

## Summary of the Third Session of the Intergovernmental Conference (IGC) on the Conservation and Sustainable Use of Marine Biodiversity of Areas Beyond National Jurisdiction: 19-30 August 2019

Delegates at the third session of the Intergovernmental Conference (IGC) on the Conservation and Sustainable Use of Marine Biodiversity of Areas Beyond National Jurisdiction (BBNJ) delved, for the first time, into textual negotiations on the basis of a “zero draft” containing treaty text developed by IGC President Rena Lee (Singapore). The document’s structure addressed general provisions and cross-cutting issues, as well as the four elements of the package identified in 2011:

- marine genetic resources (MGRs), including questions on the sharing of benefits;
- measures such as area-based management tools (ABMTs), including marine protected areas (MPAs);
- environmental impact assessment (EIAs); and
- capacity building and the transfer of marine technology (CB&TT).

Deliberations were productive and the spirit of cooperation that permeated the meeting was highlighted by delegates and observers alike.

Regarding MGRs, including questions on the sharing of benefits, progress was made on, *inter alia*:

- the temporal scope of the agreement;
- the inclusion of benefit-sharing modalities in the international legally binding instrument (ILBI) as opposed to having them developed by the Conference of the Parties (COP);
- the referencing of non-monetary benefits; and
- including a definition of MGRs.

Further consideration is still required, regarding, *inter alia*:

- whether to refer only to MGR collected *in situ*, or also have reference to *ex situ*, *in silico*, digital sequence information (DSI) and data, and derivatives;
- the definition of access and whether it should be subject to a permit or license, or free and open;
- mandatory or voluntary benefit-sharing, its modalities, and triggers; and
- whether to address intellectual property rights (IPRs) and, if so, how.

On ABMTs, there was convergence of opinions around, *inter alia*: developing proposals on the basis of best available science, including traditional knowledge (TK) of indigenous peoples and local communities (IPLCs); submitting proposals

to establish ABMTs, including MPAs, by states parties; and including a list of streamlined objectives that are outcome- rather than process-oriented. Divergence of opinions remained on, *inter alia*: determining the role of relevant global, regional, and sectoral bodies; whether different processes for MPAs should be distinguished from those of ABMTs; and provisions around implementation, and monitoring and review.

Regarding EIAs, new provisions were proposed to address potential gaps as well as to further streamline the text, including by removing alternatives that received no support and merging provisions, where appropriate. Some provisions that enjoyed support, such as on strategic environmental assessments (SEAs), may require further development, while additional discussions are needed on some of the key operational provisions, such as thresholds, criteria, the degree of internationalization of the process, and the relationship with EIA processes under other processes and bodies.

On CB&TT, progress was noted regarding:

- the inclusion of most of the listed objectives;
- a provision on cooperation at all levels, including through global, regional, sub-regional, and sectoral bodies;
- the suggested types/categories of CB&TT;
- the desirability of a clearing-house mechanism (CHM); and

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- the COP or other appropriate body having a role in determining CB&TT types.

Further work is still needed on:

- whether capacity building is to be voluntary, or both mandatory and voluntary;
- who should benefit;
- the role of the COP in elaborating relevant modalities;
- the terms and conditions upon which CB&TT are to be provided;
- concerns regarding the imposition of obligations on the private sector;
- the provision on monitoring and review, including their mandatory or voluntary nature; and
- questions on the scope.

Discussions on cross-cutting issues focused on the provisions of the agreement on: objective, general principles, relationship with other relevant instruments, frameworks, and bodies as well as international cooperation. Institutional arrangements were also addressed, as were the parts on dispute settlement and funding. Progress was made in a number of provisions, but further work is required to reach consensus.

A revised draft for the next session will be developed on the basis of discussions and submissions during the meeting.

IGC-3 took place from 19-30 August at UN Headquarters in New York. More than 400 participants, including governments, international organizations, civil society, and academia engaged productively in the session in an amicable spirit to achieve the goal of conservation and sustainable use of BBNJ.

### A Brief History of the IGC on BBNJ

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 around seamounts, hydrothermal vents, sponges, and cold-water corals, while concerns grow about the increasing anthropogenic pressures posed by existing and emerging activities, such as fishing, mining, marine pollution, and bioprospecting in the deep sea.

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

The Convention on Biological Diversity (CBD), which entered into force on 29 December 1993, defines biodiversity and aims to promote its conservation, the sustainable use of its components, and the fair and equitable sharing of the benefits arising from the use of genetic resources. In areas beyond national jurisdiction (ABNJ), the Convention applies to processes and activities carried out under the jurisdiction or control of its parties. The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization, which entered into force on 12 October 2014, applies to genetic resources within the scope of CBD Article 15 (Access to Genetic Resources) and to TK associated with genetic resources within the scope of the Convention.

Following more than a decade of discussions convened under the United Nations General Assembly, the Assembly, in its resolution 72/249 of 24 December 2017, decided to convene an IGC to elaborate the text of a legally binding instrument under UNCLOS on the conservation and sustainable use of BBNJ, with

a view to developing the instrument as soon as possible. The IGC is mandated to meet for four sessions, with the fourth session scheduled for March 2020.

### Key Turning Points

**Working Group:** Established by General Assembly resolution 59/24 of 2004, the *Ad Hoc* Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of BBNJ served to exchange views on institutional coordination, the need for short-term measures to address illegal, unregulated, and unreported fishing and destructive fishing practices, MGRs, marine scientific research (MSR) on marine biodiversity, MPAs, and EIAs. It met three times from 2006 to 2010.

**The “Package”:** 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;
- ABMTs, including MPAs;
- EIAs; and
- CB&TT.

**UN Conference on Sustainable Development (Rio+20):** The UN Conference on Sustainable Development (20-22 June 2012, Rio de Janeiro, Brazil) expressed the commitment of states to address, on an urgent basis, building on the work of the Working Group and before the end of the 69th session of the General Assembly, the issue of the conservation and sustainable use of BBNJ, including by taking a decision on the development of an international instrument under UNCLOS.

**A Legally Binding Instrument:** Between 2014 and 2015, the Working Group engaged in interactive substantive debates on the scope, parameters, and feasibility of an international instrument under UNCLOS. At its ninth meeting, the Working Group reached consensus on recommendations for a decision to be taken at the 69th session of the UN General Assembly to develop a new legally binding instrument on BBNJ under UNCLOS, and to start a negotiating process to that end.

**Preparatory Committee:** Established by General Assembly resolution 69/292, the PrepCom was mandated to make substantive recommendations to the General Assembly on the elements of a draft text of a legally binding instrument under UNCLOS, taking into account the work of the Working Group; and for the Assembly to decide at its 72nd session whether to convene an IGC to elaborate the text of the treaty. The PrepCom considered the scope of the treaty and its relationship with other instruments, guiding approaches and principles, as well as the elements of the package. In spite of diverging views, with a wide majority of countries arguing that the PrepCom had exhausted all efforts to reach consensus, the PrepCom outcome eventually adopted by consensus comprised:

- 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 convening an IGC.

**IGC Organizational Meeting:** The IGC organizational meeting took place from 16-18 April 2018. Delegates agreed to: focus IGC-1 on substantive discussions based on the elements of the package; take consensus-based decisions on the preparation process of a zero draft; and mandate the President to prepare a concise document that identifies areas for further discussion, that does not contain treaty text, and that would not constitute the zero draft.

**IGC-1:** At the first meeting of the IGC, held from 4-17 September 2018, delegates made some progress in clarifying positions on the package elements and tabling more detailed options for a process on ABMTs. President Lee suggested preparing a document that would facilitate text-based negotiations, containing treaty language and reflecting options on the four elements of the package, taking into account all inputs during IGC-1 as well as the Preparatory Committee's report, well in advance of IGC-2.

**IGC-2:** Delegates convened for the second session of the IGC from 25 March to 5 April 2019. They deliberated on the basis of the IGC President's Aid to Negotiations, which contained options structured along the lines of the 2011 package. In their discussions on the President's Aid, delegates continued to elaborate their positions on issues previously identified as areas of divergence, achieving convergence on a few areas, such as: the need to promote coherence, complementarity, and synergies with other frameworks and bodies; benefit-sharing as part of conservation and sustainable use; and EIAs being mutually supportive with other instruments. But important issues still remained outstanding. In the closing session, several called on IGC President Lee to prepare and circulate a "no-options" document containing treaty text, and to revise the meeting format, calling for a more informal set-up to facilitate in-depth negotiations.

### IGC-3 Report

On Monday, 19 August 2019, IGC President Rena Lee opened the session, calling on delegates to provide inputs to the draft text of an agreement under UNCLOS on BBNJ (A/CONF.232/2019/6) to ensure a fair, balanced, and effective outcome. Pointing to the Global Assessment Report on Biodiversity and Ecosystem Services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES), Lee noted that the IGC is "on the right track" to contribute to the transformative change necessary to reverse marine biodiversity loss. Concurring, Miguel de Serpa Soares, Secretary-General of the IGC, Under-Secretary-General for Legal Affairs and UN Legal Counsel, underlined that climate change and the ocean are inextricably linked and pointed to the upcoming special report of the Intergovernmental Panel on Climate Change (IPCC) on the ocean and cryosphere in a changing climate.

Delegates approved the agenda (A/CONF.232/2019/7) and the Programme of Work (A/CONF.232/2019/8). President Lee informed delegates that IGC-3 would proceed in a new working format, involving "informal-informals" open to states, specialized agencies, and a limited number of observers, intergovernmental organizations (IGOs), and non-governmental organizations (NGOs), but closed to the press and the *Earth Negotiations Bulletin*. On Friday, 23 August 2019, delegates agreed to a revised programme of work (A/CONF.232/2019/8/Rev.1).

### Credentials

On Friday, August 30, delegates adopted the credentials report (A/CONF.232/2019/9). Peru, also on behalf of Argentina, Brazil, Canada, Chile, Colombia, Costa Rica, Guatemala, Honduras, Paraguay, Australia, Ecuador, the US, Georgia, Israel, the UK, the Republic of Korea, and the Czech Republic, noted their acceptance of the report on credentials does not imply the tacit acceptance of the legitimacy of the Venezuelan regime. This was opposed by Venezuela, Cuba, Nicaragua, Iran, China, and the Russian Federation, who emphasized the principle of non-interference with the internal affairs of states.

### General Exchange of Views

On Monday, 19 August 2019, delegates made general statements, a summary of which can be found at <https://enb.iisd.org/vol25/enb25209e.html>

### Discussions on a Draft Text of a New BBNJ Agreement

The following discussions are organized according to sections presented in the draft text, discussed over the two-week meeting. Discussions in the informal working group and in the "informal-informals" were held for MGRs, including benefit-sharing questions, facilitated by Janine Coye-Felson (Belize); ABMTs, including MPAs, facilitated by Alice Revell (New Zealand); EIAs, facilitated by Réne Lefebvre (the Netherlands); CB&TT, facilitated by Olai Uludong (Palau); and cross-cutting issues, facilitated by IGC President Lee. Unless otherwise noted, this summary reflects discussions held in the open, informal working group setting.

### General Provisions

These provisions were discussed in the informal working group on cross-cutting issues on 19, 28, and 29 August 2019. They were also discussed in "informal-informals." Specific terms were also addressed under the informal working groups on MGRs, EIAs, and CB&TT. These discussions were facilitated by IGC President Rena Lee.

**Use of terms:** Views diverged on a definition of access in relation to MGRs, in particular on whether referring to access as the collection of MGRs was sufficient, and on whether to include any or all of the bracketed references to MGRs accessed *in situ*, *ex situ*, and *in silico*, and as DSI and data. The Group of 77 and China (G-77/China), the Caribbean Community (CARICOM), the Core Latin American countries (CLAM), the Pacific Small Island Developing States (P-SIDS), and others stressed the need for a broad definition, going beyond the simple collection of MGRs. CARICOM suggested including "the collection, taking, obtaining, or exploitation of MGRs for their utilization." CLAM suggested "access means, in relation to MGRs, access *in situ*, *ex situ*, *in silico*, and as DSI and data." The African Group, P-SIDS, CARICOM, and others supported referencing the different types of access. The EU and Norway proposed that access in relation to MGRs means the collection of MGRs in ABNJ.

The Russian Federation, New Zealand, Australia, and the US did not support including a definition on access. The EU, Norway, the Russian Federation, Japan, the Republic of Korea, and Switzerland stressed that definitions can be better addressed after agreeing on the substantive provisions of the ILBI.

The African Group, with the EU and Norway, proposed the definition of **marine genetic material** as "any material of marine plant, animal, microbial, or other origin containing functional units of heredity." The US and Japan added that marine genetic material "does not include material made from material, such as

derivatives, or information describing material, such as genetic sequence data,” and, with Indonesia, defined the scope as material “collected from ABNJ.” P-SIDS suggested that the definition refer to any DNA or RNA in and from ABNJ. Switzerland, with Australia, urged aligning with CBD definitions. Eritrea requested clarity on the meaning of “actual or potential value” of marine genetic material, pointing to IPBES work on values.

On the definition of **MGRs**, views differed over the need for a separate definition of MGRs, as preferred by the G-77/China, the African Group, CLAM, CARICOM, and P-SIDS, or defining it in conjunction with marine genetic material, as supported by the EU and the US. The African Group called for reference to derivatives and the data thereof.

CLAM and CARICOM proposed that MGRs mean “any material of marine plant, animal, microbial, or other origin, containing functional units of heredity with actual or potential value of their genetic and biochemical properties.” P-SIDS proposed that MGRs mean “any material of marine plant, animal, microbial, or other origin, found in or originating from ABNJ and containing genetic information, including information or data relevant to biochemical properties and derivatives.” China requested deleting the reference to genetic and biochemical properties.

The G-77/China, P-SIDS, Indonesia, Sri Lanka, Nigeria, and Cuba underscored the need to include definitions on marine technology, the transfer of marine technology, and, with CLAM, capacity building. The EU, Japan, the US, the Republic of Korea, Canada, Australia, and Switzerland did not consider developing definitions for these items necessary. The Intergovernmental Oceanographic Commission (IOC-UNESCO) highlighted the elements of its Criteria and Guidelines on Transfer of Marine Technology, and referenced its Capacity Development Strategy to develop a definition on capacity building.

**Objective:** This provision states the objective of this agreement is to ensure the conservation and sustainable use of BBNJ. The G-77/China, supported by Australia, Monaco, Dominican Republic, Maldives, and others, proposed amending the title to “General Objective,” with CLAM noting there are other parts of the draft agreement with more specific objectives.

The G-77/China, supported by many, proposed deleting the reference to “long-term” conservation, with Jamaica emphasizing the importance of short-term measures. Monaco and the EU opposed the deletion, with New Zealand noting a long-term conservation objective does not preclude short-term measures.

Turkey, supported by the Philippines, but opposed by China and the EU, proposed pointing to “environmentally” relevant UNCLOS provisions. The African Group noted there are other relevant provisions beyond environmental ones.

CLAM offered a proposal to specify cooperation “among state parties,” opposed by the Philippines, Maldives, and the EU. Singapore and Switzerland, supported by the African Group, proposed emphasizing the importance of enhancing cooperation among relevant global, regional, and sectoral bodies. The US, Canada, and New Zealand cautioned against these specifications, noting the need for a concise objective. The Russian Federation pointed out that cooperation is the means through which to achieve the objective, not the objective itself. Cuba, supported by El Salvador, suggested including text on benefit sharing.

The International Cable Protection Committee (ICPC) urged that sustainable use of marine biodiversity be fully operationalized, while not overriding conservation.

**Application:** This provision states, in part, that the provisions of this agreement apply to ABNJ. Ecuador suggested adding

that the application should be “exclusively” in ABNJ, “without overlooking regulations on sustainable use, such as fisheries, maritime transport, and the exploration of the seabed.” The G-77/China proposed simplified language stating that “this agreement applies to ABNJ.” Colombia suggested adding that the scope excludes enclosed and semi-enclosed seas. Turkey reiterated the need to clarify that nothing in this agreement can be interpreted as applying to maritime areas within 200 nautical miles. The Republic of Korea proposed that the provisions should apply to activities under a state’s jurisdiction in ABNJ.

CARICOM, the US, Iceland, Norway, Australia, New Zealand, Switzerland, and the International Maritime Organization (IMO) expressed preference for the original text, with the Russian Federation and the Republic of Korea; and supported the simplified G-77/China suggestion.

The EU reserved its position, noting the importance of considering whether there is a need for a geographical scope in the document as the negotiations evolve, and emphasizing that some of the provisions, such as on CB&TT, will also be applicable to areas under national jurisdiction.

In relation to text on the application of the ILBI to state-owned or operated warships, naval auxiliary, or other vessels, Palestine, on behalf of “a majority of the G-77,” and with the African Group and Sri Lanka, expressed concern that the provision may give rise to a loophole that could permit MSR to be conducted on state vessels, potentially conflicting with the access of all to MGRs. The G-77/China proposed re-formulating the paragraph, while the African Group, with Sri Lanka, proposed deleting it. CLAM observed that the text is a direct reference to UNCLOS Article 236 (sovereign immunity), and proposed, supported by the EU, Australia, the Russian Federation, the US, China, Canada, Indonesia, and Japan, a new article titled “Sovereign Immunity.” Norway queried the need for a provision on sovereign immunity in the ILBI given its inclusion in UNCLOS. Japan proposed including additional language to reflect the principle of non-retroactivity in the application of the ILBI. IGC President Lee noted convergence on retaining the original language under a separate article.

**Relationship with UNCLOS, and other instruments and bodies:** On the title, the G-77/China, supported by the EU, CLAM, Indonesia, New Zealand, and several others, proposed deleting the reference to “other existing” instruments to avoid prejudicing future instruments. Nigeria suggested adding a reference to “sub-regional” instruments.

The African Group proposed deleting a reference to the ILBI “not prejudicing the rights, jurisdiction, and duties of states under the Convention,” questioning how the agreement could be implemented, notably with regard to MPAs and ABMTs, without conflicting with a number of rights, such as on those on navigation. The EU, with Canada, Australia, and Japan, opposed the deletion. New Zealand, with P-SIDS, suggested that a stand-alone article be designated for the rights of coastal states.

Colombia, opposed by many, suggested deleting the specification of the continental shelf within and beyond 200 nautical miles and the exclusive economic zone (EEZ).

CLAM favored, opposed by many, deleting bracketed text noting that the agreement should “respect the competences of” other bodies. Canada, with Norway and the Republic of Korea, proposed respecting the “mandate and competencies of other bodies.” Switzerland proposed that the agreement provide for mutual support of relevant bodies.

Ecuador proposed adding that the designated secretariat promote coordination mechanisms with other bodies. The IMO

suggested adding a “no more favorable clause,” to ensure that non-party ships do not gain a competitive economic advantage by not being party to the ILBI.

CLAM, the Russian Federation, the EU, the African Group, Iceland, Australia, and the IMO suggested deleting a provision that relevant instruments should be “supportive of, and not run counter to, the objectives of the Convention and the ILBI.”

The G-77/China, CLAM, Turkey, Indonesia, and Iran supported a provision noting that the ILBI’s provisions “are not intended to affect the legal status of non-parties to UNCLOS or any other related agreements with regard to those instruments.” Turkey stressed it is the single most important provision for non-parties to UNCLOS. The US supported the idea included in the provision. Canada suggested that a preambular provision recognize that the ILBI does not affect the legal status of non-parties to UNCLOS.

The EU, the Republic of Korea, Australia, Norway, New Zealand, Iceland, Holy See, the Russian Federation, Canada, and the Intergovernmental Council on Environmental Law (ICEL) requested its deletion. The EU underlined that, while the ILBI aims for universal participation, this provision risks “diverging interpretations that would challenge the integrity of the ILBI and UNCLOS.”

On a provision noting that nothing in the ILBI shall prejudice the rights, jurisdiction, and duties of states parties under UNCLOS, the International Seabed Authority (ISA) suggested also including a reference to the 1994 Implementing Agreement. South Africa noted that it may be problematic to subject the ILBI to another implementing agreement.

**General principles and approaches: Title:** The G-77/China supported referring to general “principles”; the US, Australia, and the Russian Federation, preferred “approaches”; and Norway, Canada, and CARICOM noted that both principles and approaches seem appropriate.

The G-77/China, with the African Group, CARICOM, the EU, and others, supported including a provision that states parties shall apply an integrated approach. The US opposed, querying, with the Russian Federation, Australia, Japan, and others, the meaning of the term. To clarify, the International Union for Conservation of Nature (IUCN) drew attention to CBD Article 10 (sustainable use).

The G-77/China, with the African Group, CARICOM, the EU, Switzerland, Canada, Indonesia, and Sri Lanka, supported an approach that builds ecosystem resilience to the adverse effects of climate change and ocean acidification, and restores ecosystem integrity. The US, Australia, and the Republic of Korea supported the reference to ecosystem resilience, but requested deletion of “climate change and ocean acidification.”

The G-77/China, with the African Group, CARICOM, the EU, Canada, Indonesia, and Switzerland, supported a provision requiring states parties to act so as not to transfer, directly or indirectly, damage or hazards from one area to another or to transform one type of pollution into another. The US and Australia considered the provision superfluous, while Japan queried its implications. The High Seas Alliance, supported by CARICOM, suggested taking “all appropriate and effective measures to prevent, reduce, and control transboundary impacts of BBNJ, including pollution from proposed or existing activities.”

Regarding a provision to the effect that states parties shall “endeavor to promote” the internalization of environmental costs, taking into account the principle that the polluter should bear the cost of pollution, the G-77/China, the EU, the Russian Federation, and others expressed support. The US, opposed by CLAM,

Indonesia, and Sri Lanka, requested that the polluter “should in principle” bear the cost.

The African Group, Indonesia, and Sri Lanka supported a reference to the principle of non-regression, the G-77/China requested clarification, and the US, with Australia, Switzerland, the Russian Federation, and the Republic of Korea, called for its deletion.

China noted that some of the suggested principles are either not well recognized internationally or only applicable to a specific number of provisions. The Alliance of Small Island States (AOSIS) requested an additional provision taking into account the special circumstances of small island developing states (SIDS).

**Additional principles and approaches:** Delegates suggested additional principles to be considered for inclusion in the ILBI, *inter alia*:

- the common heritage of humankind;
- the polluter pays principle;
- the precautionary approach/principle;
- the principle of equity;
- the ecosystem approach;
- the use of best available science and TK;
- transparency;
- ocean stewardship;
- adjacency;
- equitable benefit-sharing;
- the obligation to protect and preserve the marine environment; and
- intra- and intergenerational equity.

The Russian Federation and China reiterated that not all principles and approaches apply to each part of the agreement, with China suggesting they be added to the relevant parts of the ILBI instead.

**International Cooperation:** On a provision that states parties shall cooperate for the conservation and sustainable use of BBNJ, including through strengthening and enhancing cooperation among existing, relevant legal instruments and frameworks, and relevant global, regional, and sectoral bodies in the achievement of the objective of the ILBI, the G-77/China, supported by CARICOM and many others, requested deleting the term “existing” and referring instead to “relevant legal instruments and frameworks,” and, supported by the Russian Federation, including “sub-regional” bodies.

Underlining that the ILBI cannot impose cooperation on other instruments, Canada suggested “promoting” cooperation, and, supported by Australia, referring to cooperation “with and among” relevant bodies. The US called for promoting cooperation “with” relevant bodies “as appropriate,” and requested deleting the reference to “the achievement of the objective of this agreement.”

Japan, Norway, the Republic of Korea, and Iceland expressed satisfaction with the provision.

Noting the provision should apply to states parties “under this agreement,” the EU, supported by Singapore, the African Group, and the High Seas Alliance, proposed adding that states parties “shall endeavor to promote the objectives of this agreement when participating in decision making under other instruments, frameworks, or bodies.”

IUCN highlighted provisions on the objectives of international cooperation in the CBD and UNCLOS, and proposed, with the Food and Agriculture Organization of the UN (FAO), a provision to the effect that states parties shall cooperate on a global, regional, and sub-regional basis “directly or through competent international organizations, in formulating and elaborating rules,

standards, and recommended practices and procedures consistent with the Convention.” Noting cooperation with the private sector is key, the ICPC called for also referring to “sectoral stakeholders.”

On a provision on international cooperation in MSR, the G-77/China, with CLAM, opposed by CARICOM and the Republic of Korea, proposed deleting references to specific UNCLOS articles. The Russian Federation did not support the provision. The EU, Norway, and Canada reserved their position.

The US opined that, if at all retained, the provision should refer to cooperation “in consistence with” the UNCLOS articles, and “in support of” the ILBI. Australia questioned the selection of UNCLOS articles and noted that, if retained, the provision is better placed under CB&TT.

The G-77/China, CLAM, the African Group, Japan, Singapore, the US, Iran, Argentina, and the High Seas Alliance requested deleting the provision that states parties shall cooperate to establish new global, regional, and sectoral bodies, where necessary, to fill governance gaps. The African Group, supported by Argentina, noted that states parties are free to create the bodies that they deem necessary, but may not have the finances to do so. New Zealand, supported by Australia, suggested states parties “may” pursue cooperation to this end. The EU, Norway, New Zealand, Canada, and Australia supported the provision. The EU, Australia, P-SIDS, and Iceland requested deleting the reference to “governance gaps.”

Canada noted the value of establishing such bodies, notably in the context of ABMTs, with Argentina, and supported cross-referencing specific elements of the ILBI and a reference to the objective of the ILBI.

The Russian Federation preferred referring to existing organizations only, and where such organizations do not exist, envisaged, with Iceland, states parties establishing regional and sectoral bodies.

New Zealand, supported by IUCN and the High Seas Alliance, proposed an additional provision that emergency or interim measures be taken if the need arises, such as when a natural or human caused phenomenon has, or is likely going to have, an adverse impact on BBNJ, noting these measures should be based on best available science and be temporary.

The High Seas Alliance emphasized that international cooperation should be pursued with regard to creating a network of MPAs in ABNJ, enabling CB&TT, and when undertaking EIAs.

### Marine Genetic Resources, including Benefit-sharing Questions

Provisions under this issue were discussed on 23 and 28 August 2019. They were also addressed in five “informal-informals” over the course of the meeting. These discussions were facilitated by Janine Coye-Felson (Belize).

**Objectives:** The EU, supported by Iceland, Switzerland, the Russian Federation, and the Republic of Korea, reiterated that the objective of the ILBI should be the conservation and sustainable use of BBNJ.

The G-77/China, CLAM, CARICOM, Norway, and the Philippines suggested restructuring the objectives to highlight the importance of fair and equitable benefit-sharing from the utilization of MGRs of ABNJ, which was opposed by the US. P-SIDS, Indonesia, and the Philippines strongly supported the reference to fair and equitable benefit-sharing, opposed by the Republic of Korea and Japan.

The EU proposed promoting benefit-sharing from the collection of MGRs of ABNJ. Indonesia supported also referring to benefit-sharing arising from “access” to MGRs, in addition to utilization.

On a provision on promoting the generation of knowledge and technological innovations, CLAM, opposed by the US, requested deleting a reference that this be done “in accordance with the Convention.” P-SIDS suggested this be done in accordance with states parties’ technological capabilities. CARICOM proposed promoting the generation “and sharing” of information.

On a provision on building developing states parties’ capacity to access and utilize MGRs of ABNJ, which included a list of country categories, the EU suggested “building the capacity of states parties that might need and request technical assistance to conserve and access MGRs of ABNJ.” Switzerland requested opening capacity building to all states, in particular developing states parties. Iran and others, opposed by the US, favored reference to middle-income countries as a developing-country category. The Philippines proposed including environmentally vulnerable states, with Indonesia adding archipelagic states. Norway, with Switzerland, Australia, and the Republic of Korea, proposed moving this provision under CB&TT.

The G-77/China, CLAM, P-SIDS, and others suggested moving a provision on contributing to the realization of a just and equitable international economic order to the ILBI preamble. The EU, Norway, Switzerland, the US, Australia, the Republic of Korea, and Japan requested its deletion.

The Russian Federation proposed alternative language for the article.

**Application: Geographical scope:** CLAM, with Japan, Norway, Canada, Singapore, Sri Lanka, and Iceland, preferred the provisions apply to MGRs “accessed” in ABNJ, noting the difficulty of determining the origin of MGRs. The EU, the Russian Federation, Australia, and the US preferred MGRs “collected in” ABNJ. The African Group and P-SIDS expressed preference for “accessed in and originating from,” while CARICOM supported MGRs “of, accessed in, and originating from ABNJ.” Indonesia proposed that the provisions shall apply to MGRs “of ABNJ.”

CLAM, the African Group, CARICOM, and P-SIDS underlined the need to conclusively define access.

**Material scope:** P-SIDS supported a provision to include “fish, insofar as they are collected for the purposes of being the subject of research into their genetic resources” and “genetic information.” CLAM, supported by CARICOM, proposed language to apply the ILBI to MGRs accessed for the purposes of “conducting activities related to their genetic composition and their derivatives, including research into their genetic and biochemical properties,” with some delegates stressing that provisions related to fish should go beyond MSR. Switzerland opined that the ILBI: shall apply to MGRs with the understanding that they are physical material and they also include fish genetic resources; and shall not apply to derivatives, supported by Canada, the US, Iceland, and China, nor DSI, with New Zealand, Australia, Iceland, and others.

The African Group, P-SIDS, Indonesia, Thailand, the Philippines, Cuba, and others suggested: including fish, insofar as they are collected for their genetic properties, and MGRs collected *in situ*, *ex situ*, *in silico*, as well as derivatives and DSI associated with MGRs. Ecuador stressed that if a fish species is determined to have value for its genetic material, it should be treated as an MGR and trigger coordination with global, regional, or sectoral bodies, including for conducting stock analyses.

The US and Iceland opposed a threshold to determine whether fish is a commodity or an MGR, with Singapore, and proposed referring to the “taking” instead of the “using” of fish. Australia noted the provision should not apply when genetic material of fish is collected for the purpose of fisheries management.

The EU, Singapore, the Philippines, and Cuba said the ILBI should apply to fish used for MSR.

FAO suggested carefully treating references to thresholds and referring to “fisheries resources” rather than “fish and other biological resources.” The High Seas Alliance proposed referring to “biological resources as a commodity,” noting problems with defining fish, including in the 1995 Fish Stocks Agreement. ICES suggested focusing on an activity-based approach, rather than on different forms of MGRs.

**Exclusions to application:** CLAM, with Iran, proposed that the ILBI shall not apply to “the use of fish and other biological resources from fishing operations and related activities,” clarifying, supported by CARICOM, that fish, when used for its genetic resources and other properties, would fall within the ILBI, but that fisheries and related activities would not.

The Russian Federation, Norway, Japan, Iceland, and New Zealand supported that the provisions should not apply to fish or other biological resources as a commodity, with New Zealand cautioning against creating loopholes in existing fisheries management structures. The EU reserved its position on fish, stating that fisheries management falls outside the scope of the ILBI.

China stated that the agreement would not apply to “the use of fish and other marine living resources as the catch of fishing or for fishing, including fishing for commercial profit, living, sport, or recreation, and the relative activity including MSR for fishing.” Iceland suggested requesting an FAO working group to provide clarification on the definition of “fish as a commodity.”

Canada and Singapore queried terminology around MGRs *in silico* and DSI as well as the practicality of grouping different types of MGRs together.

**Temporal scope:** Switzerland, Norway, Canada, New Zealand, Indonesia, Australia, the US, Iceland, and China noted that the provisions shall apply to MGRs collected after the entry into force of the ILBI. China requested clarification on whether entry into force refers to the date of ratification or accession. The African Group, P-SIDS, and Sri Lanka emphasized that when MGRs have been collected before the ILBI’s entry into force, but utilized for a commercial purpose after the entry into force, the provisions should apply. Japan suggested moving the provision on retroactivity to the general provisions.

Switzerland, supported by the US, offered to replace the entire article, noting that “the provision of this part applies to MGRs collected *in situ* in ABNJ after the entry into force of this agreement.” The EU proposed applying the provisions to MGRs “collected in ABNJ after the entry into force of this agreement for the respective party.”

**Activities with respect to MGRs of ABNJ: Scope:** Noting that these activities may be carried out by all states, the G-77/China, CLAM, CARICOM, P-SIDS, and Switzerland requested deleting a reference giving “due regard for the rights, obligations, and interests under UNCLOS.” The US proposed reflecting the rights, obligations, and interests of other states. CLAM suggested referring to activities with respect to MGRs “accessed in” ABNJ.

The EU suggested “including all states, irrespective of their geographical location, and competent international organizations,” and, opposed by the G-77/China, the African Group, and CARICOM, referring to MSR activities with respect to MGRs of

ABNJ. Sri Lanka and others cautioned against limiting the scope to MSR. P-SIDS and the African Group suggested reference to UNCLOS Article 241 (non-recognition of MSR as the legal basis for claims).

Norway, Australia, New Zealand, and Japan suggested deleting the provision. Australia and the Republic of Korea cautioned against undermining MSR provisions. Switzerland and Japan queried the meaning of the term “activities.” The Russian Federation did not support the selective quoting of UNCLOS provisions.

**MGRs of ABNJ and within national jurisdiction:** Switzerland, China, the Russian Federation, Norway, the US, the Republic of Korea, and Japan proposed deleting this provision. P-SIDS, with CLAM and many others, supported retaining the provision, specifically to account for transboundary issues.

Singapore, opposed by the Russian Federation, proposed that in cases where MGRs are found in both ABNJ and within national jurisdiction, states “shall endeavor to cooperate, as appropriate, with any coastal states.” China opposed granting coastal states special status in the context of BBNJ.

**Sovereignty:** The G-77/China supported a provision preventing states from claiming, exercising, or appropriating sovereignty or sovereign rights over MGRs of ABNJ. Favoring deletion, Japan, with the Republic of Korea, the Russian Federation, and Iceland, emphasized that UNCLOS Article 137 (legal status of the Area and its resources) only applies to mineral resources in the Area. The US and Australia noted that the text implies that MGRs of ABNJ fall under the common heritage of humankind.

The African Group pointed to a study on the relationship between the CBD and UNCLOS on deep seabed genetic resources, recalling that, during the establishment of the regime, these resources were largely unknown. P-SIDS, supported by the Philippines, proposed also requiring the prior consent of concerned coastal states when activities with respect to MGRs of ABNJ may affect them.

**Uses and purposes:** The G-77/China, with P-SIDS and others, supported the “utilization” of MGRs of ABNJ for the benefit of humankind as a whole, taking into consideration the interests and needs of developing states. Requesting deletion of the provision, the US and Iceland objected to the implication that MGRs are the common heritage of humankind. Eritrea suggested that adopting an ecosystem approach would support the application of the common heritage of humankind to MGRs as it applies to mineral resources in the Area.

The G-77/China supported retaining the provision that activities are carried out exclusively for peaceful purposes. The Holy See suggested adding that states parties or their nationals shall not conduct MSR of MGRs “to the detriment of the human race for unethical or unapproved purposes as recognized by national or international law.” Considering this a cross-cutting issue, Australia, with Switzerland, the US, and Iceland, preferred addressing it in the preamble.

**Access to MGRs:** Reporting on discussions from “informal-informals,” Facilitator Coye-Felson highlighted differing views on:

- the definition, with some preferring not defining access at all;
- regulation modalities, with delegates opting for, *inter alia*, free and unimpeded access, or access, subject to prior notification or a licensing system;
- applicability regarding MGRs *ex situ* and *in silico*; and
- provisions calling for states parties to take the necessary measures to facilitate access.

She noted general support that the consent of coastal states would not be required in cases where activities in ABNJ may result in the utilization of MGRs found in areas within national jurisdiction, but opinions differed on the need for notification and consultation. Reporting back from a Friends of TK Group (Norway, Australia, Canada, New Zealand, and Maldives), Fiji proposed that: states parties shall take legislative, administrative, or policy measures, as appropriate, with the aim of ensuring that TK associated with MGRs collected in ABNJ held by IPLCs shall only be accessed with their prior informed consent; and that the CHM may act as an intermediary to facilitate access on mutually agreed terms (MAT) to said TK.

**Fair and equitable benefit-sharing:** Reporting on discussions from “informal-informals,” Coye-Felson noted that opinions differed on: the qualifiers of benefit-sharing; activities triggering benefit-sharing; the voluntary or mandatory nature of benefit-sharing; and obligations of states parties related to measures to ensure that the benefits arising from TK are shared with indigenous peoples and local communities. Coye-Felson highlighted some support for a provision that states parties shall take the necessary measures to ensure that benefits are shared.

**Intellectual Property Rights:** Reporting from discussions in “informal-informals,” Coye-Felson highlighted different views on whether the ILBI should address IPRs or not, with some emphasizing traceability and compliance, while others suggesting that competent bodies, such as the World Intellectual Property Organization or the World Trade Organization, address the issue.

**Monitoring:** Reporting from discussions in “informal-informals,” Coye-Felson highlighted that many supported a robust track-and-trace mechanism, while others cautioned against impeding MSR. She highlighted divergent views on: the types of activities subject to monitoring; the feasibility and desirability of a proposed identification and notification system; and the entity responsible for reviewing the submitted reports.

### Measures such as ABMTs, including MPAs

Provisions under this issue were discussed on 21 and 27 August 2019, and in three “informal-informals.” Discussions were facilitated by Alice Revell (New Zealand).

**Objectives:** Reporting from discussions in “informal-informals,” Revell noted that delegates had expressed willingness to streamline the list of objectives, including ideas about focusing on outcome-oriented, rather than process-oriented, objectives. Views differed on the potential respective roles of a scientific and technical body, and the COP in relation to ABMTs.

**International cooperation and cooperation:** Reporting from discussions in “informal-informals,” Revell noted that delegates had exchanged opinions and submitted proposals on: collaboration mechanisms and consultation processes; the concept of “not undermining” other relevant frameworks and bodies; the relationship with measures adopted by coastal states, including the idea of compatibility; and situations where ABMTs subsequently fall under national jurisdiction.

**Identification of areas requiring protection:** Canada, the Philippines, and Japan preferred deleting the reference to areas “requiring protection.” The Republic of Korea underlined that the principle of “not undermining” applies to provisions on the identification of areas, proposals, consultation, and decision making related to ABMTs. Canada noted that references to best available science, ecosystem approach, and precaution should apply to the agreement as a whole, and further proposed defining ABMTs, including MPAs, as well as other effective conservation measures (OECMs), as defined in the CBD.

**Basis for ABMTs:** The G-77/China, with Japan, Australia, Canada, and others, expressed support for the establishment, rather than designation, of ABMTs. Turkey suggested establishing ABMTs, and designating MPAs.

The G-77/China, the African Group, the EU, P-SIDS, Cuba, the Philippines, Switzerland, Norway, the High Seas Alliance, and IUCN expressed preference for the precautionary principle. Japan, with the Republic of Korea, China, Canada, Turkey, Australia, and the US, supported the precautionary approach. The US noted that the concept of the precautionary principle gives rise to a particular legal conclusion.

The Russian Federation emphasized best available scientific data and the “precautionary ecosystem approach,” and said that measures should be time-bound and adjustable to allow for strengthening, weakening, or lifting restrictions.

The EU and the US expressed a preference for “the ecosystem approach”; with the EU emphasizing the importance of taking into account relevant TK. P-SIDS, with CARICOM and Eritrea, noted that TK should be reflected in the ILBI as equal to best available science. China emphasized best scientific evidence, and noted that persons and entities, other than IPLCs, such as states, may be holders of TK. P-SIDS emphasized that language on TK needs to reflect existing international law.

**List of ABMT criteria:** Japan, the US, the Philippines, Kiribati, Singapore, and the High Seas Alliance supported streamlining the list, with the US calling for a flexible list. Australia, Maldives, and Senegal called for the development of a non-exhaustive list.

The G-77/China supported an indicative list of identification criteria including slow recovery “and resilience,” with Bangladesh and CLAM, but deleting reference to rarity, biological productivity, exceptional naturalness, economic and social factors, the adverse impacts of climate change and ocean acidification, and cumulative and transboundary impacts. The EU called for deleting references to dependency, economic and social factors, and feasibility, questioning how these criteria serve the identification of areas. P-SIDS preferred referring to uniqueness “or” rarity; proposed to add cultural factors to the list; and emphasized the importance of referring to both climate change and ocean acidification. The Philippines supported uniqueness, biological productivity and, with Singapore, deleting “exceptional” as a qualifier of naturalness, and deleting ecological connectivity. New Zealand, supported by Eritrea, proposed adding cultural connectivity and cultural value to ecological connectivity.

The African Group proposed a streamlined categorization of criteria:

- vulnerability to impacts, including from climate change, ocean acidification, anthropogenic ocean noise pollution, and other cumulative effects;
- essential for the survival, function, or recovery of rare depleted, threatened, or endangered marine species and other forms of marine life;
- natural carbon stores; and
- enhancing productivity and health, and building resilience to stressors, including those related to climate change, ocean acidification, and marine pollution.

China, with Cuba, suggested the criteria be separated into four categories, reflecting economic, social, biological and ecological, and operational criteria.

Norway queried how the list of criteria will be operationalized in the new treaty, cautioning that “we may end up with every part of the ocean requiring special treatment.” He further queried the difference between criteria on “vulnerability,” “fragility,” and “sensitivity.”

IUCN proposed differentiating criteria for the evaluation of individual sites and those for networks of sites, noting that different criteria might be important for MPAs and requesting explicit reference to de-oxygenation.

Eritrea underscored the importance of socio-economic factors and, with Cuba, proposed including reference to the Sustainable Development Goals (SDGs). Switzerland, with Japan and the US, noted links to work under other bodies and organizations.

Japan, with the US, felt climate change was adequately covered by vulnerability, fragility, sensitivity, and slow recovery, while Switzerland and Singapore proposed combining vulnerability and ocean acidification. New Zealand and others preferred referencing vulnerability to climate change and its effects. Thailand underscored the importance of including climate change and ocean acidification in the description of vulnerability.

CARICOM proposed restructuring the article to ensure a focus on conservation and sustainable use, and broaden the areas that could be subject to ABMTs. CARICOM further suggested, supported by the EU, Thailand, Senegal, and the Philippines, that criteria be placed in an annex with a general provision in the treaty to provide guidance on criteria identification, suggesting that a scientific and technical body be tasked with developing and revising criteria over time, building on lessons learned from other bodies. New Zealand expressed flexibility regarding an annex. Japan suggested that detailed criteria be outlined in guidelines.

The EU, supported by P-SIDS, proposed to also use the list of criteria in the recognition of existing MPAs designated by relevant bodies.

On the mechanism for establishing ABMTs, the Russian Federation noted decisions should take place within competent regional bodies, stressing that the article should describe a general approach for areas requiring “attention” rather than protection; and expressing flexibility to an indicative list in an annex.

**Development of criteria:** The G-77/China, with the African Group, indicated that criteria could be further developed by the scientific and technical body for consideration and adoption by the COP, supported by P-SIDS. Australia questioned the appropriateness of the COP revising criteria contained in the treaty text. Turkey, with the Republic of Korea, proposed that a scientific and technical body determine the list of criteria.

Thailand and Cuba underscored the important role of the scientific and technical body to “future-proof the ILBI. Canada cautioned against introducing language that allows the COP to adopt amendments to the new treaty.

The Dominican Republic pointed to the CBD’s work on criteria for ecologically or biologically significant marine areas (EBSAs) and inquired whether the ILBI would establish a new scientific and technical body or make use of the CBD’s SBSTTA.

IUCN suggested “adoption and implementation” of ABMTs, stressing that the precautionary principle and ecosystem approach should be applied throughout the agreement. The CBD drew attention to two sets of criteria adopted under the Convention, namely on EBSAs, and on the scientific guidance for selecting areas for a representative network of MPAs. The World Wildlife Fund (WWF) called for explicitly addressing the designation of MPAs, and highlighted OECMs, marine spatial planning, and an open-ended list of ABMTs.

**Elaboration of criteria:** On the identification of criteria by the scientific and technical body, P-SIDS, Monaco, the US, Japan, and others stressed that the process should be initiated by states parties. Monaco said that the scientific and technical body should have a role in consultations and proposal evaluation. Japan emphasized the scientific body’s advisory role. The US,

supported by Switzerland, noted that the identification criteria shall be taken into account by the scientific body when reviewing proposals. Canada said the respective mandates of the scientific and technical body and the COP should be clarified.

On language that such criteria should be taken into account in the establishment of ABMTs under other instruments, frameworks, and bodies, the EU, P-SIDS, Monaco, and China cautioned against imposing criteria on other bodies, with Canada drawing attention to the status of non-parties to the ILBI. The EU suggested that a state party, which is also a party to an existing framework, should endeavor to promote the objectives of the ILBI when participating in decision making in the other body. China, supported by Iceland, proposed that other bodies “may” consider the criteria, but their application should not be mandatory. Japan, supported by the US, Norway, and the Philippines, suggested to “encourage” the consideration of the criteria by other bodies.

CLAM, Australia, and the Philippines preferred deleting the paragraph in its entirety, with the Republic of Korea suggesting moving it to the article on proposals. Turkey noted that provisions on the role of the scientific and technical body are better addressed under the articles related to decision making and implementation.

Mauritius queried whether identifying an area for an ABMT or MPA, which has already been identified as an EBSA under the CBD, would conflict with the “not undermining” principle.

**Proposals:** The G-77/China, CLAM, CARICOM, and many others suggested that states parties submit proposals for “the establishment” rather than “the designation of” ABMTs to the secretariat. The Russian Federation proposed deleting the provision. CARICOM suggested adding the “application of measures of conservation and sustainable use.” The US noted the primary focus lies in the identification of areas requiring further protection and supported the submission of proposals being limited to states, including states parties and “states entitled to become parties.” Ecuador suggested that two or more states parties may submit joint proposals, with at least one of them neighboring the proposed area. Iceland reiterated that the mandates of relevant frameworks and bodies should not be undermined, calling for not establishing ABMTs in cases where such bodies exist.

**Collaboration with stakeholders:** The EU, supported by Senegal and others, proposed including relevant global, regional, and sectoral bodies as well as civil society. India emphasized collaboration with regional bodies and frameworks. Norway, Japan, Monaco, the Russian Federation, and Turkey queried whether it is necessary to indicate opportunities to collaborate, noting it is obvious that states parties can collaborate at their discretion.

ICPC called for including “the coordinates of existing and planned submarine cables.” The IMO supported holding consultations early in the process.

**Basic principles:** The EU, CARICOM, P-SIDS, Eritrea, Cuba, Sri Lanka, the Philippines, Israel, and Cameroon favored reference to the precautionary principle and the ecosystem approach, while Norway, China, Iceland, the US, Japan, Maldives, Turkey, the Republic of Korea, and the Russian Federation preferred the precautionary approach. CARICOM, with P-SIDS, Eritrea, the Philippines, and New Zealand, stressed that proposals should be based on relevant TK, with the Russian Federation suggesting taking into account TK “where relevant.” China, opposed by P-SIDS, reiterated that TK can be held by other entities, in addition to IPLCs. The Republic of Korea emphasized

best available science, with the Russian Federation highlighting best scientific data. Canada noted these provisions would be better discussed under general principles and approaches.

**Proposal elements:** CLAM, supported by P-SIDS, the Russian Federation, Nicaragua, and the Philippines, proposed that the list of elements to be included in the proposals outline “minimum” requirements. The Republic of Korea requested deleting specific proposal elements, preferring their development as guidelines by the scientific and technical body. Japan, with the Russian Federation, requested including scientific data. China, with New Zealand, proposed requiring a description of the area, including, with P-SIDS and Cuba, its cultural, social, and economic values. The US suggested adding historical value. Mauritius emphasized the importance of including the ABMT’s objective.

The EU suggested adding a description of the characteristics and biodiversity values of the area, and the sensitivity of the species and/or habitats concerned as well as, where relevant, the potential for restoration of the proposed area. The EU also proposed: referring to “specific” conservation objectives; describing “priority elements” for a management plan; and including information on consultations with all states, supported by Singapore, “including the most potentially affected states, any states with a continental shelf subjacent or maritime area adjacent to any proposed MPA and states that carry out human activities including economic activities in the area, and/or relevant global, regional, and sectoral bodies that have a role and activities in the proposed area.” Canada and Monaco proposed referring to “current and expected” human activities and broaden the provision to uses by adjacent coastal states, not only by local communities. China requested deleting the provision.

Norway proposed including information on the state of marine environment and biodiversity in the identified area, while Eritrea and Maldives suggested values and functions of the identified area.

CLAM and CARICOM favored reference to a “management plan,” while Japan and Indonesia preferred “conservation and management measures.” The High Seas Alliance and others supported both. China also favored a management plan, proposing this be guided by the principle of cost-effectiveness and include, *inter alia*: baseline data; measurable, relevant and, with the Russian Federation, time-bound management objectives; and descriptions of pressures, and the status and trends of marine biological diversity and habitats. CARICOM preferred an indicative list of minimum requirements in an annex, emphasizing, with Maldives, Eritrea, and the ICPC, the need to include socio-economic benefits. P-SIDS queried the meaning of “standards,” supported by the US, Canada, Mauritius, Iceland, and Turkey; suggested, with the US, Japan, Monaco, Mauritius, and New Zealand, referring to a “description of the current state of the marine environment,” rather than “elements” of it; and called for reference to “conservation and sustainable use” measures, in addition to management measures.

Norway noted management measures would not need to be included if the COP is tasked to identify them. The US suggested referring to a “recommended” monitoring, research, and review plan, and, supported by New Zealand, deleting the reference to “priority elements.” Turkey proposed language to differentiate between ABMTs and MPAs, noting that “plans” relate only to MPAs. Australia proposed that the provision should require specifying the activities to be restricted, prohibited, and managed.

Australia proposed states parties consult with adjacent coastal states, relevant legal instruments, frameworks, and bodies likely to be affected by the proposal, take into account their views,

and provide them with an opportunity to participate in the development of the proposal. Canada said information should be provided on consultations undertaken “so far” and also include information on measures already in place under other bodies. Mauritius, Sri Lanka, and others, opposed by China, urged retaining the reference to consultations with adjacent coastal states.

The G-77/China, CLAM, Australia, and others favored that further requirements on proposal contents shall be elaborated by a scientific and technical body for consideration and adoption by the COP.

IUCN emphasized the need to distinguish between MPAs and other ABMTs as well as the existence of multiple categories of MPAs, suggesting delineation of zones in the proposed areas and the development of a management plan for each zone. The UN Environment Programme (UNEP) underscored that ABMTs have already been designated by existing regional programmes. FAO called to attribute entities that have established ABMTs and suggested including reference to “control and surveillance.” The High Seas Alliance made an urgent call for action, encouraging the creation of a global network of “truly protected” MPAs.

**Consultation on and assessment of proposals:** Reporting from “informal-informals,” Revell highlighted:

- convergence to provide an open, inclusive, and transparent process;
- the need to establish a timebound consultation process;
- the importance of identifying how to revise proposals without repeating the consultation process to ensure efficiency;
- questions of the appropriate point to submit proposals to a scientific and technical body; and
- whether a preliminary review is necessary.

**Decision-making:** Reporting from “informal-informals,” Revell noted, *inter alia*:

- general support for clearly outlining the possible decision-making functions of the COP;
- diverging views on whether decision making should be only by consensus, or a fallback voting mechanism should be contemplated in cases where consensus cannot be reached; and
- suggestions to refer to a timely publishing of COP decisions and to a broader principle of transparency, along with discussions on the need for explicit notification of adjacent coastal states.

**Implementation:** Reporting from “informal-informals,” Revell pointed to convergence to include some form of this article, but noted that further discussion is required on which elements to retain, explaining that these views are informed by different institutional arrangements with respect to ABMTs, including MPAs, and the role of subsidiary bodies possibly established under the agreement.

**Monitoring and review:** Reporting from informal-informal discussions, Revell indicated strong support for a structure consisting of states parties reporting on implementation, monitoring, and review by a scientific and technical body, and decision making by the COP. Delegates also suggested reflecting the role of other relevant frameworks and bodies for monitoring and review of areas they have established.

### Environmental Impact Assessments

Provisions under this issue were address on 22 and 29 August 2019 as well as in 10 “informal-informals.” Discussions were facilitated by Réne Lefeber (Netherlands).

**Obligation to conduct an EIA:** Reporting from “informal-informals,” Lefeber noted broad support for an obligation to

conduct EIAs, but differing views on the reference to UNCLOS and the threshold for conducting an EIA, and limited support for the provision as drafted. Concerns notably related to the reference that states parties shall implement any further measures on the conduct of EIAs decided by the COP, implying that such measures would be binding. As a possible way forward, he offered that “guidance developed by the COP should be taken into account” by states parties. Lefeber noted support for both an impact- and activity-oriented approach to determine which activities should be covered.

**Relationship with EIAs under other instruments and bodies:** Reporting from the “informal-informals,” Lefeber highlighted that participants had considered whether: provisions on consistency with UNCLOS and on the EIA process not undermining other relevant bodies are needed or are already covered by the general part of the agreement; to include a reference to “obligations” under the Convention; states parties or a scientific and technical body under the new instrument would cooperate in promoting the use of EIAs in relevant bodies; and the potential for the ILBI and other relevant bodies to develop common minimum standards for the conduct of EIAs. Delegates also discussed the four alternatives in the draft agreement as well as new alternatives and possible combinations thereof. Different views were expressed on possible rules regarding the role of bodies established under the ILBI in the evaluation of EIAs conducted under other bodies.

**Thresholds and criteria:** Reporting from “informal-informals,” Lefeber highlighted that delegations continued to explore various options and notably discussed whether it is necessary to refer to the threshold contained in UNCLOS Article 206 (assessment of potential impacts), with some highlighting the need to address linkages with provisions on screening and obligation to conduct EIAs. Some expressed support for a non-exhaustive list of criteria. Lefeber also noted support for a tiered approach requiring less extensive EIAs for activities falling under the threshold of UNCLOS Article 206 and a full/comprehensive EIA for activities meeting the threshold, with some expressing reservations as to the practical applicability of such a tiered approach. Differing views remained regarding the role of bodies established under the ILBI in further elaborating the threshold and criteria set out in the article. Lefeber invited delegates to consider the possibility of linking a tiered approach on thresholds to a tiered approach in terms of decision making, and noted the option that the internationalization of decision making be voluntary.

**Cumulative impacts:** Reporting from “informal-informals,” Lefeber highlighted consensus on the need to take into account cumulative impacts in the conduct of EIAs, with different views on whether further details are needed on how this should be done. Delegates supported the possibility for the COP or a subsidiary body to develop guidelines in this regard. Lefeber noted divergent views on the need for, and form of, explicit references to climate change, ocean acidification, and deoxygenation as examples of cumulative impacts. Delegations also considered the definition of cumulative impacts under the use of terms, with some reserving their position on definitions, and others seeking clarity on references to impacts on one ecosystem resulting from different past, present, and future activities.

**Transboundary impacts:** Reporting from “informal-informals,” Lefeber described broad support for the need to take into account transboundary impacts, but highlighted that views differed on the need for explicit references to impacts to adjacent areas, adjacent coastal states, and areas within national jurisdiction, including the continental shelf beyond 200 nautical

miles. He also noted questions raised on the relationship between the provision on transboundary impacts and UNCLOS Article 194 (measures to prevent, reduce and control pollution of the marine environment), and a proposal was made on the relation between this provision and other obligations of states parties under international law.

**Areas identified as ecologically or biologically significant or vulnerable:** Reporting from informal-informal discussions, Lefeber noted limited support for the provision as currently drafted, but highlighted emerging consensus that the characteristics of an area could be taken into account either in the EIA screening process and/or in the determination of whether an activity meets the threshold defined in the relevant ILBI provision. Lefeber also noted a proposal was made to replace the article with a provision on mandatory EIA for areas designated by relevant global, regional, or sectoral bodies.

**Strategic environmental assessments:** Reporting from “informal-informals,” Lefeber said further consideration was needed on SEAs, noting a lack of clarity on the concept and concerns over practical applicability. In light of the limited time remaining, he offered as a way forward to have the COP take up this issue at a later stage, noting that nothing in the agreement precludes the possibility of conducting SEAs individually or jointly. He emphasized this would allow retaining the concept of SEAs in the ILBI, giving delegates sufficient time to reach a common understanding over the concept.

**List of activities requiring/or not an EIA:** Reporting from “informal-informals,” Lefeber noted views differed as to whether to retain or delete the provision and indicated delegates might wish to direct the COP to take this issue up at a later stage, noting this would give time to gain clarity over the practical application of the ILBI.

**Screening:** New Zealand suggested distinguishing provisions related to process from those related to content. Canada offered a proposal to combine provisions on the EIA process into a single article.

On who determines whether an EIA is required, the G-77/China, CLAM, CARICOM, the African Group, the EU, P-SIDS, and many others suggested that a state party shall determine whether an EIA is required with respect to a planned activity under its jurisdiction or control. CARICOM added that the state party, as the responsible entity, may place the burden for screening on the proponent and Norway added that while companies or contractors may carry out the EIA, the ILBI should only lay obligations on states parties.

On screening considerations for activities requiring an EIA, including characteristics such as the significance or vulnerability of the area where the planned activity is intended to take place, CLAM, with the Republic of Korea, New Zealand, Australia, and Japan, and opposed by CARICOM and Mauritius, requested deleting the provision. Eritrea proposed, opposed by the US, requiring an EIA should an activity take place in, or adjacent to, an area that has been identified as significant for biological diversity conservation and/or human wellbeing. New Zealand opined that questions about significance or vulnerability could be addressed under thresholds. The EU, with New Zealand, Australia, Norway, and the US, agreed that screening should consider the characteristics of the area, but, opposed by P-SIDS, noted that significance or vulnerability should not necessarily lead to an EIA requirement.

The Russian Federation favored taking a more general approach to determine the threshold. Cameroon requested more clarity on the threshold, specifically regarding who determines

whether an area is ecologically or biologically significant or vulnerable.

On the need for independent assessment, the G-77/China, CLAM, P-SIDS, the African Group, New Zealand, Norway, Indonesia, and the High Seas Alliance noted that if a state party determines that an EIA is not required for a planned activity, it must provide information to support that conclusion. CARICOM, P-SIDS, Indonesia, Cameroon, and the High Seas Alliance said the scientific and technical body should verify that the information provided by the state party satisfies the requirements. The US, with Canada, preferred language to the effect that states parties must “make information to support that conclusion publicly available.” Switzerland and the High Seas Alliance supported making the information publicly available, as long as it is also submitted to the scientific and technical body, with Switzerland noting the need for a procedure to deal with problematic cases. The EU, the Republic of Korea, Australia, and Japan requested deleting the provision, stressing that relevant responsibilities lie with states parties. Mauritius called for clarity on how information would be exchanged between the COP and states parties. The Russian Federation reiterated its opposition to the establishment of a scientific and technical body under the ILBI.

The Republic of Korea, with the Russian Federation and Japan, suggested that provisions dealing with the EIA process could take the form of voluntary guidelines to support national implementation.

On the relation between the agreement’s EIA provisions and those under other bodies, the ISA drew attention to an information note delineating existing EIA provisions under the Convention, the 1994 Agreement, and the ISA, cautioning against the ILBI diminishing these provisions.

**Scoping:** On the entity responsible for establishing scoping procedures, the G-77/China, the EU, and Singapore preferred that states parties establish these procedures. Canada favored “a state party” defining the scope. P-SIDS and the Philippines expressed preference for the scientific and technical body establishing procedures. The Russian Federation proposed that a state party define the scope of the EIA in accordance with the guidelines. CARICOM proposed that states parties establish procedures, “including public consultation,” to establish the scope of the EIA.

On issues within the scope, CLAM proposed taking into account social, economic, cultural, and other key impacts, including identified cumulative impacts, supporting, with P-SIDS, also using relevant TK. Concurring, CARICOM, IUCN, and the High Seas Alliance underlined the need to also include alternatives for analysis, including non-action alternatives. Singapore preferred that alternatives for analysis be included “where possible.” Eritrea suggested “taking into account interrelated socio-economic, cultural, and human health impacts.” The Philippines urged consultation with coastal states “as early as the scoping stage.”

The EU, supported by Switzerland and the High Seas Alliance, preferred a general high-level description, proposing that scoping “shall identify key environmental impacts and issues, including identifying cumulative impacts, using best available scientific information, and TK, where relevant.” China supported including only key environmental impacts based on best available scientific information and TK. Singapore suggested reformulating to “key environmental and, where relevant, social, economic, and cultural issues.” The US stated that socio-economic impacts could be considered as a sub-activity. The Republic of Korea stressed that socio-economic impacts are not an appropriate scoping element.

The Russian Federation reserved its position on including cumulative impacts until the relevant discussion on the definition is concluded.

**Impact assessment and evaluation:** Regarding the entity ensuring the conduct of the prediction and evaluation of impacts in the EIA be in accordance with provisions in the ILBI, the G-77/China, CLAM, P-SIDS, CARICOM, the African Group, and others supported that a state party, not the proponent, be responsible. Singapore requested language to clarify that states parties are responsible “as far as practicable,” with the US suggesting states parties “shall endeavor” conformity.

The EU proposed that “a state party shall ensure that an EIA, conducted under this part, shall predict and evaluate impacts using the best available scientific information and TK, where relevant. Impact assessment and evaluation shall identify and predict the likely environmental impacts of the planned activity, and shall include cumulative impacts and impacts in areas within national jurisdiction.” The Russian Federation, with Norway, clarified that TK should be used “where relevant,” and Singapore suggested examining alternatives “where possible.” China requested referring to best available scientific “evidence” and “relevant TK.” Norway proposed creating a separate provision containing information sources relevant for EIAs.

CARICOM, supported by the High Seas Alliance, proposed including a “no-action alternative” to cover activities not proceeding as a result of an EIA. The Deep Sea Conservation Coalition pointed to EIA provisions for deep-sea bottom fisheries under the UN General Assembly and regional fisheries management organizations (RFMOs).

Regarding joint EIAs, the G-77/China, P-SIDS, CARICOM, Canada, and others agreed that nothing in the agreement should preclude them, in particular for SIDS. The EU and Indonesia suggested that this be extended to all developing countries, with Norway calling to delete the provision if it is not open to all countries.

On designating a third party or an independent consultant appointed by a panel of experts established by the scientific and technical body to conduct an EIA, Norway emphasized that the state party is legally responsible for the conformity of the EIA and should be free to choose who conducts the EIA. Indonesia expressed a preference for designating a third party, adding that a list of individual consultants may be developed by the scientific and technical body.

The G-77/China, the African Group, and P-SIDS emphasized that the two options are not mutually exclusive. The African Group suggested that a “state party may select a minimum of three experts from a panel of experts designated by the scientific and technical body. The panel of experts may be commissioned by states parties with capacity constraints to conduct an EIA for planned activities,” which will then be submitted to states parties for review and decision making. CLAM, CARICOM, and Canada favored a state party having the option to designate a third party to conduct an EIA, which would then be submitted to the state party for review and decision making.

The EU noted lack of clarity around third party involvement, reiterating, with Japan and the US, that it is the state party that decides on the conduct of an EIA. China requested referring to a “qualified third-party entity” instead of an independent consultant.

On creating a relevant pool of experts, the African Group supported its creation to assist countries facing constraints in conducting EIAs. The EU, with New Zealand, Norway, and China, emphasized that this could be taken up under capacity building. CLAM and the Russian Federation, opposed by

CARICOM and Canada, requested deleting the provision. Singapore noted the need to consider procedures to address conflicts of interest and, with Norway, costs.

**Mitigation, prevention and management of potential adverse effects:** Reporting from discussions in “informal-informals,” Lefeber noted delegates discussed the meaning of the terms “effects” and “impacts,” notably whether both terms can be used interchangeably or whether effects are “consequences of” impacts. He highlighted broad support for a proposal to add an article on the objectives of conducting an EIA, with additional need for discussion on the list of objectives.

**Public notification and consultation:** The US, supported by the Republic of Korea, proposed the title “public notification and opportunity for comment.”

**Early notification:** The G-77/China, the African Group, CARICOM, CLAM, P-SIDS, Switzerland, and many others supported early notification of planned activities to stakeholders. The EU suggested ensuring notification to all relevant stakeholders. Canada, supported by the Philippines, New Zealand, Seychelles, and Norway, proposed early notification to “potentially affected states, where those can be identified, in particular adjacent coastal states.” The Russian Federation proposed submission of comments “before the conclusion of the EIA process.”

**Stakeholders:** The African Group, CARICOM, P-SIDS, Switzerland, and Norway supported a provision specifying the stakeholders. CARICOM and P-SIDS requested reference to “sub-regional” bodies. Canada called for deleting references to scientific experts, affected parties, adjacent communities and organizations, interested and relevant stakeholders, and those with existing interests in the area. The EU emphasized that the provision includes too much detail. The Russian Federation, China, the US, and the Republic of Korea proposed deleting the paragraph, finding the scope too broad.

**Transparency and inclusivity:** The G-77/China and many others supported a provision noting that the public notification and consultation process should be transparent and inclusive, emphasizing that it be targeted and proactive when involving adjacent SIDS. CARICOM and P-SIDS suggested that the process be done in a timely manner. CLAM and the Philippines proposed involving all adjacent coastal states. The EU and Switzerland did not support singling out particular stakeholders. The Russian Federation, China, the US, and the Republic of Korea proposed deleting “targeted and proactive when involving adjacent SIDS.”

**Comments:** Regarding comments received, the EU suggested:

- noting the importance of responses to all comments, not just “substantive” ones, supported by many, and opposed by the Russian Federation and the US;
- giving particular regard to comments concerning potential impacts to ABNJ rather than to transboundary impacts, supported by Canada; and
- deleting a provision on the publication of received comments along with descriptions of how they were addressed.

Canada proposed providing “an indication” of how the comments were addressed. The Republic of Korea and the Russian Federation did not support a requirement to address or respond to comments, with the Russian Federation adding that comments shall be considered “to the extent practicable,” and China proposing “as appropriate by states parties.”

**Access to information:** The EU, Australia, and Indonesia supported that states parties establish procedures allowing for access to information related to the EIA process. CARICOM stressed that all states parties, not just those that undertake

an EIA, should establish relevant procedures. P-SIDS, with Seychelles, proposed the scientific and technical body elaborate relevant procedures for adoption by the COP.

**Non-disclosure:** The EU, Canada, the US, the Philippines, and the Republic of Korea supported reference to the non-disclosure of non-public information or information that would undermine IPRs or other interests. Switzerland suggested including “without prejudice to the protection of confidential information.” CARICOM requested that such information be made available to the scientific and technical body for its review. Norway, supported by the High Seas Alliance, opined that non-disclosure of non-public information that does not undermine “other interests” is too broad a formulation. The High Seas Alliance suggested that states parties shall not be required to disclose “commercially confidential information according to standards and guidelines established by the COP, and subject to any review procedures recommended by the COP.”

**Consultation for monitoring, reporting, and review:** On a provision on states parties being consulted or kept informed during the monitoring, reporting, and review processes, the EU and Canada stressed that this process follows the agreed EIA process and, with the P-SIDS, Canada, Norway, and the Philippines, should be dealt with under the relevant provisions. CARICOM, the Philippines, and Sri Lanka noted the need to actively consult all states, particularly adjacent coastal states, including SIDS. The Russian Federation, the US, the Republic of Korea, and China proposed deleting the provision.

**International consultation:** The EU, Switzerland, the Philippines, Seychelles, Canada, and Indonesia, opposed by the US and China, supported a provision on the development of procedures by the COP to facilitate consultation at the international level. The Russian Federation proposed deletion, suggesting that these procedures be laid out in an annex as part of guiding principles.

The EU suggested an additional provision enabling the COP to request a subsidiary body to develop recommendations and guidelines on the conduct of the EIA process. P-SIDS, supported by Norway, proposed that in cases where the planned activities affect areas of the high seas that are entirely surrounded by EEZs, the views and comments of these states shall be given particular regard.

**Preparation and content of EIA reports:** The G-77/China, the African Group, CARICOM, Australia, and the High Seas Alliance supported the ILBI outlining a minimum, mandatory list of information to be included in the reports. China favored an indicative list. The Russian Federation said it should be an indicative list contained in an annex. The Republic of Korea emphasized that a detailed list could be part of voluntary guidelines to be developed later. CLAM and the EU supported that the ILBI outline the mandatory list of information to be included.

The EU and Canada supported including a description of the planned activity, its purpose, and location, with CLAM preferring “geo-referential location.”

CLAM, Canada, Singapore, and the EU supported a description of the results of the scoping exercise.

CLAM, the EU, and Canada supported including a description of the marine environment likely to be affected. The US suggested taking into account large-scale, reasonable, foreseeable changes in the marine environment, such as ocean acidification.

Regarding a provision to include a description of the potential effects of the planned activity on the marine environment, CLAM supported the text, requesting adding “environmental

impacts.” CARICOM proposed referring to impacts in the marine environment “and ecosystems.” P-SIDS, the EU, and Canada requested deleting reference to the likelihood that the assessed activity will cause substantial pollution and harmful changes, with the EU also calling to delete reference to estimates of significance. Canada requested reference to accidents and malfunctions. The US, Australia, and Israel did not support reference to socio-economic and cultural impacts. The ICPC suggested including socio-economic impacts, both beneficial and adversary, as a standalone provision.

The EU and the US favored including a description of any measures to avoid, prevent, and mitigate impacts. CLAM and Senegal requested additional reference to measures for “minimizing” impacts and, “where necessary and possible, redressing any substantial pollution, significant, and harmful changes to the marine environment, and other adverse social, economic, cultural, and relevant impacts,” with P-SIDS, Indonesia, and the High Seas Alliance, requesting deleting “where necessary and possible.”

CLAM requested including a description of any follow-up actions. The EU requested a reference to post-project analysis and remediation be moved to the provision on the description of measures for avoiding, preventing, and mitigating impacts. CLAM, opposed by the EU, supported:

- the reference to the sources of information contained in the report;
- an explicit indication of predictive methods and underlying assumptions, as well as the relevant environmental data used; reference to the methodology used to identify environmental impacts;
- including an environmental management plan, including a contingency plan for responding to incidents; and
- including the environmental record of the proponent, opposed by the US.

CLAM, the US, China, Israel, Australia, and the EU requested deleting the reference to a review of a planned activity’s business plan. CARICOM proposed instead referring to an activity’s cost-benefit analysis.

**Report review:** Regarding a provision on who and how further “details” or “guidance” on the required content of an EIA report may be developed and reviewed, the G-77/China, CARICOM, and P-SIDS referred to “details and/or guidance,” CLAM, Indonesia, and the US to “guidance,” and the EU to “details.” The G-77/China noted it should be developed by “a scientific and technical body for consideration and adoption by the COP.” The EU supported it be developed by the COP, with the US and China, and called, with CARICOM and P-SIDS, for it to be annexed to the ILBI. The EU and CARICOM favored “regular” review, while P-SIDS and Nigeria preferred review “as necessary.” Norway and Canada questioned the need for updating the comprehensive list.

**Publication of assessment reports:** The G-77/China supported requiring states parties to publish and communicate the reports of the results of EIAs, with the EU, Canada, and the Russian Federation, requesting deletion of “and communicate.” The Republic of Korea suggested “publish and provide.” The African Group, the EU, P-SIDS, Canada, and the Russian Federation opposed referring to specific UNCLOS articles, preferring that publication be “in accordance with the Convention.” The African Group, CARICOM, P-SIDS, the Russian Federation, Norway, the US, and New Zealand supported publication of EIA reports through the CHM. New Zealand noted the CHM should publish stakeholders’ submissions received during consultations.

CLAM proposed that the secretariat centralize and disseminate the information to all states parties. Switzerland suggested publication be performed by states parties through the secretariat. The EU proposed the publication through a dedicated registry under the ILBI. China suggested deleting the provision. The High Seas Alliance suggested ensuring that the full report is communicated to all states parties and stakeholders.

**Consideration and review of assessment reports:** The African Group, Indonesia, Seychelles, Senegal, and the High Seas Alliance supported that the reports be considered and reviewed by a scientific and technical body. CLAM, Norway, and New Zealand preferred review by states parties. Norway noted the review reports might be made publicly available through the CHM. New Zealand highlighted that a subsidiary body might have a role in reviewing some of the reports to ensure consistency.

The African Group and CLAM noted the review should be done on the basis of approved scientific methods, with CLAM also referring to possible guidelines developed by the scientific and technical body and adopted by the COP. Australia called for balancing international accountability with the rights of states parties. The Russian Federation, the US, Japan, the EU, Canada, Singapore, and Israel requested deleting the provision.

The High Seas Alliance called for a “backstop clause” if the review of all EIAs is impossible.

**Decision making:** In his report from “informal-informals,” Lefebber noted that divergent positions remain around whether decision making should take place at the national or international level. He noted delegations discussed suggestions to merge the two alternatives by providing for international decision making if a country so wishes, while retaining national-level decision making for those that prefer it. They further deliberated on distinguishing between “decision making” and “advice” at the international level as well as between “light” and “heavy” access, depending on the severity of harm to the marine environment. Delegates were unable to reach consensus on a provision noting that no decision allowing an activity to proceed shall be made where the EIA indicates severe adverse impacts on the marine environment. Opinions mostly converged around a requirement to make public the decision-making-related documents, with further work remaining on the relevant language.

**Monitoring:** Reporting on “informal-informals,” Lefebber noted consensus that the responsibility for monitoring and review should rest with states parties, but noted differing views on the reference to monitoring by the proponent. Views also differed on whether to refer to UNCLOS or specific articles thereof, with some proposals for streamlining the provision and better aligning it with UNCLOS Article 204. Lefebber noted support for merging the provisions on monitoring with that on reporting and pointed to proposals on the scope of impacts to be monitored, including socio-economic, cultural, and health impacts.

**Reporting:** Reporting on “informal-informals,” Lefebber noted no support for the provision that states parties shall report on the effects of authorized activities in accordance with UNCLOS Articles 204-206. Lefebber noted the need for further consideration on: the scope of reporting obligations; the reference to UNCLOS Article 204; and the potential role of relevant global, regional, and sectoral bodies in reporting as well as the possibility of voluntary reporting of states parties to such bodies. Delegates broadly supported making reports publicly available, either through the secretariat or the CHM, but views differed on requiring reports to be submitted to the COP or a subsidiary body.

**Review:** From “informal-informals,” Lefeber noted support for the review provision, but divergence on its substance, with emerging consensus that states parties should bear the responsibility for ensuring the review of the EIA of the authorized activity. Further consideration is needed on whether additional steps should be envisaged, notably regarding the possible role of a subsidiary body to be established under the ILBI. Lefeber noted there was no support for a provision on a non-adversarial consultation process, although some delegations saw value in considering this in relation to compliance or dispute settlement.

### Capacity Building and the Transfer of Marine Technology

Provisions under this issue were considered on 20 and 26 August 2019, and in one session of “informal-informals.” Discussions were facilitated by Olai Uludong (Palau).

**Objectives:** The EU, with Canada, suggested that the chapeau reference that CB&TT shall be aimed at states parties, in particular developing states parties, in implementing provisions of the ILBI. P-SIDS, with Bangladesh, CARICOM, and Maldives, suggested a more general provision to promote capacity building for states parties that need assistance, particularly developing states.

The G-77/China preferred ensuring access to technology by the transfer of marine technology, while Japan, the US, Norway, and the Russian Federation supported “promoting and encouraging” this access.

CARICOM proposed including reference to the “equitable” participation of developing countries under the ILBI as well as extending knowledge dissemination and developing technological capacities in areas under national jurisdiction.

Honduras, opposed by the G-77/China, suggested deleting reference to SEAs.

The G-77/China expressed support for text on access to, and benefits from, the scientific information resulting from access to resources in ABNJ, in particular MGRs, requesting to also refer to the “utilization” of resources. Japan noted that mineral resources in the Area fall under the jurisdiction of the ISA.

On access to MGRs *in situ*, *ex situ*, *in silico*, and as DSI and data, China requested retaining reference to MGRs *in situ*; India preferred retaining reference to MGRs *in situ*, *in silico*, and as DSI; and P-SIDS requested retaining reference to them all.

The G-77/China favored a reference to “endogenous” research capabilities relating to MGRs and products, processes, and other tools. P-SIDS called to also refer to “local” capabilities.

The EU urged moving references to the implementation of CB&TT to the chapeau of the article and, supported by Canada, proposed: shortening the paragraph to note that CB&TT shall contribute to support the implementation of the MGR provisions established by the ILBI; and retaining only the provisions on ABMTs and MPAs, and EIAs and SEAs. The US, with Switzerland, Australia, and the Russian Federation, requested deleting the entire paragraph, noting that it includes details that should be dealt with elsewhere in the ILBI.

**Cooperation:** Japan and the Republic of Korea stressed that states parties shall “promote” cooperation in accordance with their capabilities, with Norway and the EU preferring cooperation “in accordance with the Convention.” Australia and Tuvalu suggested “in accordance with the agreement and member states’ capabilities.” Tuvalu preferred that states parties shall “ensure” cooperation. The US suggested cooperation take place in a manner “consistent with Part XIV of the Convention,” with the EU querying the specific mention of Part XIV, and CARICOM, Honduras, Sri Lanka, and Togo requesting its deletion. Reiterating

that cooperation shall be carried out on a strictly voluntary basis, the Russian Federation did not support the descriptions of legal obligations.

Japan and Norway preferred that CB&TT be “promoted,” and the G-77/China and others that it should be “carried out” through enhanced cooperation. The US suggested that CB&TT “may be carried out or promoted.” The G-77/China and others proposed including cooperation “in all forms, including partnerships with stakeholders such as industry and the private sector.” Japan, supported by the Republic of Korea and Canada, requested deleting reference to cooperation with industry and the private sector.

The EU favored enhanced cooperation at all levels with the active participation of competent organizations and involving all relevant stakeholders, including, where appropriate, the private sector, civil society and, with Tuvalu, holders of TK. The Russian Federation stressed that specific forms or modalities of cooperation will be covered by a reference to voluntary cooperation based on MAT. Switzerland preferred voluntary technology transfer based on MAT. Bangladesh expressed skepticism about voluntary provisions for technology transfer.

On the full recognition of the special requirements of developing states parties, the G-77/China and others supported reference to the duty to “cooperate,” while the US and the Republic of Korea favored to “promote cooperation.” AOSIS suggested that the text should:

- “take into account the different needs of states parties including, in particular, the special circumstances of SIDS,” with Australia;
- include an additional article to address the special circumstances of and take into account the capacity constraints of SIDS in relation to CB&TT; and
- include a paragraph to “ensure” that SIDS are not disproportionately burdened by the ILBI.

The US and Canada, opposed by the G-77/China, proposed deleting the reference to middle-income countries. The African Group, with Nicaragua, expressed preference for CB&TT to be “carried out” through enhanced cooperation; and requested deleting the references to forms of cooperation, especially noting that South-South cooperation is voluntary.

The EU proposed referring to the special requirements of developing states consistent with this agreement. The US requested text to clarify what special needs are.

**CB&TT modalities:** The G-77/China suggested deleting reference to CB&TT not duplicating existing programmes, opposed by the US, the Republic of Korea, Norway, and Switzerland. The EU proposed that CB&TT shall be transparent, needs-driven, consistent with the objectives of the ILBI, and not duplicate existing programmes. He opined that references to a participatory approach and gender-responsiveness should be retained.

Stressing that reference to “mandatory” CB&TT is meant to create a legal obligation, the G-77/China proposed that CB&TT: shall be based on, and be responsive to, the needs and priorities of developing states parties as determined by a needs assessment on an individual case-by-case or regional basis, with Norway, P-SIDS, and CARICOM; and detailed modalities for CB&TT shall be developed and adopted by the COP within one year of the ILBI’s entry into force. Switzerland, supported by Australia, requested clarification as to how an assessment mechanism established by the COP would work.

The EU emphasized that all states parties could potentially be able to benefit from CB&TT provisions related to conservation

and sustainable use, stressing that CB&TT modalities should be discussed by the COP. Noting that not all developing states parties will be recipients of CB&TT, the US requested referring to “recipient” developing state parties. Australia drew attention to the need for flexibility regarding states’ capacity to provide CB&TT.

The US, with the Republic of Korea, said CB&TT “should” be guided by lessons learned. P-SIDS opposed only referring to “existing” legal instruments. CARICOM, with P-SIDS, supported referencing lessons learned by sub-regional bodies.

The EU, with the US, suggested that the COP “may determine to develop” detailed modalities, procedures, and guidelines, rather than be mandated to do so. The US proposed only referring to guidelines. The G-77/China, with the Republic of Korea, proposed that the COP be mandated to develop these modalities within a clear timeframe. ICEL suggested that an advisory body help to determine procedures and guidelines.

The Republic of Korea suggested addressing the current provisions in future guidelines. Japan proposed deleting the entire paragraph due to lack of consensus on the nature of CB&TT.

#### **Additional modalities for the transfer of marine**

**technology:** Reporting from “informal-informals,” Uludong noted convergence on CB&TT responding to needs, and support for streamlining the text to address duplication. Uludong noted divergence on, *inter alia*:

- whether capacity building is to be voluntary, or both mandatory and voluntary;
- the requirement not to duplicate existing efforts, and its implications;
- the levels and/or mechanisms through which needs should be identified and assessed;
- who should benefit from CB&TT;
- the role of the COP in elaborating modalities for CB&TT, including timelines; and
- the terms and conditions upon which CB&TT are to be provided.

**Types:** Delegates discussed three options: an indicative list of types of CB&TT within the ILBI; an indicative list in an annex; and mandating the COP to develop such a list.

The G-77/China, supported by the African Group, CARICOM, and CLAM, suggested the options be combined, with an indicative list included in the ILBI, additional types of CB&TT set forth in an annex, and a future body, like the COP or a subsidiary body, mandated to further develop the list. He stressed, supported by CARICOM and CLAM, that the list shall be reviewed, assessed, and adjusted periodically by the COP.

P-SIDS supported including the types of CB&TT in an annex, adding that they could be further developed by the COP, including through a scientific, technical, and technological body. China stressed the importance of a list in the ILBI. The EU and Switzerland favored including a list of types of CB&TT, requesting deletion of reference to biotechnological research activities. Canada, Australia, New Zealand, Indonesia, and Norway supported including a list and expressed flexibility in allowing the COP to complement it. The African Group and CARICOM noted that future input to the list should be given by a CB&TT committee established under the ILBI.

The US proposed that the COP, not a subsidiary body, develop, by consensus, guidelines or an indicative, non-exhaustive list under the ILBI, if needed; and cautioned that periodic reviews and updates of a list included in the ILBI may require treaty amendments. The Republic of Korea preferred that the COP develop voluntary guidelines, which may be reviewed “as

necessary.” Japan supported a simple, indicative list contained in an annex, cautioning against including such a list in the ILBI or mandating a subsidiary body to develop it. The Russian Federation underlined that CB&TT is voluntary, supporting mandating related functions to the COP.

Considering the annex related to CB&TT, the G-77/China, CLAM, and P-SIDS noted the need to consider the level of detail to be provided in the ILBI and the annex, respectively. The EU reiterated its preference for having a short, non-exhaustive, and future-proofed “headline list” of CB&TT types in the ILBI.

**Monitoring and review:** The Republic of Korea and the Russian Federation opposed monitoring provisions in the context of CB&TT, noting, with Japan, that the transfer of marine technology should be done on a voluntary basis. The G-77/China and others noted that CB&TT, and related monitoring and review, should be mandatory.

The G-77/China suggested that performance measurement should be taken on the basis of “objectively verifiable” indicators. New Zealand and the EU preferred deleting the provision.

On those to be included in the monitoring and review process, the G-77/China favored reference to relevant “stakeholders,” instead of “actors,” with CARICOM, P-SIDS, and Nigeria adding stakeholders at the sub-regional level. Japan preferred that the process be “open to,” rather than “require the participation of,” relevant actors. ICEL queried which part of the monitoring and review process would be open to the engagement of relevant actors.

The EU, with Australia, Canada, and the Russian Federation, said the monitoring and review of CB&TT should take place under the COP, opposing a reference to a CB&TT subsidiary body. Japan proposed that “the COP may convene meetings for review of CB&TT.” Norway noted that a subsidiary body could deliver on tasks related to: needs assessment; development of additional CB&TT types; and monitoring and review.

The EU, supported by the US and Canada, cautioned against language alluding to a differentiation of states parties’ obligations under the ILBI, with the US proposing that CB&TT “assists developing states parties to strengthen their implementation of the agreement.” Canada opined that CB&TT is not a prerequisite to implementation, but rather supports it.

The G-77/China said states parties shall submit reports, which may include inputs from regional CB&TT committees, to be made publicly available. The Republic of Korea, Japan, and Indonesia requested deleting a reference to “regional committees.” The US opposed mandatory reporting requirements for CB&TT providers. Australia proposed that states parties may submit, on a voluntary basis, reports of CB&TT “they have provided or received.” Many delegations noted that reporting should not be onerous, in particular for developing states parties. Japan observed that reporting is voluntary and hence not onerous. The EU said modalities for monitoring and review should be decided by the COP. FAO emphasized taking into account monitoring and review requirements by donors and collaborators.

#### **Institutional Arrangements**

Provisions under this issue were discussed on 28-29 August 2019, and in one session of “informal-informals.” The discussions were held under cross-cutting issues, facilitated by IGC President Lee.

**Conference of the Parties:** Many supported the establishment of a COP, and having the first meeting convene no later than one year after the ILBI’s entry into force. CLAM proposed that the COP meet “every year” thereafter. The Russian Federation stated

that the COP, rather than the ILBI, determine meeting periodicity. The G-77/China, with the African Group, proposed that the COP adopt rules of procedure for itself and for any subsidiary body that it may establish. CLAM supported the use of the IGC's rules of procedure, until the COP adopts its own.

The US, the Russian Federation, China, Iceland, and others underlined consensus-based decision making, including to adopt the rules of procedure. Canada and Switzerland supported consensus-based adoption of rules of procedure, but were open to voting for decision making in other cases. New Zealand, with Australia and the High Seas Alliance, supported a stand-alone provision on decision making. The African Group, with P-SIDS, underlined the need to include a voting option for decision making.

New Zealand, also on behalf of Norway, Australia, and Canada, supported by P-SIDS, ICPC, and the High Seas Alliance, introduced a proposal for a new article on transparency.

**Subsidiary bodies under the COP:** The G-77/China supported the COP's functions for monitoring and keeping under review the ILBI's implementation, with several requesting clarity regarding "keeping under review." The Russian Federation supported the COP reviewing the ILBI's implementation. The EU, with New Zealand, proposed that the COP keep the ILBI's implementation under regular review and make the necessary decisions to promote effective implementation.

The G-77/China supported that the COP promote cooperation and coordination with and among existing instruments, frameworks, and bodies. CARICOM, opposed by P-SIDS and the Republic of Korea, requested retaining references to establishing processes for cooperation and coordination among relevant global, regional, and sectoral bodies, with New Zealand, but opposed by the Russian Federation; and inviting other global, regional, and sectoral bodies to establish cooperation processes.

The G-77/China, with New Zealand, further supported listing that the COP shall:

- make, within its mandate, decisions and recommendations related to the implementation of the ILBI;
- exchange information relevant to the implementation of the ILBI;
- adopt, at each ordinary meeting, a budget for the financial period until the following ordinary meeting; and
- undertake other functions identified in the ILBI or as may be required for its implementation.

The G-77/China, Turkey, and New Zealand, opposed by the Russian Federation, supported mandating the COP to establish subsidiary bodies. The G-77/China, opposed by Japan, the US, Iceland, and others, supported also including a non-exhaustive list of bodies. CLAM and New Zealand preferred that the COP decide on these bodies at a later stage. The African Group, with Sri Lanka, Turkey, and others, expressed strong support for including a benefit-sharing mechanism in the list. CARICOM expressed reservations on an implementation and compliance committee.

The G-77/China and New Zealand expressed general support for a provision tasking the COP to assess and review the adequacy and effectiveness of ILBI provisions. New Zealand suggested linking this provision to implementation and compliance. CARICOM, with the EU, preferred that the COP conduct the assessment and review. The Russian Federation preferred mandating the COP to "give recommendations." The EU proposed mandating the COP to carry out the assessment and review within five years of the entry into force.

**Scientific and technical body/network:** The G-77/China, the EU, Switzerland, the Republic of Korea, Canada, New Zealand, Australia, and Japan supported establishing a scientific and technical body, with P-SIDS adding it should also be a technological body. The Russian Federation suggested deleting the entire article, noting that the provisions will create a "politicized and overly bureaucratic body." Iceland envisaged a slim institutional structure, relying on regional and sectoral bodies in terms of technical expertise.

The EU and Australia noted the body shall be composed of experts "with suitable scientific qualification," with Japan, China, and the US, taking into account the need for multidisciplinary expertise, including TK, gender balance, and equitable geographical representation.

CLAM proposed deleting the reference to TK.

The US noted that the body should be open to representatives of non-party states. China cautioned against creating a large structure. Ecuador and Sri Lanka emphasized equitable geographical representation.

The EU, Senegal, and UNEP supported that the body may also draw on appropriate advice from existing arrangements, such as the Joint Group of Experts on the Scientific Aspects of Marine Environmental Protection. The G-77/China, the US, Iceland, Australia, Canada, and Norway requested deleting the reference to the experts' group. The US suggested that the body could create *ad hoc* scientific and technical advice bodies for a limited duration. CLAM and China requested deleting the provision.

The EU, Switzerland, the US, Iceland, the Republic of Korea, and Norway preferred referring to a short list of essential functions, emphasizing the body shall be "advisory in nature," with CLAM, and "operate under the guidance and authority of the COP." As core functions, the EU highlighted: providing scientific and technical advice to the COP, with CARICOM; maintaining contact with the scientific world; and proposing the establishment of sub-committees. CARICOM and P-SIDS emphasized the body should provide scientific and technical advice beyond COP requests. P-SIDS noted needs-based assessment mechanisms should be country driven. CLAM reiterated that functions should be contained in an annex.

On the list of functions, delegates expressed diverging opinions on which should be kept, with many noting that some are covered in different parts of the agreement and that they should be decided once the substantive discussions are finalized.

**Secretariat:** The G-77/China and many others supported the establishment of a secretariat. The EU indicated that key functions need to be determined before deciding on size, function, and budget. China, Canada, Switzerland, and Turkey, opposed by Cameroon and Iceland, preferred the secretariat of an existing international organization as the ILBI secretariat.

Norway, Iceland, Canada, the Russian Federation, and the US expressed preference for the UN Division for Ocean Affairs and the Law of the Sea (UNDOALOS) carrying out secretariat functions. The IGC requested the Under-Secretary-General for Legal Affairs and UN Legal Counsel to submit information to the IGC on what it would take for UNDOALOS to perform the secretariat functions of the ILBI.

The Russian Federation, Iceland, the US, and Turkey did not support the ISA carrying out secretariat functions. Indonesia preferred the ISA take up secretariat functions.

Canada and China highlighted that assisting with ILBI implementation is not a secretariat function and, with the Russian Federation and the US, proposed deleting this reference. China

did not support the secretariat preparing reports on the execution of its functions, with the US and Japan cautioning against burdensome reporting requirements.

**Clearing-house Mechanism (CHM):** The G-77/China, CARICOM, the EU, and Australia stressed the importance of the CHM in the overall ILBI architecture. Singapore highlighted the role of the CHM as an information repository. The US suggested simplified language, stating that the CHM shall “enable states parties to have access to, and share, information.”

**Establishment and nature:** Many supported establishing the CHM, with the EU proposing specifying its objectives. The US stressed that the objectives of the CHM are better served building upon existing efforts. China called for clearly defined, simple, and explicit functions.

Many supported an open-access, web-based platform. P-SIDS, the US, and the EU queried whether the ILBI will limit the CHM to a web-based platform, noting the need to allow for technological developments. P-SIDS and Australia underlined that “open access” provisions must protect the holders of TK.

Regarding including a network of experts as part of the CHM, CLAM proposed deleting the reference. P-SIDS opined that the CHM should “cascade” information from the global to the regional and national levels and, with CARICOM, considered the importance of the network of experts and practitioners to that end. Cuba and P-SIDS emphasized the existence of networks of experts in other relevant bodies.

Switzerland considered the reference to the network misplaced, with the Russian Federation and the Republic of Korea requesting bracketing the reference. The US proposed including “contact information for a network of experts and practitioners in relevant fields.” Australia suggested defining the functions of experts before referencing a network of experts.

The EU, CARICOM, Australia, the US, the Russian Federation, China, and Switzerland suggested that specific modalities for the CHM’s operation be developed by the COP. Indonesia proposed considering the potential role of the IOC-UNESCO Secretariat.

IOC-UNESCO offered to provide a briefing on the design and development of a prototype of a CHM as a web-based platform, including a proactive network of experts. ICEL suggested referring to a “publicly available/open” platform.

**Types and content:** Regarding the content of information to be included in the CHM, CLAM, with Switzerland, suggested simplifying the provision, referring to information “with respect to the activities covered under this agreement.” P-SIDS requested removing the reference to the evaluation of information, with Canada, and simplifying provisions related to information on EIAs. New Zealand and the US supported placing types of capacity building under the relevant provision on types of CB&TT. The Philippines, opposed by the Republic of Korea, supported referring to the principle of prior informed consent in relation to TK. The Republic of Korea considered a track-and-trace MGRs mechanism to be unrealistic, with Canada requesting clarification on how such a mechanism would work. CARICOM and the US noted the need for requests for CB&TT to be addressed on a case-by-case basis. Canada requested clarification on the reference to “patent monitoring services.”

**Functions and modalities:** CLAM suggested:

- “facilitating” rather than “providing” access to related expertise;
- “providing” rather than “promoting” linkages to existing relevant CHMs, supported by G-77/China, but opposed by Japan;

- “fostering” rather than “facilitating” enhanced transparency;
- deleting reference to building on existing regional clearing-house institutions, with CARICOM and Switzerland; and
- adding functions determined by the COP.

P-SIDS noted that the CHM “shall facilitate” the list of functions included in the text, with Japan preferring “should.” Switzerland emphasized the existence of match-making capacity-building platforms, while Japan opposed the establishment of new sub-regional or regional mechanisms under the provision. The US proposed reference to “publicly available” databases, and private and non-governmental platforms.

The EU stressed that the concrete functions and tasks of the CHM should be addressed in the specific parts of the ILBI, supported by Maldives, and provided indicative language, notably on: the dissemination of MGR-related pre-cruise information and post-cruise notification; EIA documentation and information on negative screening discussions; and facilitating cooperation and coordination among states parties in relation to ABMTs.

Switzerland favored that the CHM’s operational modalities be determined and decided upon by the COP, with Turkey, Japan, the Republic of Korea, and ICEL, taking into account lessons learned from other organizations, existing information systems and databases, and potential issues of confidentiality. New Zealand proposed first addressing the CHM’s functions and then its content. The Philippines supported including provisions on the functions of the CHM in the treaty, noting additional functions may be determined by the COP.

ICEL suggested that the provision on CHM cross-reference sections of the ILBI containing CHM-related obligations.

**Additional functions:** CLAM proposed that the CHM shall “take into consideration” the special circumstances of SIDS, and, opposed by Indonesia, deleting reference to archipelagic developing states. Switzerland, the US, Canada, Australia, and New Zealand supported referencing the special circumstances of SIDS, but considered access to the CHM should be facilitated for all states parties. Canada proposed the CHM provide information related to specific programmes for SIDS.

**Governance:** CLAM, P-SIDS, and Switzerland expressed preference for the CHM to be managed by the secretariat, with CLAM proposing “without prejudice to possible cooperation with other entities.” Indonesia preferred the CHM be managed by the Secretariat of the IOC-UNESCO. The EU considered it premature to consider this question, noting, with the Russian Federation and New Zealand, the pending discussions on what entity would perform the ILBI’s secretariat functions. Canada, Australia, and the Russian Federation cautioned that the ILBI cannot impose obligations on another body.

**Confidentiality:** Israel called for stronger language, pointing to the provision on public notification and consultation related to not undermining IPRs. The US and the Russian Federation emphasized that the ILBI should not require revealing any information that would be withheld under domestic law. Canada, the Russian Federation, and New Zealand noted this provision might be better placed under general provisions. P-SIDS cautioned that references to confidentiality and copyright should not defeat the intent of the ILBI.

#### Financial Resources and Mechanism

**Funding:** Reporting on informal-informal discussions, IGC President Rena Lee, as facilitator of the informal working group on cross-cutting issues, noted some convergence of views on:

- providing funding through a range of sources;

- recognizing the special circumstances of groups of countries; and
- establishing a Voluntary Trust Fund to facilitate the participation of representatives of developing states parties.

Opinions diverged, *inter alia*, on: whether funding should be voluntary or include mandatory requirements, with some noting that funding provisions are contingent upon the substantive ones; and the modalities and uses of a potential special fund.

### Implementation and Compliance

Norway, opposed by CARICOM and Indonesia, preferred the article only address implementation, not compliance. Australia saw merit in addressing implementation and compliance in distinct articles.

On a provision that states parties shall take the necessary legislative, administrative, or policy measures to ensure the implementation of the ILBI, a number of delegations noted linkages to implementation provisions under different parts, calling for streamlining and cross-referencing. The US questioned the need for the article, pointing to the Vienna Convention on the Law of Treaties. Canada noted the value of a central provision on implementation, which would allow reducing repetition across the agreement. Indonesia proposed referring to “effective” implementation.

On a provision that each state party shall monitor the implementation of its obligations under the ILBI, CLAM proposed that each state party shall report to the COP on measures that it has taken to implement the ILBI. Switzerland referenced agreed language under the Minamata Convention on Mercury. CARICOM, the US, and Australia cautioned against burdensome reporting requirements, with Maldives and New Zealand specifically pointing to SIDS. China opposed a review by the COP and preferred information reports to be submitted to the CHM. New Zealand suggested reports be submitted at “regular” intervals and be made publicly available, and that the COP invite global, regional, and sectoral bodies to report on their implementation. Australia requested clarification on the information to be covered in the reports.

On a provision that the COP shall consider and approve cooperative procedures and institutional mechanisms to promote compliance with the provisions of the ILBI and to address cases of non-compliance, China requested deleting the reference to the COP “addressing cases of non-compliance.” The US opposed a compliance mechanism altogether. Australia and Canada expressed support for a compliance mechanism, calling for addressing non-compliance in a constructive way. The High Seas Alliance pointed to the compliance committees of the Aarhus and Espoo Conventions as examples for facilitative and assistance-oriented compliance mechanisms.

The EU, with the US and Japan, said questions related to implementation should be addressed once delegations have a better understanding of the obligations under the ILBI.

### Settlement of Disputes

Many supported establishing a dispute settlement mechanism, cautioning that dispute settlements can be very costly, especially for developing states. Some delegates supported that provisions set out in UNCLOS Part XV apply *mutatis mutandis* to any dispute between states parties. Others suggested giving relevant jurisdiction to the International Tribunal on the Law of the Sea (ITLOS), including for providing advisory opinions. Yet others favored that states parties be given the choice to select

the appropriate mechanism. Some delegations reserved their positions.

CLAM suggested an additional provision, noting that no action or activity taken on the basis of this agreement be construed or considered to be prejudicial to the positions of states parties to a land, insular, or maritime sovereignty dispute, or to a dispute concerning the delimitation of maritime areas. Switzerland underscored that maritime disputes and sovereign issues are not part of the BBNJ agreement. P-SIDS suggested an additional provision to the effect that disputes between states parties on the interpretation or application of the ILBI may be submitted to a special ITLOS chamber, whether or not they are UNCLOS parties.

South Africa suggested that if states parties to a dispute have not accepted the same procedure for the settlement of the dispute, that dispute may be submitted to ITLOS. Colombia and El Salvador did not support the provisions, noting that they do not promote universal participation. Turkey did not support any reference to UNCLOS, noting that relevant provisions can only be applied on a voluntary basis. The High Seas Alliance called for cost-effective and non-confrontational provisions.

The draft text also contained sections on: ILBI non-parties; good faith and abuse of rights; and final provisions. These issues were not considered in detail at this meeting.

### The Way Forward

On Friday, 30 August 2019, IGC President Lee opened discussions on the way forward. Supporting the conclusion of negotiations in 2020, the EU called on the IGC to move beyond stating and explaining positions, and underscored the need for: a stronger role for facilitators to promote greater interaction between delegations and promote progress on divergent views; and continued “report-back” sessions from parallel “informal-informals” to ensure collective consensus across all thematic parts of the package. For the next iteration of text, the EU requested this revised text be circulated in 2019 to allow for intersessional work; and called for the format of IGC-4 to be publicized in a timely manner.

The G-77/China supported concluding the IGC in line with the mandate and called for the revised text to reflect the Group’s submissions, including on the underpinning role of the principle of common heritage of humankind. He requested that the revised text be circulated no later than November 2019 and stressed that the text should only include those provisions that have gained the support of the majority.

The African Group acknowledged the first reading of the draft text as a positive exercise, pointing to some areas of convergence. He called for the revised draft to only include elements supported by a majority of delegations, requesting its timely release. Further, he suggested that the possibility of an IGC-5 be discussed intersessionally.

AOSIS lauded the IGC for entering the textual negotiation phase of the process; expressed satisfaction regarding the informal-informal setting; and noted that the electronic availability of textual proposals through conference room papers was a step in the right direction. Supporting intersessional work and stressing the goal of adopting an agreement in 2020, AOSIS called for an early release of the revised text.

The Pacific Islands Forum lauded the zero draft as a useful starting point for discussions; supported a similar meeting format for IGC-4; and called for a timely release of the negotiating text, preferably by the end of October 2019.

P-SIDS and Cook Islands joined the calls for an early release of the revised text, ideally by the end of October 2019, noting that the revised text should take into account areas of convergence. P-SIDS requested allowing delegations to make submission on proposals before IGC-4, to enable better preparation and a full use of the time available at IGC-4. P-SIDS further requested an early release of meeting modalities for IGC-4, noting the capacity constraints of smaller delegations, and joined others in urging further contributions to the voluntary trust fund.

The Land-Locked Developing Countries noted that having a zero draft was fundamental for the proper development of the negotiations, appreciating the efforts to move forward in a productive way. He stressed that the result must be balanced and address the concerns of all countries, taking into account their specific challenges and vulnerabilities. He underscored the need to include in the ILBI:

- the principle of the freedom of the high seas;
- the common heritage of humankind principle;
- protection and preservations of the marine environment;
- access to and fair and equitable benefit-sharing of marine resources; and
- CB&TT.

He called for recognizing the group's specific needs and circumstances, and ensuring fair access to MGRs and distribution of benefits. He emphasized that CB&TT must be mandatory and a cross-cutting element throughout the agreement, and echoed others in calling for the prompt circulation of the new draft to allow for consultations.

CARICOM called for the following steps:

- circulation of a revised negotiation text, taking into account tabled ideas, by November 2019;
- intersessional work to bridge the remaining gaps;
- the need to increase the number of "informal-informals," keeping the meetings of the informal working groups at a minimum; and
- holding parallel meetings only as strictly required and working longer hours.

Regarding the format, CLAM stressed the need to accelerate discussions with a view to reach consensus in areas with greater challenges. He highlighted the need for space for negotiating text and for avoiding duplication of discussions. He called for greater flexibility and longer working hours to allow for a first reading of the text during the first week of the meeting, stressing the need for interpretation. He further called for circulating a revised version of the text by October 2019.

Expressing commitment to work during the intersessional period, China supported the early release of the revised treaty text and requested more "informal-informal" meetings to advance negotiations.

Japan expressed a commitment to consult national stakeholders in order to find possible "landing points," and to draft new proposals intersessionally. Regarding the timeline for reaching agreement at IGC-4, Japan appreciated the "spirit", but noted that concluding a high-quality agreement that every state would like to ratify is most important, cautioning against imposing deadlines to the detriment of quality.

Canada supported the idea of a compilation document of proposals made during IGC-3, joining others in supporting that a revised text be available as soon as possible during the intersessional period. Regarding the next iteration of the text, Canada noted the challenge of finding a balance between making good progress and reflecting areas of convergence, on the one hand, and the risk of expansion, on the other, adding that "we

need to move forward without risking another round of healthy comments." Canada joined others in expressing that delegates must prepare for an IGC-4 that goes beyond stating positions, and come ready to compromise and find agreed ways forward.

The Russian Federation noted a change in dynamics, expressing hope it continues to take us together on "the long road ahead." Noting that his delegation will not "sacrifice expedience for quality," he welcomed the possibility of additional IGC sessions.

The US supported a call to receive revised text "well in advance" of IGC-4. Stressing interest to reach agreement by consensus, he supported the African Group's suggestion to discuss a potential IGC-5 during the intersessional period. He underscored the need for the revised text to reflect the principle of freedom of the high seas, and enhanced cooperation, without undermining relevant frameworks, instruments, and bodies.

Pointing to slow but steady progress, Norway acknowledged that the draft text successfully focused discussions on specific and concrete proposals. He supported continued "informal-informals," but underlined the need to ensure transparency, and inclusivity in these sessions, enabling information to flow out "so that people can know what we are doing in there." For the next iteration of the text, he expressed hope that the President would continue to focus the work of the Conference by narrowing possible options, reiterating trust by saying "the faith in this room is with you, and we do give you liberty to develop the text as a basis for our work forward."

Sierra Leone supported completion of the work by IGC-4 as mandated, called for the revised draft to be circulated in a timely manner, and emphasized the common heritage of humankind be reflected in the new text, particularly as it relates to access to, and benefit-sharing of, MGRs.

Iceland noted that the text-based discussion was useful to clarify delegations' positions, but stressed that fundamental issues have still not been addressed despite "being with us from the start of the BBNJ process." He underscored reaching consensus and universal participation. He called for a revised draft to be circulated in a timely manner, reflecting all views and interests and not only the ones of the majority as well as for the opportunity to submit new proposals, based on the revised draft, prior to IGC-4. On the modalities of IGC-4, he called for further work in small groups and "informal-informals," with few parallel meetings.

The Philippines urged delegates to go beyond business as usual to reach an agreement that benefits humankind as a whole, calling for political will and willingness to compromise. Turkey supported the modus operandi of IGC-3, stressing the need for a universal instrument and looking forward to the new draft as soon as possible, including all positions. The Republic of Korea emphasized active discussions on every article of the ILBI, stressing the need to achieve universal participation. He noted diverging views on several essential elements, hoping to focus on narrowing the differing views. Egypt emphasized the common heritage of humankind, calling for a revised text as soon as possible. Palestine highlighted process, noting the international standards and customary norms that apply in international negotiations were absolutely respected.

IGC President Lee announced that IGC-4 will convene from 23 March – 3 April 2020. She indicated that all IGC-3 textual proposals will be compiled and circulated. Responding to requests for a revised draft text, she confirmed that she would:

- seek input from the Facilitators on the content of the revised text;

- include discussions at IGC-3, including areas of convergence; and
- circulate the revised text as soon as possible.

On modalities of work for IGC-4, she indicated: support to continue the current format, including parallel “informal-informals” to “step up the pace”; and the possibility of convening stocktaking plenary sessions, rather than informal working groups, to more holistically address the four elements of the 2011 package.

### ***Other Matters***

On Friday, 30 August 2019, updating delegates on the status of the Voluntary Trust Fund for the participation of developing countries, Gabriele Goettsche-Wanli, Director, UNDOALOS, highlighted that for IGC-3, the Fund had assisted five developing country delegates out of 60 applications and underlined the importance of more contributions. Several developing countries thanked donors for their contributions to the Fund and encouraged further contributions to ensure full participation, stressing the need to ensure a balanced outcome.

### ***Closure of the Meeting***

During the closing session on Friday, 30 August, the African Union highlighted the common heritage of humankind as a cornerstone in the drawing up of the BBNJ agreement. IUCN supported the ambitious plans for intersessional work, pointing to meetings in the intersessional period to address ABMTs and MGRs. The IMO noted its willingness to support intersessional efforts by providing information or briefings on IMO instruments, regulations, programmes or procedures to negotiating states parties as needed.

IGC President Lee underlined areas of clear progress after careful consideration of the ILBI’s provisions and willingness to move forward, noting that areas exist where further work is required. She encouraged all delegates to study the proposals and use them as a catalyst to spark creative solutions that can lead to consensus at IGC-4. She welcomed the commitment to intersessional work, urging states to reach out to other delegations to find ways forward.

In closing, Lee highlighted the passion, dedication, commitment, spirit of cooperation, and willingness to listen to each other, stressing the need for achieving a balance in addressing all concerns. She drew attention to the IPBES Global Assessment report, lamenting biodiversity loss, and stressing the need for a transformative change for the oceans. She gavelled the meeting to a close at 5:17 pm.

## **A Brief Analysis of IGC-3**

“Like Jonah, the whale had swallowed me; unlike him, I believed I would spend eternity inside the belly of the beast.” Bob Kerrey, former Nebraska Governor and United States Senator

Delegates gathered once again in the very familiar setting of the United Nations Headquarters intending to make progress towards a treaty to protect and sustainably use biodiversity in the high seas. At this third of four scheduled sessions of the Intergovernmental Conference (IGC), delegates were greeted at the entrance by the tall statue of a whale entangled in marine plastics, installed by Greenpeace and the High Seas Alliance, to remind everyone, upon entering the home of multilateral decision making, of their responsibility to protect the ocean.

With calls for “switching gears and moving to negotiation mode” articulated for several years, and having exchanged views based on a “President’s Aid to Discussions” at IGC-2 in March 2019, delegates were now ready to consider the “zero draft” of an international legally binding instrument on the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction (BBNJ). The draft text prepared by IGC President Rena Lee comprised everything one would expect to find in an international treaty: it featured a total of twelve “parts,” ranging from a preamble and general provisions, such as on the use of terms, to provisions on institutional arrangements and the settlement of disputes. Dedicated parts addressed the elements of the package agreed in 2011: marine genetic resources (MGRs), including questions on benefit sharing; area-based management tools (ABMTs), including marine protected areas (MPAs); environmental impact assessments (EIAs); and capacity building and transfer of marine technology (CB&TT). Albeit being fourteen pages shorter than the earlier Aid to Discussions, this draft text was significantly more comprehensive and allowed delegates to envision the final shape of the long-awaited treaty.

Another noteworthy characteristic of IGC-3 relates to the format of the discussions: responding to the calls of many delegations at IGC-2, the meeting featured not only informal working groups, but also “informal-informals.” Most delegates seemed to think this format spurred more frank discussions and facilitated better mutual understanding of delegations’ positions on key issues in the draft text.

This brief analysis will reflect on where “inside the belly of the [BBNJ] beast” we are standing, first examining the process and then focusing on the substance, with a view to take stock of progress. This analysis will conclude by drawing together key ideas put forward by delegates and observers on how to “tame the beast” and ultimately reach agreement on how to conserve and sustainably use BBNJ.

### ***IGC-3: Process***

The process at IGC-3 changed markedly from previous meetings. For one, the existence of a zero draft allowed delegations to move away from restating general views towards making concrete textual proposals. Key in this regard was the fact that the text was circulated well in advance of the meeting. This allowed delegations to engage with the zero draft in their capitals, and, for some, consult at the regional level. As a result, IGC-3 began with many delegations submitting textual proposals on various parts of the document, compiled as numerous conference room papers (CRPs) throughout the course of the meeting. This approach found much support and many lauded the benefits of engaging in discussions on the basis of specific proposed amendments. Some emphasized it would have been helpful to have the textual proposals compiled according to the respective articles they addressed, rather than having them scattered across many CRPs. An optimistic observer even indulged in noting that “ideally, delegations would submit their textual proposals ahead of the meeting,” adding that “this would help us identify similar proposals beforehand and come to the next IGC with an idea of how to possibly bridge more diverging ones.”

On the second notable characteristic in terms of process, the informal-informal setting, views were slightly more nuanced. Delegates generally seemed to think this format was helpful, but many underscored the importance of informing delegations “as early as possible” of the working methods for the next meeting. Taking a somewhat different approach than other environmental negotiation processes, the Bureau decided to open the “informal-

informals” to a limited number of intergovernmental organizations and non-governmental organizations. Several delegations flagged the need to ensure inclusivity and transparency, with one delegate calling for information to “flow out” of the informal-informals, “so that people can know what we are doing in there,” and another stressing that the CRPs were “nowhere to be found on the meeting website,” but only accessible to those in the room.

While the informal working group was convening in a plenary layout, the “informal-informals” met in a smaller u-shaped room, which a seasoned observer noted is “essential to get delegates to actually talk to, rather than past, each other.” The question then is not whether “informal-informals” are “here to stay,” but rather how they will be arranged in the future. Smaller delegations especially expressed frustration at the sudden changes to the programme of work. “In-session changes are not the problem,” one delegate shared, “but not making these changes transparent makes it difficult for us to coordinate, especially since we can only have a few people in the room at any one time.” Some requested there be regular report backs from the “informal-informals” to give all delegations the much-needed overview of where discussions stand across the different elements of the package. One delegate explained that taking stock in plenary “would ensure that the different moving parts are not operating in a self-contained manner, but that bridges are considered across the entire package,” urging to address the draft text as a whole.

### **IGC-3: Progress**

In terms of substantive progress, delegates were pleased to finally have a draft treaty text after repeated calls for speeding up the pace of negotiations during IGC-1 and IGC-2. The general sense at the end of the meeting was also quite positive, with many delegations noting that IGC-3 allowed them to “better understand each other’s positions.” While some delegations drew attention to the urgency of reaching agreement, others pointed out that “expediency must not come at the expense of quality” and noted the importance of “bringing everyone on board.”

As the reports by the Facilitators of the five Working Groups and the respective informal-informals showed, some areas of convergence also emerged during the meeting. At the end of the IGC-3, many pointed to progress under discussions on EIAs, including suggestions to fill existing gaps and further streamline the text. There was also broad agreement on the functions of the clearing-house mechanism, which many see as a “vital information-exchange platform” to enhance the implementation of the future agreement. When referring to other relevant instruments and frameworks, delegates, for example, agreed the provision should not be limited to “existing” ones, so as to “future-proof” the agreement. With regards to ABMTs, delegates converged on the need to provide an open, inclusive, and transparent process for the consultation and assessment of proposals. On MGRs, progress was noted regarding the geographical and temporal scope of the agreement, with delegates agreeing that the agreement refers to ABNJ and that the provisions on MGRs apply only after entry into force, not retroactively. On CB&TT, delegates converged on defining a number of CB&TT objectives and the role of the clearing-house mechanism in disseminating information, including on marine technology.

However, many were quick to point out that areas where some level of convergence was reached and areas where divergence remains do not “stand on equal ground.” While there are a number of instances in which delegates converged on “addressing” a certain provision in the agreement, vast disagreement remained on the substance of such provisions,

and, more so, on the premise of the future agreement. For instance, views remain far apart in terms of the scope of the new agreement, notably on whether to include fish as a commodity or for their genetic properties—an issue that has been at the heart of negotiations from the early days of the Preparatory Committee—as well as on whether to include genetic resources collected *in situ* and *ex situ* as well as derivatives and digital sequence information associated with MGRs. Those opposed to including fish as a commodity have long pointed to existing management arrangements. Those in favor point to the lack of global management and oversight of this sector, with several developing countries “left vulnerable” to depleting fish stocks within their national jurisdiction, which have been overexploited by others in areas beyond national jurisdiction.

With this debate still up in the air, a number of delegations noted that discussions have not yet moved past the status quo, with several closing statements reflecting some of the underlying, or overarching, tensions. Will the future agreement be grounded in the principle of the common heritage of humankind, freedom of the high seas, or a combination of the two principles? Will measures be addressed at a global or regional level? Will benefit-sharing be fair and equitable, mandatory or voluntary, of a non-monetary nature or also include monetary benefit-sharing? “It is interesting to have moved into detailed textual negotiations without having addressed these issues,” shared one observer, adding “it will require a lot more to fully flesh out the agreement.”

### **Looking Ahead to IGC-4**

On the way forward, it was clear that President Lee will have her work cut out for her as she tries to “balance the revised negotiating text, including suggestions that are sometimes completely contradictory.” During the closing session, there were calls for narrowing down the number of textual alternatives, drawing on the Facilitators’ assessment of discussions held at IGC-3. Some suggested focusing on the options that received broadest support, with others emphasizing the importance of reflecting fundamentally divergent alternatives. While many appreciated the effort to ensure that this process is “member state driven,” it was also clear that delegates want, and trust, IGC President Lee to craft a more streamlined iteration of the draft agreement. With the support and trust of the Conference behind her, Lee was urged to submit a revised draft before the end of 2019, at the very latest.

There is also “an evident appetite for intersessional work,” as one observer noted, who pointed to the EU’s announcement that it would hold several workshops to support the negotiations, including one on EIA in January 2020. Several calls were also heard for the Facilitators to take a more active role at future meetings in promoting greater interaction between the delegations and identify bridging opportunities.

Looking ahead, some mentioned the Espoo and the Aarhus Conventions as examples of facilitative compliance mechanisms to draw from, and others noted the role of “Friends of the Chair” groups to facilitate in-session iterations of text. Several praised the “Friends of Traditional Knowledge” as a first example to emulate in future. In this new stage of negotiations, “we should perhaps look to see how best to manage the work,” opined one delegate, “I know some processes where small discussions on the margins of the meeting on relevant text are encouraged to facilitate convergence.”

Throughout the meeting, delegates were cognizant of the need to keep up with advances in knowledge, with many pointing to recent Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) Global Assessment on Biodiversity and Ecosystem Services findings and the upcoming Intergovernmental Panel on Climate Change (IPCC) report on the Ocean and Cryosphere in a Changing Climate. “As we address the details, we must not lose sight of the big picture,” stressed one delegate, underlining the need for a balance between conservation and sustainable use measures.

Some remained hopeful that negotiations on this treaty will be concluded at IGC-4. However, several others suggested that “we need to make a plan for a fifth meeting,” noting that divergence still prevails on a raft of issues, which “will take more than one meeting to address.” In this regard, others were open to the whispered suggestions to move future discussions away from New York. “Maybe a new setting will inspire us to find the needed common ground,” hoped an observer, although he cautioned that a move to a new venue “should not be a reason to force the adoption of a half-baked agreement.”

As delegates left New York, there was a general sense of optimism for IGC-4. One delegate, leaving plenary shared “With the text before us, and another chance to have frank, open discussions, we are finally heading in the right direction” to address the lacuna in the conservation and sustainable use of biodiversity in the high seas.

### Upcoming Meetings

#### **46th session of the Joint Group of Experts on the Scientific Aspects of Marine Environmental Protection (GESAMP):**

The meeting will be co-hosted by UNDOALOS and the UN Development Programme. On 10 September, GESAMP will celebrate its 50th anniversary. **dates:** 8-12 September 2019 **location:** UN Headquarters, New York **www:** <http://www.gesamp.org/meetings/46th-session-of-of-gesamp>

**OceanObs’19 – An Ocean of Opportunity:** This meeting is a community-driven global conference to communicate decadal progress of ocean observing networks and chart innovative solutions to society’s growing needs for ocean information in the coming decade. **dates:** 16-20 September 2019 **location:** Honolulu, Hawaii, US **www:** <http://www.oceanobs19.net>

**IPCC-51:** The 51st session of the IPCC is expected to approve the summary for policymakers of the Special Report on the Ocean and Cryosphere in a Changing Climate. **dates:** 20-23 September 2019 **location:** Monaco **www:** <https://www.ipcc.ch/meeting-doc/2nd-joint-session-wgi-ii-ipcc51/>

**CBD Regional Workshop to Facilitate the Description of EBSAs in the North-East Atlantic Ocean and Training Session on EBSAs:** Preceded by a training session on EBSAs on 22 September, this workshop will facilitate the description of EBSAs through application of the scientific criteria in Annex I of Decision IX/20, and CBD Decision 14/9, in which the COP invited parties to submit descriptions of areas that meet the criteria for EBSAs in the North-East Atlantic. **dates:** 22-27 September 2019 **location:** Stockholm, Sweden **www:** <https://www.cbd.int/meetings/EBSA-WS-2019-01>

**UN 2019 Climate Summit:** UN Secretary-General António Guterres will convene the UN Climate Summit under the theme “A Race We Can Win. A Race We Must Win,” to mobilize political and economic energy at the highest levels to advance climate action. **date:** 23 September 2019 **location:** UN Headquarters, New York **www:** <http://www.un.org/climatechange/>

**SDG Summit:** The High-level Political Forum on Sustainable Development (HLPF), under the auspices of the UN General Assembly, will assess progress achieved so far since the adoption of the 2030 Agenda for Sustainable Development in September 2015 and provide leadership and guidance on the way forward that will help accelerate implementation of the 2030 Agenda and the Sustainable Development Goals (SDGs). **dates:** 24-25 September 2019 **location:** UN Headquarters, New York **www:** <https://sustainabledevelopment.un.org/sdgs Summit>

**Marine Regions Forum 2019:** The theme “Achieving a healthy ocean - Regional ocean governance beyond 2020” aims to develop clear recommendations, catalyze actionable outputs, and build partnerships for stronger regional ocean governance in support of SDG 14 “Life Below Water,” the Marine Regions Forum will provide a space for decision-makers, scientists, and civil society from around the world to discuss solutions for ocean health. The Forum will feature interactive plenary and parallel dialogue sessions. **dates:** 30 September - 2 October 2019 **location:** Berlin, Germany **www:** <https://www.prog-ocean.org/marine-regions-forum/>

**Global Capacity-building workshop on Monitoring the Utilization of Genetic Resources under the Nagoya Protocol:** This meeting will provide an overview of the system for monitoring the utilization of genetic resources under the Nagoya Protocol; share country experiences on monitoring the utilization of genetic resources; and look ahead to develop road maps for enhancing national systems to monitor the utilization of genetic resources. **dates:** 30 September – 2 October 2019 **location:** Bonn, Germany **www:** <https://www.cbd.int/meetings/NP-CB-WS-2019-01>

**Deep CCZ Biodiversity Synthesis Workshop:** The International Seabed Authority (ISA) and the Deep Clarion-Clipperton Zone (CCZ) Project (University of Hawaii) will convene an expert workshop on Deep CCZ Biodiversity Synthesis with financial support from the Gordon & Betty Moore Foundation, the Pew Charitable Trusts, and the University of Hawaii. The workshop aims to review and analyze recent seafloor ecosystem data from the CCZ to synthesize patterns of biodiversity, community structure, species range, genetic connectivity, ecosystem function, and habitat heterogeneity along and across the CCZ, and to assess the representativity of the Areas of Particular Environmental Interest relative to exploration contract area. **dates:** 1-4 October 2019 **location:** Friday Harbor, Washington, US **www:** <https://www.isa.org.jm/workshop/deep-ccz-biodiversity-synthesis-workshop>

**51st Session of the Commission on the Limits of the Continental Shelf:** The 51st session of the Commission on the Limits of the Continental Shelf will convene for seven weeks. The session will only include meetings of the sub-commissions. **date:** 14 October - 29 November 2019 **location:** UN Headquarters, New York **www:** [https://www.un.org/depts/los/reference\\_files/calendar\\_of\\_meetings.htm](https://www.un.org/depts/los/reference_files/calendar_of_meetings.htm)

**III Latin American and Caribbean Congress of Protected Areas:** The III Latin American and Caribbean Congress of Protected Areas will be held under the theme, “Solutions for Welfare and Sustainable Development.” An initiative of the IUCN and its World Commission on Protected Areas, the Congress provides a space for exchange of experience and debate on the formulation and implementation of public policies. The meeting will address, *inter alia*: well-being and protected areas and linkages with the SDGs; protected areas’ contribution to climate change mitigation and adaptation; and coastal and

marine conservation and sustainability. **dates:** 14-17 October 2019 **location:** Lima, Peru **www:** <https://www.areasprotegidas-latinoamerica.org/>

**Sixth Our Ocean Conference:** The sixth Our Ocean Conference will highlight the importance of knowledge as the basis of our actions and policies to ensure sustainable future economic growth. The conference will bring together leaders from government, business, civil society, and research institutions to share their experience, identify solutions, and commit to action for a clean, healthy, and productive ocean. **dates:** 23-24 October 2019 **location:** Oslo, Norway **www:** <https://ourocean2019.no/>

#### Thematic Consultation on Marine and Coastal

**Biodiversity:** The Secretariat of the CBD will convene a thematic consultation on marine and coastal biodiversity for the post-2020 global biodiversity framework, with financial support from the Government of Sweden. The outputs of the consultation will form the basis of a report, which will serve as input to the formal process and deliberations under the Convention on the post-2020 global biodiversity framework. **dates:** 13-15 November 2019 **location:** Montreal, Canada **www:** <https://www.cbd.int/meetings/POST2020-WS-2019-10>

#### Workshop on the REMP for the Area of the Northern

**Mid-Atlantic Ridge:** The ISA, in collaboration with the Atlantic REMP Project and the Government of Portugal, will convene the first workshop on regional environmental management plans (REMPs) for the Area of the Northern Mid-Atlantic Ridge (MAR). The workshop aims to review and analyze seafloor and water column ecosystem data from MAR. **dates:** 25-29 November 2019 **location:** Evora, Portugal **www:** <https://www.isa.org.jm/workshop/workshop-regional-environmental-management-plan-area-northern-mid-atlantic-ridge>

#### 26th Session of the ISA Assembly and the ISA Council

**(Part I):** The ISA Council will continue discussions on, *inter alia*, the election of members of the Legal and Technical Commission (LTC), the payment mechanism, and the draft exploitation regulations. **dates:** between 17 February - 6 March 2020 (TBC) **location:** Kingston, Jamaica **www:** <https://www.isa.org.jm/sessions/26th-session-2020>

#### Second meeting of the CBD Open-ended Working Group

**on the Post-2020 Framework:** This meeting will develop a preliminary text of the post-2020 global biodiversity framework for further elaboration at the third post-2020 Working Group. **dates:** 24-28 February 2020 **location:** Kunming, China **www:** <https://www.cbd.int/conferences/post2020>

**BBNJ IGC-4:** This session will continue to negotiate issues related to the conservation and sustainable use of BBNJ, in particular, MGRs, including questions on the sharing of benefits, MPAs, EIAs and CB&TT. **dates:** 23 March - 3 April 2020 **location:** UN Headquarters, New York **www:** <https://www.un.org/bbnj/>

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

## 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 transfer of marine technology
CBD	Convention on Biological Diversity
CHM	Clearing-house mechanism
CLAM	Core Latin American Countries
COP	Conference of the Parties
DSI	Digital sequence information
EBSAs	Ecologically or biologically significant marine areas
EEZ	Exclusive economic zones
EIA	Environmental impact assessment
FAO	Food and Agriculture Organization of the UN
ICEL	International Council on Environmental Law
ICPC	International Cable Protection Committee
IGC	Intergovernmental Conference
ILBI	International legally binding instrument
IMO	International Maritime Organization
IOC-UNESCO	Intergovernmental Oceanographic Commission of the UN Educational, Scientific and Cultural Organization
IPBES	Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services
IPCC	Intergovernmental Panel on Climate Change
IPLCs	Indigenous peoples and local communities
IPRs	Intellectual property rights
ISA	International Seabed Authority
IUCN	International Union for Conservation of Nature
MATs	Mutually agreed terms
MGRs	Marine genetic resources
MPAs	Marine protected areas
MSR	Marine scientific research
OECMs	Other effective conservation measures
P-SIDS	Pacific small island developing states
SEAs	Strategic environmental assessments
SIDS	Small island developing states
TK	Traditional Knowledge
UNCLOS	United Nations Convention on the Law of the Sea
UNDOALOS	United Nations Division for Ocean Affairs and the Law of the Sea
UNEP	United Nations Environment Programme