33 (obligations of state parties to a dispute). Mexico proposed attributing a role to ITLOS. CARICOM, supported by the Philippines and Tonga, suggested that ITLOS could provide advisory opinions. The US stated that references to the UN Charter and ITLOS advisory opinions require further discussion. The EU argued that disputes under the ILBI could qualify as disputes under UNCLOS, with modalities to be decided at a later stage. Greenpeace called for establishing transparent, accessible and effective dispute resolution.

The Russian Federation requested deleting this section, stressing that dispute settlement is already included in UNCLOS. This was opposed by PSIDS, who noted it should be linked to compliance.

RESPONSIBILITY AND LIABILITY: This issue was raised in the informal working group on crosscutting issues on Thursday, 13 July, and then addressed in plenary on Wednesday, 19 July. China, supported by the US and opposed by Mexico and CARICOM, proposed deleting the section. The Philippines noted that these provisions are consistent with the polluter pays principle. The EU considered a provision on responsibility unnecessary, suggesting that the IGC could take up the issue.

The Russian Federation and the US, opposed by PSIDS, Argentina and CARICOM, requested deleting the section. China proposed addressing issues relating to responsibility and liability based on UNCLOS Articles 304 (responsibility and liability for damage), 205 (publication of reports) and 263 (responsibility and liability). The Philippines supported establishing a rehabilitation fund, as proposed by PSIDS. The Republic of Korea, opposed by the Philippines, suggested deleting reference to the International Law Commission's Articles on the responsibility of states for internationally wrongful acts and customary international law, as well as other international legal instruments.

REVIEW: This issue was raised in the informal working group on crosscutting issues on Thursday, 13 July, and then addressed in plenary on Wednesday, 19 July. Japan, supported by the EU and the African Group, and opposed by CARICOM,

Tonga and the Philippines, considered reference to UNCLOS Article 154 (periodic review) and UNFSA Article 36 (review conference) inappropriate, with Argentina proposing periodic review of the ILBI's effectiveness in achieving its objectives. The Russian Federation recommended eliminating reference to the UNFSA. The Philippines suggested reviewing the ILBI's effectiveness, "taking into consideration best available scientific knowledge to facilitate adaptive management."

FINAL CLAUSES: This issue was raised in the informal working group on cross-cutting issues on Thursday, 13 July, with the EU emphasizing early entry into force and universality. Mexico recommended providing for provisional implementation. Argentina called for a safeguard clause.

On Friday evening, 21 July, Chair Duarte noted that the elements in Section A would state that none of the ILBI provisions can be interpreted or considered as prejudicing the positions of states on land and maritime disputes.

Final Recommendations: Under the non-exclusive elements that generated convergence among most delegations (Section A), the ILBI would:

- address issues of compliance, but further discussion is required;
- set out the obligation to settle disputes by peaceful means, as well as the need to cooperate to prevent disputes, drawing on existing dispute settlement provisions, such as those of the UN Charter and UNCLOS; and
- set out the modalities for settling disputes concerning the interpretation or application of the instrument.

The ILBI would set out final clauses with a view to achieving universal participation, be consistent with relevant UNCLOS provisions on this matter, including regarding international organizations; and state that none of its provisions can be interpreted or considered as prejudicing the positions of states on land and maritime disputes.

In addition, the ILBI could address issues relating to responsibility and liability.

The issues where there are divergences of views (Section B) include dispute settlement, responsibility and liability, and periodic review of the ILBI effectiveness in achieving its objectives.

CLOSING PLENARY

On Friday evening, 21 July, Chair Duarte convened the closing plenary. The EU requested an addition to the PrepCom report, noting that despite numerous requests to eliminate, or, in the spirit of compromise, reflect in both Sections A and B, language stating that the ILBI "could recognize that the legal status of non-parties to UNCLOS or any other related agreements with regard to those instruments would not be affected," such language remains only in Section A even if it did not generate convergence. He stated that the PrepCom has, nevertheless, fulfilled its mandate and should move to the next stage.

Delegates adopted the draft report of PrepCom 4 with minor amendments. The G-77/China expressed satisfaction with the adoption of the report and substantive recommendations by consensus, emphasizing that the PrepCom's mandate has been successfully completed, despite weaknesses in the recommendations; and noted that many elements need to be discussed in depth, expressing commitment to productive negotiations during the next stage of the process. The FSM, for Pacific Islands Forum, emphasized that more work lies ahead, and expressed hope that the General Assembly will convene an IGC in 2018. PSIDS recalled the 12-year journey that has

led to the adoption of the PrepCom's recommendations, and expressed readiness to resolve outstanding issues at the IGC in 2018. Mexico stressed that this is "one of the most important outcomes" towards an ILBI, and to protecting the ocean and "our blue planet." Samoa noted that that the recommendations struck a balance towards convening an IGC in 2018, hoping that future generations will look back and "see we have played our part in protecting BBNJ."

Monaco expressed thanks for delegates' efforts and concessions and looked forward to engaging actively in the IGC. Morocco noted that the text had been accepted for the sake of consensus, urging everyone to work hard to convene an IGC in 2018. Regretting that stronger language in the recommendations could not have been agreed, Costa Rica said the text reflected a carefully crafted, delicate balance. Thailand observed that the PrepCom has successfully "unpacked the 2011 package," adding that the report and elements would serve as good basis for further negotiations, and that it is time to take steady steps towards IGC, as early as possible. Guatemala expressed thanks to the delegations for their flexibility and to Chair Duarte and his team, quoting Jimmy Dean "I cannot change the flow of the wind, but can adjust my sails to reach my destiny."

The African Group emphasized that after 10 years of discussions in the Working Group and two years in the PrepCom, "we did it and we are going to elaborate a new treaty and hopefully close regulatory and legal gaps in UNCLOS," underscoring that he expects the same level of flexibility shown in adopting the recommendations to be shown by other delegations during the next stage of the process. LDCs recommended focusing on positive gains, despite concessions by all sides, pointing to the ILBI draft elements, a possible structure for the ILBI, and the recommendation to convene an IGC as soon as possible. He further underscored the specific challenges faced by LDCs and other vulnerable group, urging states to "reach out to those furthest behind."

Thanking all delegations for their flexibility and tenacity to reach consensus, AOSIS described the process as one of "monumental significance," and hoped that the recommendations reflect to the General Assembly the sense of urgency and will serve as a strong signal for holding an IGC as soon as possible in 2018. Peru stressed that this year will be remembered as a "game changer for the oceans." Thanking all delegations for the spirit of compromise, India noted that "the recommendations are meaningful." IUCN said that it has been a "long and winding road, but the future of the oceans is brighter." Noting she would prefer stronger language, the High Seas Alliance appreciated the spirit of compromise, and looked forward to future work during the next stage of the process.

Commending Chair Duarte, his team, particularly Barbara Boechat (Brazil), and UN Division for Ocean Affairs and the Law of the Sea (UNDOALOS) for "building bridges to consensus," General Assembly President Peter Thomson stressed that this is a "solid step" by the international community in restoring ocean health; underscored the need to reverse the cycle of ocean decline caused by human activity and ensure the conservation and sustainable use of "the oceans that unite us"; and expressed hope that the General Assembly will maintain the momentum and convene an IGC.

Chair Duarte expressed appreciation for the groundwork laid by former PrepCom Chair Eden Charles, a sentiment supported by many delegations; thanked delegates for their support and flexibility; and closed the meeting at 10:01 pm.

A BRIEF ANALYSIS OF PREPCOM 4

TOWARDS A PARIS AGREEMENT FOR THE OCEAN?

“We can’t afford to leave 70% of our oceans to unlimited exploitation. We need a Paris Agreement for the ocean with ambitious and measurable goals.” This was Leonardo DiCaprio’s clarion call, delivered via video-message to the UN Ocean Conference in June 2017. DiCaprio was among the many celebrities, artists, scientists and social entrepreneurs that helped generate genuine hope and momentum for addressing the multiple threats to the oceans at this high-octane event.

Fast forward three weeks and delegates once again assembled at UN Headquarters, albeit this time for a much lower-key but still game-changing final session of the Preparatory Committee, aimed at forging the way ahead for a new ocean biodiversity treaty. With a view to placing this process in the context of the expectations raised at the UN Ocean Conference, this brief analysis will untangle the complex drivers, dynamics and trade-offs that played out on the way to a hard-fought PrepCom consensus outcome, reflect on the PrepCom’s legacy, and look at the expected choppy waters ahead.

TO CONVENE OR NOT TO CONVENE AN IGC?

As BBNJ delegates got down to work, there were very few signs of the energy and sense of urgency that had permeated the UN Ocean Conference. The iconic ocean debris-recycled artwork that had graced the entrance to the building and the powerful images of life in the depth of the seas exhibited in the atrium had been removed. Negotiations resumed without fanfare in the usual, windowless meeting room where only sporadic references were made to the UN Ocean Conference’s intergovernmental outcome, “Our Ocean, Our Future: A Call for Action,” or to the relevance of the ILBI for the realization of multiple Sustainable Development Goals. This irony was not lost on some, given that the High-Level Political Forum on Sustainable Development was meeting in parallel in the same building and carrying out an in-depth review of SDG 14 (life below water).

In the lead-up to PrepCom 4, no one was expecting to make major strides in further developing the draft elements of a new treaty during this final session. This was partly due to the short intersessional period, with PrepCom 3 ending on 7 April and the deadline for the final round of written submissions on 24 April. It was also partly due to the concurrent negotiations of the Call for Action that was adopted at the Ocean Conference, which kept many BBNJ delegates busy, leaving little time to prepare substantively for the final PrepCom session. But most delegates were nevertheless eager to capture progress made over the past two years in order to demonstrate that the PrepCom’s mandate had been completed, efforts to reach consensus without engaging in text-based negotiations had been exhausted, and the process was ready to move to a more formal stage: an intergovernmental conference in 2018.

However, cracks began to appear before the end of the first week, as a few delegations argued for a more literal interpretation of the PrepCom’s mandate, which did not explicitly include making a procedural recommendation. According to the minority view (held by Japan, China, the Russian Federation, Iceland and the US), the decision on whether to convene an IGC or not was to be left to the UN General Assembly, after the end of the PrepCom, exclusively on the merits of the PrepCom’s substantive outcome. The latter argument was intertwined with the Russian Federation’s claims that their views had not been accommodated

in the Chair’s text, glossing over whether consensus had really been captured in the substantive elements and whether efforts had really been exhausted to ensure everybody was on board.

Chair Duarte and his team’s innovative way of tackling this divergence of views was by differentiating between draft elements where the draft used “would” (representing consensus elements) as opposed to “could” (representing elements that required further discussion), but the subtle attempt did not convince the outliers, who instead demanded a separate section clearly demarcating elements on which consensus had not been achieved. An informal, closed-door session was convened during the second week to address the most intractable substantive issues, but did not make much headway, according to those that made it into the overcrowded room.

A revised draft was offered on a no-objection basis following the informal session, which most delegations supported as a “delicate balance.” But when others pointed to difficulties in accepting it, the Chair conducted bilateral consultations, as a last attempt at developing a compromise text. A well-informed participant revealed in the corridors that the strategy was not to re-open the substantive elements of the ILBI as such, which had already accommodated several requests from the minority, but rather focus on whether the PrepCom would call for an IGC “as soon as possible” and how the PrepCom would “label” the ILBI elements. On the latter, Chair Duarte made another attempt in the revised draft to avoid the consensus/non-consensus dilemma, by distinguishing the thorny substantive elements as “elements that require most attention towards further progress in the development of a draft ILBI text.” As the veterans observed, this opened the space for leaving the intractable issues both within the original draft elements (which became Section A), as well as in a separate section (which became Section B). Meanwhile, some delegations were rumored to be preparing for a vote in the final plenary, and others were considering whether it would help to involve ambassadors or the President of the General Assembly, Peter Thomson, the “father” of the UN Ocean Conference.

The late afternoon and good part of the evening of the last day of the PrepCom were spent in reportedly emotional regional consultations, as the Chair’s new draft left the vast majority bitterly disappointed. The two sets of elements had been downgraded, in the eyes of many, to elements that generated “convergence among most delegations” (Section A) and “main issues on which there is divergence of views” (Section B), with the added caveat that both sets of elements “do not reflect consensus.” The last statement took even some delegations in the minority by surprise. “This is an inaccurate reflection of the progress made in the PrepCom,” confided a baffled developed country delegate. Another observer remarked: “How can there be no consensus on Section A which, for the most part, includes placeholders for draft elements?” pointing to draft elements such as “the text could set additional objectives, if agreed.”

Eventually the G-77 and the EU, who were the last ones to emerge from internal coordination meetings, accepted the proposed outcome for the sake of concluding the PrepCom with consensus. “We are all quite unhappy with the language,” ruffled delegates uttered, after an unexpected standing ovation at the end of the session, “but we all know that consensus is preferable to voting to get a textual negotiation off the ground.” A delegate in the minority also considered this an important sign of commitment that the future ILBI will be negotiated with the goal of universal participation in mind.

THE PREPCOM'S SUBSTANTIVE LEGACY?

So has the PrepCom paved the way for a “Paris Agreement for the oceans”? For one thing, as a former Paris Agreement negotiator at the PrepCom remarked in an informal conversation, the ILBI and the Paris Agreement are like “apples and oranges.” Although both agreements focus on the commons, the Paris Agreement is mainly concerned with domestic action under national jurisdiction, in the framework of a well-established framework to assess comparability of efforts (“a tonne is a tonne” is the motto, referring to carbon dioxide). In addition, it has a clear, overarching international “home,” the UN Framework Convention on Climate Change and its well-resourced secretariat. On the other hand, BBNJ conservation and sustainable use have more to do with international cooperation across a fragmented landscape of marine biodiversity fora and processes, some with more means than others. In that context, efforts are difficult to compare as there are different methodologies and worldviews as to the values of ecosystems. “So the pledge-and-review approach of the Paris Agreement, or its advanced methodologies for monitoring, reporting and verification, may hardly be a good fit for the oceans,” concluded the delegate.

BBNJ veterans instead tend to compare the ILBI with another UNCLOS implementing agreement that has brought the international law of the sea and international biodiversity law closer: the UN Fish Stocks Agreement. Some hope that the ILBI will serve to provide the operational details on how to protect fragile ecosystems in the deep seas, connecting the dots between the general provisions of UNCLOS and the concepts, approaches and guidelines developed under the Convention on Biological Diversity, and international sectoral and regional bodies. “If we are lucky, we can get something comparable to what UNFSA achieved on the application of the precautionary approach,” commented an international law expert referring to the innovation of reference points under UNFSA Article 6, pondering whether this achievement was made possible by the UNFSA being negotiated as a soft-law instrument initially. “Perhaps having agreed on the legally binding nature of the ILBI early on may be a handicap, which may explain why some delegations have already made it clear that the ILBI should foresee the development of guidelines, but not directly incorporate them in its text.” Another long-standing participant called attention to the fact that the level of normative detail of UNFSA could be attributed to the narrow scope of the agreement, whereas the ILBI will cover all marine life in ABNJ under several pillars of UNCLOS. According to that view, it can be expected that delegations will be very cautious in balancing the breadth of potential impacts on states’ activities with open-ended obligations like in a framework convention.

Perhaps the most important lesson learned from UNFSA, as several delegates shared in the corridors, is that without an institutional structure comparable to the COP of multilateral environmental agreements, there is no scope to develop even gradually ambitious and measurable objectives. PrepCom 4 witnessed rehashed views on how heavy or light the ILBI institutional structure should be. Developing countries have been calling for an increasingly ambitious and articulated international architecture, with multiple funds and overview and support mechanisms. Several developed countries, however, were worried about the costs involved, advocating for a light institutional structure. They also raised issues about the need for “form to follow function,” noting that there are divergent views as to the need for an international, regional or a hybrid model, which is

bundled up in the continuing controversial discussions on how the ILBI will “not undermine” other instruments and processes. For some, this debate cannot be resolved other than through textual negotiations and will take priority over the institutional architecture.

In this regard, while the supporters of a hybrid approach expressed satisfaction that the PrepCom elements left the door fully open for exploring all possible shades of hybridity at the IGC, others worried that the work done in clarifying an initial set of options during the previous sessions of the PrepCom might be lost in the slim set of elements that will be forwarded to the General Assembly. “That’s why we insisted on giving some status to the last-minute Chair’s streamlined non-paper,” explained a delegate who underscored how the non-paper was helpful both to reflect (in much more detail than the draft elements submitted to the General Assembly) the depth of the substantive exchanges during the PrepCom, and to order them through the articulation of options for various elements, wondering whether focusing on options could have been done a bit earlier in the process to enable more structured and effective discussion. “But the non-paper mainly reflects written submissions to the Chair, rather than all the oral interventions made during the first three PrepCom sessions,” argued another, recalling that many delegations either did not wish to provide written submissions at this stage or did not manage to meet the tight deadline that had been set for them at PrepCom 3. In the end, the existence of the non-paper is neutrally acknowledged in the meeting report, and “those delegations that found it useful will be at liberty to put it back on the table,” a veteran noted.

GETTING TO YES?

While most BBNJ participants considered that, for better or worse, the PrepCom had completed its mandate, they were barely off the UN grounds before they began planning how to take things forward in the General Assembly, considering that the US and Japan had indicated the need to consult capitals on the IGC and other major players were conspicuously silent during the closing plenary. “We take it that this outcome is broadly understood as enabling the General Assembly to call for an IGC, still as soon as 2018,” said a hopeful delegate, and that “those that paid the highest price for consensus will be repaid with similar levels of flexibility on that occasion.”

Civil society representatives were already scouting for champions that could put forward a draft resolution to the General Assembly in the autumn, hoping that moving quickly to an IGC will facilitate efforts to get public and media attention to this process and put pressure on delegations. A long-standing ocean campaigner explained, in this connection, that a PrepCom 4 side-event focused on the Paris Agreement, with an inspiring intervention by former UNFCCC Executive Secretary Cristiana Figueres, was meant to underscore the need not just to keep, but actually to increase, the political momentum for “getting to yes.” Walking off into the warm New York night, many considered the end of PrepCom 4 too early to say if a firm course has been set towards developing—as Virgin Founder Richard Branson put it at the UN Oceans Conference—“a bold treaty with teeth and vision.”

UPCOMING MEETINGS**23rd Annual Meeting of the International Seabed**

Authority: During the 23rd annual meeting of the International Seabed Authority (ISA), Member States will review and provide direction to the work of the Authority and its Secretariat. **dates:** 7-18 August 2017 **location:** Kingston, Jamaica **contact:** ISA Secretariat **phone:** +1-876-922-9105 **fax:** +1-876-922-0195 **email:** <https://www.isa.org.jm/contact-us> **www:** <https://www.isa.org.jm/sessions/23rd-session-2017>

4th International Marine Protected Areas Congress: The IMPAC4 will convene under the theme “MPAs: bringing the ocean and people together.” It is expected to be one of the last milestones in the road of conferences on marine conservation before reaching the 2020 deadline for the Aichi Biodiversity Targets. **dates:** 4-8 September 2017 **location:** La Serena, Chile **email:** impac4@mma.gob.cl **www:** <http://www.impac4.org/>

48th Pacific Islands Forum (PIF) Leaders Meeting: The gathering will include: the Smaller Islands States Leaders Meeting (4 September); the Pacific ACP Leaders Meeting (5 September); the Official Opening of the 48th Pacific Islands Forum (5 September); the Forum Leaders Dialogue with Civil Society Organizations and Private Sector (6 September); the 48th PIF Plenary Sessions with Associate Members and Forum Observers and Post Forum Dialogue Partners (7 September); and the Forum Leaders Retreat (8 September). **dates:** 4-8 September 2017 **location:** Apia, Samoa **contact:** PIF Secretariat **email:** media@forumsec.org **www:** <http://www.forumsec.org/>

Sixth Session of Meeting of the Parties to the Aarhus Convention, Third Session of the Meeting of the Parties to Protocol on PRTRs, Joint High-level Segment: The sixth session of the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), the third session of the Protocol on Pollutant Release and Transfer Registers (Protocol on PRTRs), and associated preparatory meetings will discuss achievements and challenges in promoting effective access to information, public participation in decision-making and access to justice in relation to issues affecting the environment. The joint High-level Segment will focus on the role of the Aarhus Convention and its Protocol in implementing the SDGs. **dates:** 11-15 September 2017 **location:** Budva, Montenegro **contact:** Aarhus Convention Secretariat **phone:** +41-22-917-2682 **email:** public.participation@unece.org **www:** <http://www.unece.org/index.php?id=44094#/>

Seventy-second Session of the UN General Assembly: The 72nd Regular Session of the UN General Assembly will start on Tuesday, 12 September 2017 at UN Headquarters. The General Debate will open on Tuesday, 19 September 2017. **location:** UN Headquarters, New York **www:** <http://www.un.org/en/ga/>

Our Ocean Conference: The European Union will host the fourth “Our Ocean” Conference, which will focus on ocean and climate change, marine pollution, sustainable fishing, and sustainable blue growth, including tidal and wave technology. The Conference will also report on and review implementation of commitments made at previous “Our Ocean” Conferences and seek new commitments. **dates:** 5-6 October 2017 **location:** Malta **contact:** Ramon van Barneveld **phone:** +32-229-84602 **email:** Ramon.Van-Barneveld@ec.europa.eu **www:** <https://oourocean2017.org/>

CMS COP 12: The theme for the twelfth session of the Conference of the Parties (COP) to the Convention on the Conservation of Migratory Species of Wild Animals (CMS)

is “Their Future is Our Future – Sustainable Development for Wildlife & People,” referring to the SDGs on ending poverty and hunger, improving health and education, combating climate change, and protecting oceans and forests. **dates:** 23-28 October 2017 **location:** Manila, the Philippines **contact:** UNEP/CMS Secretariat **phone:** +49-228-815-2401 **fax:** +49-228-815-2449 **email:** cms.secretariat@cms.int **www:** <http://www.cms.int/>

Global Science, Technology and Innovation Conference (G-STIC) 2017: This Conference is the first in a series to bring together key stakeholders from science, technology and innovation communities (including the private sector), and provide a forum to review, discuss and identify internationally relevant technological innovations that can lead the world on a more sustainable development course. The series is hosted jointly by: VITO (a Belgian research and technology organization on cleantech and sustainable development) and the Asian Institute of Technology, the Indian Institute of Technology and The Energy and Resources Institute (TERI). **dates:** 23-25 October 2017 **location:** Brussels, Belgium **contact:** VITO NV **phone:** +32-3-286-7458 **email:** info@gstic.org **www:** <https://www.gstic.org>

Fourth Intergovernmental Review Meeting on the Implementation of the Global Programme of Action for the Protection of the Marine Environment from Land-based Activities:

The Fourth Intergovernmental Review Meeting on the Implementation of the Global Programme of Action for the Protection of the Marine Environment from Land-based Activities (GPA) will take place in Bali, Indonesia. The Intergovernmental Review Meeting is a forum where governments and other stakeholders review the status of the implementation of the GPA and decide on action to be taken to strengthen its implementation. **dates:** 23-27 October 2017 **location:** Bali, Indonesia **contact:** UNEP GPA Coordination Office **email:** gpa@unep.org **www:** <http://www.unep.org/nairobiconvention/unep-global-programme-action-unepegpa>

UNFCCC COP 23: COP 23 will be organized by Fiji and hosted at the headquarters of the UNFCCC Secretariat in Bonn, Germany. The UNFCCC COP and Meeting of Parties to the Paris Agreement will meet, as will the Subsidiary Body for Implementation (SBI), the Subsidiary Body for Scientific and Technological Advice (SBSTA) and the *Ad Hoc* Working Group on the Paris Agreement (APA). **dates:** 6-17 November 2017 **location:** Bonn, Germany **contact:** UNFCCC Secretariat **phone:** +49-228-815-1000 **fax:** +49-228-815-1999 **email:** secretariat@unfccc.int **www:** http://unfccc.int/meetings/bonn_nov_2017/meeting/10084.php

53rd Meeting of the GEF Council: The 53rd meeting of the Global Environment Facility (GEF) Council will be preceded by the GEF CSO Consultation, on 4 December. On the final day, the Council will convene as the Council of the Least Developed Countries Fund (LDCF) and Special Climate Change Fund (SCCF), also at the same location. **dates:** 28-30 November 2017 **location:** Washington D.C., US **contact:** GEF Secretariat **email:** <https://www.thegef.org/contact> **www:** <https://www.thegef.org/events/53rd-gef-council-meeting>

World Ocean Council’s Sustainable Ocean Summit (SOS):

Under the theme, “The Ocean Sustainable Development Goal (SDG 14): Business Leadership and Business Opportunities,” the summit will focus on: ocean business community leadership in achieving SDG 14; and business growth and investment opportunities of ocean sustainable development. SOS 2017 will also aim to advance the development of SDG targets and indicators being developed with and for the Ocean Business

Community via the World Ocean Council; address the other SDGs and how they relate to the ocean and also create the need for business leadership and opportunities for business growth and development; and build on the results and momentum of the UN Ocean Conference and other ocean events in 2017.

dates: 29 November – 1 December 2017 **location:** Halifax, Nova Scotia, Canada **contact:** World Ocean Council **email:** <https://sustainableoceansummit.org/contact/> **www:** <https://sustainableoceansummit.org/>

Third Meeting of the UN Environment Assembly: The third meeting of the UN Environment Assembly (UNEA 3) will be held, on an exceptional basis, from 4-6 December 2017, with the high-level segment taking place on 5-6 December, and the Open-Ended Committee of Permanent Representatives from 29 November to 1 December. **dates:** 4-6 December 2017 **location:** Nairobi, Kenya **contact:** Jorge Laguna-Celis, Secretary of Governing Bodies **phone:** +254-20-7623431 **email:** unep.sgb@unep.org **www:** <http://www.unep.org/environmentassembly/>

CBD SBSTTA-21 and Article 8(j) Working Group-10: The Convention on Biological Diversity (CBD) Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA) will address, *inter alia*, the links between the Aichi Biodiversity Targets and the SDGs, biodiversity and health, and biodiversity mainstreaming in the energy, mining and infrastructure sectors. The tenth meeting of the CBD *Ad Hoc* Open-ended Working Group on Article 8(j) and Related Provisions will meet in parallel to SBSTTA-21. **dates:** 11-16 December 2017 **location:** Montreal, Quebec, Canada **contact:** CBD Secretariat **phone:** +1-514-288-2220 **fax:** +1-514-288-6588 **email:** secretariat@cbd.int **www:** <https://www.cbd.int/meetings/>

Sixth International Marine Debris Conference: The US National Oceanic and Atmospheric Administration (NOAA) and UN Environment will organize the Sixth International Marine Debris Conference (6IMDC). The conference will promote international coordination efforts within the marine debris community, and it will build on the partnerships and successes of the Honolulu Strategy, which was developed at the last conference in 2011. **dates:** 12-16 March 2018 **location:** San Diego, California, US **email:** info@6IMDC.org **www:** <http://internationalmarinedebrisconference.org/>

4th World Conference on Marine Biodiversity: This meeting will bring together scientists, practitioners, and policy makers to discuss and advance understanding of: climate change impacts on marine biodiversity; cumulative impacts of human activities on marine biodiversity; marine ecosystem safety; role of systematics in understanding ocean change; bioinformatics and data delivery; analytical approaches in marine biodiversity science; integrative frameworks for linking environmental and biological drivers of biodiversity; linking biodiversity to ecosystem function and services; blue biotechnology and marine genetic resources; marine policy and law; marine biodiversity and human health; marine biodiversity education and outreach; and strategies for conservation of marine biodiversity. **dates:** 13-16 May 2018 **location:** Montreal, Quebec, Canada **contact:** 4th WCMB Congress Secretariat **phone:** +1-514-287-9898 ext. 334 **fax:** +1-514-287-1248 **email:** wcm2018secretariat@jpd.com **www:** <http://www.wcm2018.org/>

IMCC5: The Society for Conservation Biology's 5th International Marine Conservation Congress will bring together conservation professionals and students to develop new and powerful tools to further marine conservation science and policy.

dates: 24-29 June 2018 **location:** Sarawak, Malaysia **contact:** IMCC5 Organizers **email:** <http://conbio.org/mini-sites/imcc5/about/contact-us/> **www:** <http://conbio.org/mini-sites/imcc5/>

CBD SBSTTA-22: The twenty-second meeting of the CBD SBSTTA will address, *inter alia*: protected areas, marine and coastal biodiversity, biodiversity and climate change, and digital sequence information on genetic resources. **dates:** 2-7 July 2018 **location:** Montreal, Quebec, Canada **contact:** CBD Secretariat **phone:** +1-514-288-2220 **fax:** +1-514-288-6588 **email:** secretariat@cbd.int **www:** <https://www.cbd.int/meetings/>

CBD SBI-2: The CBD Subsidiary Body on Implementation (SBI) will address: review of the effectiveness of the Nagoya Protocol, the global multilateral benefit-sharing mechanism under the Protocol, and specialized international access and benefit-sharing mechanisms in light of Nagoya Protocol Article 10. **dates:** 9-13 July 2018 **location:** Montreal, Quebec, Canada **contact:** CBD Secretariat **phone:** +1-514-288-2220 **fax:** +1-514-288-6588 **email:** secretariat@cbd.int **www:** <https://www.cbd.int/doc/?meeting=5691>

GLOSSARY

ABMTs	Area-based management tools
ABNJ	Areas beyond national jurisdiction
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
COP	Conference of the parties
EBSAs	Ecologically or biologically significant marine areas
EEZ	Exclusive Economic Zone
EIA	Environmental impact assessment
FSM	Federated States of Micronesia
IGC	Intergovernmental Conference
ILBI	International legally binding instrument
IOC	Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization (UNESCO)
IPRs	Intellectual property rights
ITLOS	International Tribunal for the Law of the Sea
IUCN	International Union for Conservation of Nature
LDCs	Least developed countries
LLDCs	Landlocked developing countries
MGRs	Marine genetic resources
MPAs	Marine protected areas
MSR	Marine scientific research
PrepCom	Preparatory Committee
PSIDS	Pacific small island developing states
SDGs	Sustainable Development Goals
SEAs	Strategic environmental assessments
SIDS	Small island developing states
UNCLOS	UN Convention on the Law of the Sea
UNFSA	UN Fish Stocks Agreement