



SUMMARY OF THE SECOND SESSION OF THE PREPARATORY COMMITTEE ON MARINE BIODIVERSITY BEYOND AREAS OF NATIONAL JURISDICTION: 26 AUGUST – 9 SEPTEMBER 2016

The second session of the Preparatory Committee (PrepCom 2) on the elements of a draft text of an international legally binding instrument (ILBI) under the UN Convention on the Law of the Sea (UNCLOS) on the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction (BBNJ) convened from 26 August – 9 September 2016 at UN Headquarters in New York. Delegates met in plenary and in informal working groups to consider: marine genetic resources, including questions on benefit-sharing; measures such as area-based management tools, including marine protected areas; environmental impact assessments; capacity building and marine technology transfer; and cross-cutting issues, such as the scope of an ILBI, its relationship with other instruments, and its guiding principles.

PrepCom 2 lived up to the expectations raised by the constructive dialogue at PrepCom 1 in March-April 2016. Delegations offered increasingly detailed proposals on the possible elements of an ILBI, and engaged in a preliminary identification of possible areas of convergence of views and of issues requiring further discussion. In addition, delegations requested the preparation of a Chair’s non-paper drawing from the statements made at PrepCom 2 and from further electronic submissions by early December 2016, in order to guide intersessional preparations for PrepCom 3.

The General Assembly during its 71st session will determine the dates of the next sessions of the PrepCom in order to fulfill its mandate to make substantive recommendations to the General Assembly at its 72nd session, which will decide whether to convene an intergovernmental conference to elaborate the text of the ILBI.

A BRIEF HISTORY OF MARINE BIODIVERSITY BEYOND AREAS OF NATIONAL JURISDICTION

The conservation and sustainable use of BBNJ is increasingly attracting international attention, as scientific information, albeit insufficient, reveals the richness and vulnerability of such

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

UNCLOS, which entered into force on 16 November 1994, sets forth the rights and obligations of states regarding the use of the oceans 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 CBD applies to processes and activities carried out under the jurisdiction or control of its parties. The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization, which entered into force on 12 October 2014, applies to genetic resources within the scope of CBD Article 15 (Access to Genetic Resources) and to traditional knowledge associated with genetic resources within the scope of the Convention.

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59TH SESSION OF THE GENERAL ASSEMBLY: In resolution 59/24, the General Assembly in 2004 established an *ad hoc* open-ended informal working group to study issues relating to the conservation and sustainable use of BBNJ (hereinafter, the Working Group), and called upon states and international organizations to take action urgently to address, in accordance with international law, destructive practices that have adverse impacts on marine biodiversity and ecosystems.

FIRST TO THIRD MEETINGS OF THE WORKING GROUP: The Working Group met three times between 2006 and 2010 (13-17 February 2006, 28 April-2 May 2008 and 1-5 February 2010) in New York) to exchange views on institutional coordination, the need for short-term measures to address illegal, unregulated and unreported (IUU) fishing and destructive fishing practices, marine genetic resources (MGRs), marine scientific research (MSR) on marine biodiversity, high seas marine protected areas (MPAs), and environmental impact assessments (EIAs).

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

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

UN CONFERENCE ON SUSTAINABLE DEVELOPMENT (RIO+20): The UN Conference on Sustainable Development (20-22 June 2012, Rio de Janeiro, Brazil) expressed the commitment of states to address, on an urgent basis, building on the work of the Working Group and before the end of the 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.

SIXTH MEETING OF THE WORKING GROUP: The sixth meeting of the Working Group (19-23 August 2013, New York) resulted in a consensus recommendation on establishing a preparatory process within the Working Group to fulfill the Rio+20 commitment by focusing on the scope, parameters and feasibility of an international instrument under UNCLOS, calling for the Working Group to be convened twice in 2014 and at least once in 2015, with a view to preparing a decision on BBNJ by the General Assembly before the end of its 69th session.

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

69TH SESSION OF THE GENERAL ASSEMBLY: In its resolution 69/292, the General Assembly decided to develop an ILBI under UNCLOS on the conservation and sustainable use of BBNJ. To that end, the Assembly established a Preparatory Committee (PrepCom), to make substantive recommendations to the General Assembly on the elements of a draft text of an ILBI under UNCLOS, taking into account the various reports of the Co-Chairs on the Working Group’s work; and for the Assembly to decide at its 72nd session whether to convene an intergovernmental conference to elaborate the text of the agreement. The resolution also indicated that negotiations will address topics identified in the 2011 “package.”

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

PREPCOM 2 REPORT

On Friday, 26 August, Chair Eden Charles (Trinidad and Tobago) opened the session, calling on delegations to build on the work done at PrepCom 1, and highlighting an indicative list of questions circulated prior to PrepCom 2 to guide discussions. He suggested “parking” issues on which there is, or seems to be, consensus for the PrepCom to discuss at a future session. Stephen Mathias, Assistant Secretary-General, UN Office of Legal Affairs, reported on recent international oceans-related developments. Gabriele Goettsche-Wanli, Director, UN Division of Ocean Affairs and the Law of the Sea (UNDOALOS) reported that contributions to the Voluntary Trust Fund were received from the Netherlands, New Zealand and Finland, which will be available for PrepCom 3, and encouraged further contributions.

Chair Charles introduced, and delegates approved, the provisional agenda (AC.287/2016/PC.2/L.1) with an oral amendment to add an agenda item on the election of Bureau members to replace Giles Norman (Canada) and Kaitaro Nonomura (Japan), as well as the programme of work (AC.287/2016/PC.2/L.2). Chair Charles noted that, following the programme of work of PrepCom 1, informal working groups will reconvene at PrepCom 2 with the same facilitators. Kiribati, for Asia-Pacific, nominated Jun Hasebe (Japan) and the Netherlands, for Western Europe and Others, nominated Catherine Boucher (Canada) as members of the Bureau. Margo Deiy (Nauru) was

elected as the new member of the Bureau for Asia-Pacific to replace Hasebe, who will retire before PrepCom 3.

Underscoring the need to meet the General Assembly resolution 69/292 deadline and “to avoid the situation that occurred on the final night of the Nagoya Protocol negotiations,” Chair Charles called on delegations to offer specific language proposals at PrepCom 2, clarifying that treaty language will be developed at the intergovernmental conference to be convened by the General Assembly. He proposed submitting a compilation of proposals to PrepCom 3, together with his reflections on PrepCom 2, and temporarily “parking” elements on which convergence is, or seems to be, emerging, to focus discussions on more contentious issues. Upon request from delegations, Chair Charles circulated written notes of his understanding of possible areas of convergence of views and possible issues for further discussion, emanating from each working group. Following discussion in plenary, revised written notes were circulated and discussed during the closing plenary on Friday, 9 September, with the exception of a note on cross-cutting issues, which will be circulated during the intersessional period.

MARINE GENETIC RESOURCES

This item was addressed in an informal working group, facilitated initially by Chair Charles and then by Carlos Sobral Duarte (Brazil), on Friday, 26 August, and Monday, 29 August; and in plenary on Thursday and Friday, 1-2 September. Discussions focused on: the definition of MGRs, including the possible inclusion of derivatives, data (*in silico*), and fish; approaches; access; benefit-sharing; and intellectual property rights (IPRs).

DEFINITIONS: Ecuador underscored the need to define BBNJ, noting that it could facilitate agreement on MGRs. Pacific Small Island Developing States (PSIDS) called for including a definition of traditional knowledge. Australia highlighted the need for coherence, favoring definitions that combine CBD and Nagoya Protocol definitions. The European Union (EU) favored the definitions contained in CBD Article 2 and in the Nagoya Protocol. New Zealand preferred definitions from the Nagoya Protocol. Japan deemed the discussion on definitions premature. Singapore, Canada and New Zealand called for working definitions, which can be reviewed as discussions progress. Japan opposed amending existing definitions in the PrepCom context. The Russian Federation, opposed by Chile, warned delegations about the legal implications of adapting definitions from other instruments. Chair Charles suggested, and delegates agreed, referring to possible convergence on drawing on definitions contained in existing instruments, without mention of the potential need to adapt these definitions, so the issue was “parked.”

MGRs, derivatives and data: The Federated States of Micronesia (FSM), supported by the Caribbean Community (CARICOM), Algeria, Singapore and the Philippines, suggested adapting CBD Article 2 by including the word “marine.” Mauritius suggested defining MGRs as “resources extracted from living organisms in the sea, including fish species and marine plants, recognized as forming part of marine biodiversity.” PSIDS underscored that bioprospecting and MSR should be elements of the working definition of MGRs. Mexico cautioned against creating a separate regime for MSR and

applied MSR. The International Union for the Conservation of Nature and Natural Resources (IUCN) recommended including *in situ*, *ex situ* and *in silico* in a definition of MGRs, as well as derivatives, and defining resources *in silico* as “data containing DNA, RNA, proteins or enzymes.”

Costa Rica suggested as a possible working concept of MGRs “material and/or data of marine plant, animal, microbial or other origin, derivatives and/or data thereof found in or originating from the high seas or the Area, containing functional units of heredity with actual or potential value of their genetic sources.” China emphasized the lack of consensus on including derivatives. The Republic of Korea underscored the need to distinguish between genetic resources and derivatives. Japan argued that acquiring genetic information from another country without the genetic resource is beyond the scope of the Nagoya Protocol, and that genetic data should not be included in the ILBI.

Venezuela called for the ILBI to include the Nagoya Protocol definition of derivatives, with the African Group noting that Nagoya Protocol Article 2 definitions should be adapted to the ILBI context.

The US proposed definitions of: MGRs as “any marine genetic material of plant, animal or microbial origin of actual or potential value collected from the Area”; and marine genetic material as “any material of plant, animal or microbial origin containing functional units of heredity, collected from the Area,” highlighting the exclusion of derivatives and of information describing material, such as genetic sequence data.

Several countries highlighted that derivatives are included in the definition of “biotechnology,” which is in turn included in the definition of “utilization of genetic resources” under the Nagoya Protocol.

Costa Rica presented two options: a general definition of MGRs as “any living resources including of marine plant, animal, microbial or other origin, found in or originating from ABNJ and containing functional units of heredity, as well as any material derivatives and data thereof with actual or potential value”; and separate definitions of MGRs and utilization to be used in tandem, with MGRs as “any living resources including of marine plant, animal, microbial or other origin, found in or originating from ABNJ and containing functional units of heredity” and utilization of genetic resources as “conduct of research and development (R&D) on the genetic and/or biochemical composition of genetic resources, including through the application of biotechnology as defined in CBD Article 2 and in line with the Nagoya Protocol.”

In plenary, Costa Rica reported on informal discussions on definitions, pointing to three options: first, including concepts from the CBD, as well as derivatives and data as enshrined in the Nagoya Protocol; second, referring to the definition of MGRs in the CBD, as well as providing a definition of utilization and a footnote referring to data, since this is not explicitly included in the Nagoya Protocol; and third, including definitions of MGRs, their utilization, biotechnology, and derivatives. Thailand, for the Group of 77 and China (G-77/China), agreed on the usefulness of a definition of MGRs, so the issue was “parked.” The US requested further discussions on derivatives and, supported by Japan, on resources *ex situ* and *in silico*.

Fish: South Africa, for the African Group, suggested including fish in the definition of MGRs. Bangladesh reminded delegates that under the CBD, genetic material means any material of plant, animal, microbial or other origin containing functional units of heredity. The US, supported by Canada, Iceland and the Republic of Korea, stressed that fish used for their genetic properties should be treated as any other organism used for the same purpose, but fish used as a commodity is addressed by other legal frameworks. Japan underscored that biological resources used as commodities in trade are out of the scope of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGR) and the CBD. Chile and IUCN favored differentiating fish used as a commodity. The Russian Federation opposed including fish under the ILBI, noting that living resources cannot fall under the common heritage of humankind principle, and cautioned against using definitions from the CBD or the Nagoya Protocol, as the scope is different. Iceland noted that due to lack of convergence this issue should not be “parked.”

APPROACHES: The G-77/China pointed to the common heritage principle as the legal foundation for benefit-sharing under the ILBI, highlighting the potential for scientific development, health and global welfare. Jamaica noted that the common heritage principle encompasses: peaceful use, non-appropriation, future generations, and equitable benefit-sharing. The Maldives, for the Alliance of Small Island States (AOSIS), underscored special needs of small island developing states (SIDS) and the need for: capacity building; sharing benefits from MSR; and equitable and just mechanisms for monetary and non-monetary benefit-sharing.

The African Group noted that common heritage and freedom of the high seas are not mutually exclusive, with CARICOM recalling that high seas freedoms are not absolute. Nauru, for the PSIDS, highlighted: common heritage of mankind; the development of a trust fund for developing countries, with particular consideration for SIDS; capacity building for SIDS; and benefit-sharing with indigenous peoples from the utilization of traditional knowledge, drawing from the Nagoya Protocol. The FSM, supported by Iran and Kenya, proposed language from UNCLOS on the use of MGRs in ABNJ being reserved for peaceful purposes. Focusing on land-locked countries, Nepal stressed that high seas freedoms and transit are interdependent.

The EU, supported by the US, Australia, Norway, Bangladesh and Iran, favored a pragmatic approach. Canada proposed discussing the benefits associated with the common heritage principle. Norway highlighted the list of benefits under the Nagoya Protocol and suggested providing a menu of potential benefits under the ILBI, as well as including a duty to use environmentally sound bioprospecting operations. Bangladesh pointed to UNCLOS Article 82 (payments and contributions with respect to the exploitation of the outer continental shelf), as a possible basis for discussion on benefit-sharing.

Japan reiterated that MGRs cannot be recognized as common heritage since UNCLOS includes benefit-sharing language only for mineral resources. IUCN underscored the common concern of humankind principle, stressing the need for publicly available information and data, legal certainty, CB&TT, and greater transparency. Chair Charles noted lack of agreement

on parking the issue. Stating that her country cannot accept the common heritage principle in the ILBI, the Russian Federation recommended including high seas freedoms. Japan, with the US, requested further discussions on the common heritage principle and on “equitable” benefit-sharing, noting that the kind of benefit-sharing under the ILBI is still under discussion. During the final plenary, on Friday, 9 September, the US noted that the discussion on whether the common heritage principle and high seas freedoms are mutually exclusive or could apply concurrently in an international instrument was too broad, suggesting, opposed by the African Group, adding “as related to MGRs.”

ACCESS: Costa Rica underscored the International Seabed Authority (ISA) should be the administrative agency, and criteria for curating samples should include a clearinghouse mechanism with access to genetic data and a protocol to ensure environmental protection. Argentina underscored the need for traceability and transparent mechanisms, pointing to Nagoya Protocol Article 17 on internationally recognized certificates.

The US reiterated that, under the high seas regime, anyone can freely access MGRs of ABNJ in accordance with international law. Japan cautioned against introducing restrictions to access to MGRs, as well as a monetary benefit-sharing mechanism, noting they could hinder R&D useful for humanity as a whole, including future generations. The EU noted that: no international organization has the mandate to regulate access; access should be conducive to research; administrative burdens should be avoided; and due regard should be given to the interest of all states, the international community and future generations.

BENEFIT-SHARING: Opposed by the African Group, the US proposed deleting a reference to a benefit-sharing “mechanism,” or adding “if any,” noting that the idea of a mechanism had not been fully discussed. Costa Rica, with Ecuador, favored a reference to a benefit-sharing “regime.” Bangladesh proposed a general reference to the sharing of benefits in line with the PrepCom’s mandate. Eritrea noted that benefit-sharing does not occur in a vacuum and requires a mechanism through which to operate, and encouraged delegates to consider ecosystem services with regard to benefit-sharing. Canada cautioned against engaging in a drafting exercise, with Mexico, supported by the FSM, proposing that the question of whether to establish a benefit-sharing mechanism should be included among issues requiring further discussion.

Monetary and non-monetary benefits: Costa Rica underscored that benefit-sharing should include monetary benefits upon commercialization, as well as non-monetary benefits. Venezuela said that monetary benefits could derive from IPRs or a tax regime, but noting difficulties related to applying IPRs to MGRs, he indicated that a flat tax could benefit all states. CARICOM suggested considering four existing models: UNCLOS provisions on MSR, CBD and Nagoya Protocol, ITPGR, and the Antarctic Treaty System. The US did not support a benefit-sharing regime for MGRs in the water column. Australia suggested: recognizing the length of time from extraction to exploitation of MGRs; recalling that benefit-sharing can include, *inter alia*, access to the scientific process and research results; and recognizing that particular types of benefits can be shared at particular points. Jamaica

avored sharing both monetary and non-monetary benefits, including through strengthening developing countries' research capabilities, and considering the ITPGR approach to monetary benefits. Bangladesh stressed that any new proposal on benefit-sharing must be linked to UNCLOS Article 82, with Iran recalling that Article 82 was the result of compromise between a broad and a restrictive definition of the continental shelf.

The G-77/China noted that non-monetary benefits could be linked to CB&TT and the facilitation of MSR on MGRs. The US expressed willingness to discuss potential non-monetary benefit-sharing options, in particular related to achieving conservation objectives, without creating operational inefficiencies and obstructing beneficial R&D activities. Singapore called for genetic data sharing as a form of benefit-sharing. Delegates agreed to "park" the issue of benefit-sharing for non-monetary benefits.

Traditional knowledge: The FSM underscored the need for prior consultations with indigenous peoples and local communities (IPLCs) concerning their traditional knowledge, with the Nagoya Protocol providing a model. PSIDS added that traditional knowledge associated with MGRs must be accessed or used with the active involvement of IPLCs and any benefits must be shared fairly with traditional knowledge holders. Venezuela called for the ILBI to consider IPLCs' needs. Cameroon sought clarification on IPLCs' rights in the high seas. During the final plenary, PSIDS reiterated the proposal to add the role of traditional knowledge as an issue for further discussion.

Contributions to conservation and sustainable use: Following consultations, the EU, supported by Japan and by the G-77/China in principle, suggested noting that "benefit-sharing should contribute to conservation and sustainable use." The G-77/China noted that BBNJ conservation and sustainable use is cross-cutting in the ILBI. PSIDS suggested that benefit-sharing "could," rather than "should," contribute to conservation and sustainable use. The FSM questioned whether some marine research benefits, like medicinal advances, would qualify as conservation and sustainable use.

During the final plenary, the EU, supported by Japan, Morocco, the US, Costa Rica, Canada, Cook Islands and Venezuela, supported including among the possible areas of convergence that benefit-sharing "should" contribute to BBNJ conservation and sustainable use. Algeria preferred stating that benefit-sharing "could" contribute to conservation and sustainable use. The FSM, supported by CARICOM and Morocco, but opposed by the EU, suggested that benefit-sharing "should also" contribute to conservation and sustainable use. Delegates agreed to leave the two options as alternatives. PSIDS, supported by Argentina, Costa Rica, CARICOM, the US and Canada, suggested adding that "benefit-sharing should/could be beneficial to current and future generations, build capacity to access MGRs of ABNJ and not be detrimental to R&D," with Costa Rica proposing that it be listed as a separate issue. Japan supported text noting that benefit-sharing "should" be beneficial to current and future generations, build capacity to access MGRs of ABNJ and not be detrimental to R&D.

INTELLECTUAL PROPERTY: The G-77/China called for a study of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) and CBD provisions. Iran

called for a mandatory disclosure requirement of the origin of genetic resources in patent applications, with Algeria linking it to fairness in information gathering. Argentina recommended a mandatory declaration of origin of MGRs found in, or originated from, ABNJ and an internationally recognized certificate inspired by Nagoya Protocol Article 17. Venezuela suggested convening a working group, within the informal working group, to address IPRs. Switzerland noted that the PrepCom is not a forum for discussing IPRs, recommending leaving these discussions to the World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO), with Japan adding that there is no need to refer to IPRs in the ILBI. Algeria opined that the PrepCom is the appropriate forum, since WIPO negotiations do not include ABNJ. Chile noted that work under WIPO could be relied upon in the common heritage context.

Final Outcome: According to the Chair's understanding, possible areas of convergence of views include:

- the usefulness of agreeing on working definitions of MGRs and other key concepts at the preliminary stage;
- the usefulness of drawing on definitions contained in existing instruments;
- benefit-sharing for non-monetary benefits;
- respect for coastal states' rights over their continental shelf;
- benefit-sharing should/could contribute to BBNJ conservation and sustainable use; and
- benefit-sharing should/could be beneficial to current and future generations, build capacity to access MGRs of ABNJ, and not be detrimental to R&D.

According to the Chair's understanding, possible issues requiring further discussion include whether to:

- take into account the distinction between fish used for genetic properties and fish used as a commodity, when developing a definition;
- consider that the common heritage of humankind and the freedom of the high seas are mutually exclusive or could apply concurrently;
- include access to resources *ex situ* and *in silico* in an access and benefit-sharing (ABS) regime;
- include derivatives in the scope;
- regulate access to MGRs of ABNJ;
- include monetary benefits;
- include MGRs of the water column in ABNJ in a benefit-sharing regime;
- have a benefit-sharing mechanism;
- address IPRs; and
- address the role of traditional knowledge.

AREA-BASED MANAGEMENT TOOLS

This item was first addressed in an informal working group, facilitated by John Adank (New Zealand), on Monday and Tuesday, 29-30 August, and in plenary on Friday, 2 September, and Tuesday, 6 September. Discussions focused on definitions, approaches, transboundary EIAs (TEIAs), strategic environmental assessments (SEAs), and governance.

DEFINITIONS: The G-77/China called for adapting global, regional and sectoral definitions of ABMTs to ABNJ, and for defining MPAs and marine spatial planning (MSP). The African Group noted sectoral and cross-sectoral ABMTs. The US called attention to the work of regional fisheries management

organizations (RFMOs) and the CBD in defining ABMTs. Chile favored an overarching definition of ABMTs. The FSM proposed drawing on CBD Decision VII/5 for defining ABMTs as “geographically defined tools beyond the limits of national jurisdiction, which are designated or regulated and managed to achieve specific conservation and/or sustainable use objectives, including the use of customary practices to protect associated cultural values.”

China proposed enumerating ABMT elements, including an objective related to protecting and sustainably using marine biodiversity, geographical scope and management approaches. New Zealand indicated as the objective of MPAs the long-term conservation of biodiversity and ecosystems, while other ABMTs could primarily have other purposes, such as resource management. Australia underscored the importance of SEAs in identifying the places and circumstances for applying ABMTs. Canada underscored the importance of the relationship between the ILBI and existing instruments.

Costa Rica suggested, as a working concept for ABMTs, “regulation of human activity and/or measures to achieve biodiversity conservation and sustainable use or resource management objectives in a specific area.” Venezuela suggested that the definition should be based on existing concepts, with Fiji noting that not every tool is universally defined or applicable. The North-East Atlantic Fisheries Commission (NEAFC) underscored that ABMTs by RFMOs are functioning well and that the ILBI should enhance harmony between tools of different sectoral bodies, rather than define ABMTs. Norway, supported by Chile, suggested further discussing definitions, following consideration of specific conservation needs, with China arguing that a definition of ABMTs should be very broad.

MPAs: The EU suggested adapting the CBD definition of protected areas as “a geographically defined marine area, which is designated or regulated and managed to achieve specific conservation objectives, ultimately contributing to attaining the sustainable use of marine biodiversity.” CARICOM called attention to language on MPAs, as well as on inclusion of threatened and endangered species in the Protocol concerning Specially Protected Areas and Wildlife to the Cartagena Convention on the marine environment of the Wider Caribbean Region.

Japan called for encompassing both conservation and sustainable use in defining MPAs, and providing for the revision and termination of MPAs when their goal is achieved. The Russian Federation suggested temporarily establishing MPAs on the basis of reliable data on the need to protect such an area, and periodic review.

Costa Rica suggested a working concept of MPAs as “a clearly defined geographic space recognized, dedicated and managed through legal and other effective means to achieve the conservation of biodiversity, ecosystem services and other cultural values.” IUCN proposed including in the MPA definition explicit reference to the primary aim of long-term conservation of biodiversity and associated ecosystem services.

Reserves: The High Seas Alliance and the Natural Resource Defense Council (NRDC) favored adapting CBD and IUCN definitions, also including cultural values; and, supported by Greenpeace, defining marine reserves as “areas of the ocean

completely protected from all extractive and destructive activities.” NRDC and the High Seas Alliance indicated that a legal definition of marine reserves does not currently exist, with IUCN pointing to relevant IUCN categories as a possible basis. During the final plenary, Norway recommended adding “the possible need” to include a definition of marine reserves to the paragraph noting the need.

APPROACHES: Monaco proposed as an area of convergence that ABMTs, including MPAs, should contribute to the objectives of conservation and sustainable use, which was “parked.” IUCN suggested including specific annexes, similar to the UN Fish Stocks Agreement (UNFSA), to guide implementation of ABMTs and MPAs, and called for: transparency, cooperation, and regular reviews of progress. Cook Islands recommended referencing “high seas pockets.” China emphasized the principles of necessity in MPA designation, cost effectiveness, best scientific evidence, and international cooperation and coordination. PSIDS highlighted adaptive management, achievable and cost-effective measures, and adverse impacts of climate change.

Australia highlighted UNFSA provisions on: the objective of long-term conservation and sustainable use; general principles; the articulation of the precautionary approach and guidance on its application in the given context; and broader cooperation with RFMOs in Article 8, which the PrepCom can draw upon, rather than Article 7 on compatible measures, which are specific to highly migratory and straddling fish stocks.

AOSIS stressed that the process for establishing ABMTs should not place disproportionate burdens on SIDS. PSIDS supported including: traditional knowledge, with the FSM highlighting language on IPLCs in the Nagoya Protocol; and the principle of adjacency, referring to the role of coastal states regarding adjacent waters. The Russian Federation stressed that remote states should not participate in the creation of MPAs in the high seas. The US called for further discussion of proximity rules in identifying and designating MPAs. Chile considered premature discussions of who should be involved in decision making regarding MPAs.

During the closing plenary, New Zealand, supported by the EU and the US, preferred that ABMTs contribute to the “long-term conservation” of BBNJ. The US favored reflecting the ecosystem, science-based and precautionary approaches as areas of convergence. The EU highlighted the need to define the “inclusiveness” principle or approach; called attention to the divergence of views on the precautionary “principle” or “approach”; and preferred eliminating reference to the balance between conservation and sustainable use. Argentina called for further discussions on “inclusiveness”; preferred a more general formulation of the role and identification of stakeholders; and favored a new “instrument,” which would provide for a consultative and integrative approach to ABMTs.

Japan suggested further discussion on: the balance between conservation and sustainable use, with China suggesting that the precautionary approach be further discussed; how to implement the “obligation to protect and preserve the marine environment”; and, supported by China and opposed by Mauritius, “inclusiveness.” New Zealand, supported by Costa Rica, Canada, and Monaco, suggested that ABMTs, including

MPAs, “collectively” contribute to the objective of conservation and sustainable use.

Norway, supported by CARICOM, Bangladesh, Canada, the Russian Federation, Morocco, Iceland, Australia and Venezuela, but opposed by Algeria, Costa Rica and Cameroon, proposed as an area of convergence the need to respect the rights of coastal states over their continental shelf. The EU recommended consideration also of the equal rights of all states on the high seas. After lengthy discussions, Algeria conceded to including the need to respect the rights of coastal states over their continental shelf under items requiring further discussion.

Japan proposed adding “ways and means” to foster better and enhanced cooperation and coordination among the issues for further discussion. China suggested adding “whether” ABMTs, including MPAs, should contribute to rehabilitation and restoration of ocean ecosystems and health. Norway recommended adding “the possible need” to include a definition of marine reserves to the paragraph noting the need.

GOVERNANCE: The African Group proposed an integrated and coordinated approach to MPA establishment through the ILBI. Japan preferred a horizontal, as opposed to a top-down, approach to ABMT designation and management, to ensure that the ILBI does not undermine existing instruments. Belize suggested that a top-down approach, which could be facilitated by a scientific or coordinating body, and include through comprehensiveness and integration principles and standards, and a horizontal approach are not mutually exclusive. Norway recommended that the ILBI focus on enhancing coordination between regional and sectoral bodies to ensure a holistic approach, referring to the bottom fisheries review as a potential model. Algeria underscored the need to review and build upon existing regional arrangements. Palau called attention to implementation and monitoring at the regional level by RFMOs and sectoral bodies, together with IPLCs.

Australia and New Zealand supported a combination of vertical and horizontal approaches along the lines of the UNFSA, with Australia favoring global standards applicable at the regional level, and reporting at the global level but without the need for global endorsement of regional decisions. New Zealand proposed that the ILBI ensure decisions based on best scientific information and transparent consultations. Chile noted that the ILBI will encompass a higher number of institutions than the UNFSA, thus necessitating a coordinating institution. Iceland cautioned against infringing on RFMOs’ mandates through a potential global body.

The International Commission for the Conservation of Atlantic Tunas (ICCAT) recommended respecting the RFMOs’ mandates in the ILBI and cautioned against replacing sectoral measures with MPAs. The International Coastal and Ocean Organization and Greenpeace highlighted the importance of a global MPA network and the need for a global authority to facilitate and monitor it, with Greenpeace and the High Seas Alliance underscoring the need to set a timeline for adopting a representative MPA network.

IUCN suggested establishing a non-hierarchical global mechanism to: facilitate and implement a global MPA network, institute a reporting and review mechanism, and coordinate implementation. Highlighting that the ILBI should provide

specific authority for establishing and managing MPAs in ABNJ, Pew, NRDC and Greenpeace stressed that most existing regional and sectoral bodies do not have the competence to protect BBNJ. NEAFC responded that RFMOs, the International Maritime Organization (IMO) and the ISA have the legal mandate to set measures also on biodiversity protection, and called on the PrepCom to address gaps and better coordinate existing efforts. NRDC stated that coordination is not enough, preferring a scientific committee to propose MPAs to a decision-making body that would address any conflicts. Greenpeace and the Deep Sea Conservation Coalition pointed to: limited progress under UNFSA; difficulties in establishing MPAs through RFMOs; and the need for a cross-sectoral approach.

During the final plenary, IUCN proposed that “the decision to designate an MPA should be taken after a consultation process, which seeks to take into consideration the views and concerns of all stakeholders, including any neighboring coastal states, as well as humankind as a whole.”

Submission and consideration of ABMT proposals: Costa Rica suggested a process whereby: states propose establishing ABMTs, including MPAs; a secretariat solicit comments from relevant entities about the potential to undermine their respective mandates and from other stakeholders, for the proponent to review; a scientific and technical body advise on the compatibility of potential MPAs with the ILBI scientific criteria, and assist in the identification of an MPA network, drawing input from scientific evaluations carried out by existing regional and sectoral organizations; and the ILBI conference of the parties (COP) consider adoption. At a later stage, Costa Rica reported that she had a written proposal on MPA governance jointly submitted with Monaco, which was supported by Greenpeace and the High Seas Alliance. The joint submission includes language on the relevance of MPAs; and on the MPA process/framework, which suggests that a successful process for the designation, establishment and management of MPAs in ABNJ should, *inter alia*, reaffirm the duty to cooperate and to protect and preserve the marine environment, establish an institutional framework, adopt scientific criteria, establish a mechanism through which state parties, individually or collectively, may propose potential MPAs, create a mechanism through which states can consider and address comments in a time-bound open and public consultation, and require the review of the MPA’s progress at set intervals and include a progress report.

The EU highlighted that: proposals to designate or recognize existing ABMTs, including MPAs, should come from state parties, individually or as a group; a platform for cooperation between states and competent organizations be formed for the duration of the establishment processes; and scientific criteria adopted by existing processes, including ecologically or biologically significant marine areas (EBSAs) and vulnerable marine ecosystems (VMEs), could be used. The G-77/China recommended that management plan proposals be submitted by state parties, followed by consultations with relevant scientific and technical bodies. CARICOM suggested: a scientific process feeding into a political one; notification to state parties, those eligible to become parties, and other relevant bodies of ABMT adoption; and a two-tiered, global and regional, approach to implementation.

Expressing support for existing regional and sectoral bodies, the US suggested a two-step scientific-policy process to identify areas for protection and conservation, drawing upon the CBD EBSA process; and a conference similar to the UNFSA Review Conference that would meet every two years or as decided by the body, including all states entitled to be parties to the ILBI and relevant entities in MPA decision-making. Japan favored a cooperation and coordination forum to avoid contradictions between different MPA management measures, pointing to the Madrid Protocol on Environmental Protection to the Antarctic Treaty, and cautioning against the ILBI directly implementing management measures. Canada underscored a global facilitative mechanism providing holistic scientific leadership, building upon and integrating existing knowledge such as on EBSAs and VMEs, and facilitating stakeholders' communication; and cautioned against a global mechanism endorsing regional decisions.

Argentina recommended further discussing stakeholders' inputs into ABMT proposals. IUCN suggested allowing for input on ABMT proposals by NGO observers similar to IMO rules. PSIDS emphasized stakeholders' role in making proposals on ABMTs. The EU suggested that a group of states could also submit MPA proposals, and favored multi-stakeholder input. The US underscored lack of clarity regarding who can submit proposals.

Content of ABMT proposals: The G-77/China suggested as information to be included in ABMT proposals: objective, delimitation of the area, and specified conservation and management measures. The EU recommended: description of biodiversity values of the area; impacts and threats, and management measures; spatial boundaries; and priority elements for a management plan. Monaco noted that his joint submission with Costa Rica aligns with the EU suggestion and includes: MPA boundaries; evaluation of the current state of marine ecosystems; description of human activities or impacts; statement of long-term conservation objectives; elements of management measures; and a plan for monitoring and reviewing the MPA once established. CARICOM recommended, *inter alia*: uniqueness or rarity, importance for life-history stages of species, fragility, slow recovery, biological productivity, biodiversity, disturbance, and management interventions proposed. China emphasized: ABMTs' necessity; scientific and legal basis; targets and objectives for protection; geographical scope; and specific protection measures.

Scientific committee: Monaco highlighted the need for a scientific body to decide on proposed MPAs, with Switzerland suggesting tasking the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) or the Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization (IOC-UNESCO) with deciding on proposed MPAs. Argentina favored a new scientific and technical body. Sri Lanka recommended a permanent scientific body to compile data and a COP. Nepal underscored the need for a scientific body to consider MPA proposals.

Canada, supported by the US and Australia, favored referring to a "scientific process," rather than a "scientific committee," providing input to "policy making," instead of a policy-making

"body." Iceland noted that reinforcing RFMOs' work is "the only way forward." Japan considered reference to a scientific committee premature. Costa Rica underscored the need for a technical body advising on the compatibility of MPA proposals with best available science, and assisting in the creation of a network of representative MPAs, drawing from existing regional and sectoral organizations, while allowing for a review of measures.

Monitoring and review: Norway suggested indicating a timeframe in MPA proposals, acknowledging that this may not always be relevant. The EU responded that ABMTs should be updated based on best available science, opposing an *a priori* timeframe. The US supported a strong science basis of any review, noted that the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) had engaged in extensive discussions on this, and, with New Zealand, stressed that the duration of an MPA be science-based. Monaco underlined that the objectives of an MPA are not of a temporary nature. Argentina proposed that the review be carried out by a technical body, taking into account science-based information. Japan recommended further deliberations on efficient review and monitoring mechanisms.

Non-parties: Chair Charles invited views on the legal effect on third states of ABMT designation. Costa Rica noted that the duty to cooperate is international customary law. The EU stated that the only obligations applicable to non-parties are those under UNCLOS Article 197 (cooperation on global or regional basis), with Australia also supporting reference to UNFSA Article 8(3) on cooperation with RFMOs.

Final Outcome: According to the Chair's understanding, possible areas of convergence of views include a number of principles and approaches for establishing ABMTs, including MPAs, such as transparency, ecosystem approach, and science-based approach; and the understanding that ABMTs, including MPAs should collectively contribute to the objective of BBNJ conservation and sustainable use.

According to the Chair's understanding, possible issues requiring further discussion include whether, *inter alia*:

- ABMTs, including MPAs, should contribute to rehabilitation and restoration of ocean ecosystems and health;
- definitions of/use of terms related to ABMTs, including MPAs, should be based on existing definitions, adapted to the BBNJ context;
- a definition of marine reserves needs to be included;
- a combination of elements, including vertical, horizontal, top-down, and bottom-up approaches, would be most effective in delivering on the objectives of the mandate;
- a new mechanism/process/global framework/instrument would provide for a consultative, integrated/transparent and inclusive approach to ABMTs, including MPAs;
- the decision to designate an MPA should be taken after a consultation process, which takes into consideration the views and concerns of all stakeholders including any neighboring coastal states, as well as humankind as a whole; and
- states individually or through relevant organizations/collectively, would make proposals in relation to ABMTs, with an option including input from relevant global, regional and sectoral stakeholders.

According to the Chair's understanding, possible issues requiring further discussion also include:

- ways and means to foster better and enhanced cooperation and coordination;
- the "architecture" of and need for any institutional mechanisms that would need to be established, including the role of a possible COP or other coordinating mechanism;
- an avenue, such as a scientific committee/process, for seeking the necessary scientific input to any policy-making body/ to provide the necessary scientific input for policy-making under the new instrument/ procedural and decision-making processes;
- role and identification of stakeholders in relation to proposals;
- follow up and monitoring mechanism; and
- ways and means to implement the obligation to protect and preserve the marine environment.

ENVIRONMENTAL IMPACT ASSESSMENTS

The item was addressed in an informal working group, facilitated by René Lefeber (the Netherlands), on Tuesday and Wednesday, 30-31 August; and then in plenary on Tuesday and Wednesday, 6-7 September. Discussions focused on: definitions, approaches, TEIAs, thresholds, and governance.

DEFINITIONS: Fiji proposed carrying out EIAs "prior to any planned or proposed activity in ABNJ, including adjacent waters, that may pose significant adverse impacts, including cumulative impacts on MPAs, EBSAs, VMEs, Particularly Sensitive Sea Areas (PSSAs), World Heritage Sites, and be based on the best science available and the precautionary approach." Costa Rica recommended defining EIAs as "an appropriate procedure subject to a decision of a competent authority for evaluating activities or processes in the marine environment likely to have significant adverse effects on biodiversity with a view to avoiding or minimizing such effects," including public participation and consultations, and requiring that the environment report and results of public participation be taken into account in the proposed activity.

APPROACHES: The G-77/China highlighted EIAs' preventive nature. The Philippines, supported by IUCN, proposed that EIAs also consider activities with climate change impacts. PSIDS, supported by CARICOM, highlighted MSP. Canada, supported by Norway, the US and Japan, recommended avoiding duplication of existing EIA practices.

The G-77/China underlined that EIAs should not be cumbersome for developing states, especially SIDS, and that technical and financial assistance should be provided. AOSIS underscored EIAs' technical nature and SIDS' training needs. The FSM noted that the duty to cooperate and coordinate does not imply that the adjacent state would assume EIA costs.

The G-77/China also suggested including language on EIAs contributing to BBNJ conservation and sustainable use, as well as the precautionary approach, among possible areas of convergence. Greenpeace suggested as a point of convergence that "EIAs should be based on generally agreed principles, including the precautionary approach, ecosystem-based management, transparency and stewardship, and applying best available science." During the final plenary, delegates agreed to "park" references that "EIAs should contribute to BBNJ conservation and sustainable use."

TEIAs: PSIDS highlighted the interests of adjacent coastal states with respect to TEIAs. The EU noted that the ILBI will address activities in ABNJ that might have an impact on BBNJ, pointing to the existing responsibility of coastal states under UNCLOS Article 194(2) to regulate activities under their jurisdiction or control that may cause transboundary impacts. China stated that only activities in ABNJ with harmful impacts on ABNJ should be covered by EIAs. Morocco and the Republic of Korea called for EIAs to focus on activities in ABNJ not covered by existing instruments.

The African Group opined that the ILBI should also cover activities within national jurisdiction with impacts in ABNJ and vice versa. Australia suggested attributing activities in ABNJ to flag states or states where private entities are registered; and when activities in ABNJ have transboundary effects on one or more coastal states, requiring consultation between flag and coastal states. Norway noted that UNCLOS Article 206 (EIA) does not distinguish between activities within the exclusive economic zone (EEZ) or on the continental shelf that could have an impact on the high seas, noting that the PrepCom's role is addressing activities that may have impacts, regardless of where they take place. The US underlined that the PrepCom's mandate is restricted to ABNJ. World Wildlife Fund (WWF) noted that TEIAs constitute an international obligation, and called for EIAs and TEIAs to address all human activities with foreseeable or potential impacts in ABNJ, regardless of where they take place.

The EU, with Japan and China, recommended further discussion of TEIAs. New Zealand suggested considering TEIAs as part of EIAs, rather than separately. The US noted divergence on the need for a separate TEIA procedure under the ILBI. Bangladesh considered TEIAs already covered under UNCLOS Article 145 on harmful activities in the Area. The African Group underscored the need to respect state sovereignty in any discussion on whether an ILBI should cover activities within national jurisdiction that may have an impact in ABNJ. Delegates agreed to include references to TEIAs among issues requiring further discussion.

In the final plenary, the US proposed further discussion on: whether transboundary impacts should be included, "and if so" whether they should be considered within EIAs or as a separate procedure; and the role of coastal states in "any" TEIAs being conducted for activities in ABNJ that may have an impact in areas within their national jurisdiction, with Algeria suggesting to also add the role of the UN.

THRESHOLDS: The G-77/China expressed openness to consider a list of activities requiring EIAs, in addition to qualitative thresholds. Mexico, supported by Chile, suggested: a hybrid system between an exhaustive list of activities triggering EIAs and a case-by-case determination, ensuring relevance in relation to future technological advances; and EIAs for new activities or those at the limit between severe and non-severe impacts against established criteria.

The African Group proposed as emerging activities that should be subject to EIAs: marine geoengineering, deep-sea fisheries, bioprospecting, deep-seabed mining, cable laying and offshore aquaculture. The EU prioritized setting thresholds, impacts and criteria before deciding on a list of activities. Japan noted that not all activities in a category, such as navigation,

should be subject to EIAs and that laying submarine cables has minor, if not negligible, impacts. Canada preferred combining a list of activities and a threshold level, with the FSM favoring a low threshold that is mutually reinforcing with a list of activities included in an annex, allowing for regular updates. CARICOM favored thresholds such as impacts on EBSAs, and a list of activities including renewable energy, carbon sequestration and installations in ABNJ. Australia, supported by Chile, stressed the need to allow amendments to any list, with IUCN pointing to the approach of the London Protocol on ocean dumping. Costa Rica proposed a non-exhaustive list subject to periodic review, including activities that are absolutely banned like nuclear or chemical waste dumping.

New Zealand noted the need for guidance on thresholds. Norway recommended basing the threshold on UNCLOS and CBD notions of “significant” impacts. Japan favored using language from UNCLOS Article 206. Singapore suggested thresholds based on UNCLOS Article 206, complemented by an illustrative list. Nepal preferred criteria and activities to be listed, to ensure objectivity. PSIDS, supported by CARICOM, called for further discussing a lower threshold for areas identified as significant, with New Zealand recommending the identification of practical ways to address this.

The US suggested, supported by Australia and opposed by Costa Rica, Iran, Eritrea, Cameroon and the FSM, referring to “significant impact,” rather than any “impact,” consistent with UNCLOS. Costa Rica cautioned against prejudging EIA thresholds. Cameroon underscored that criteria for significance are not defined. Venezuela stressed the need for an assessment to set a threshold, supporting conducting EIAs for all activities. The US then proposed that the ILBI address EIAs for activities in ABNJ that may have “an impact that reaches a particular threshold,” supported by Japan and with Australia underscoring, *inter alia*, CBD Article 14 (impact assessment) and Principle 17 of the Rio Declaration on Environment and Development (EIA). Costa Rica suggested using “the agreed threshold.” The US preferred referring to “an agreed threshold,” and delegates agreed to “parking,” as an area of convergence, that “an ILBI will address EIAs for activities in ABNJ that may have an impact that reaches an agreed threshold.”

During the final plenary, Venezuela, opposed by Australia, the US, and Costa Rica, requested further discussion on a reference noting that the ILBI would address EIAs for activities in ABNJ that may have an impact that reaches an agreed threshold in ABNJ. Venezuela, opposed by China, also required further deliberations on a provision stating that UNCLOS Article 206 is the point of departure with regard to thresholds and responsibility for EIAs, and guidance is needed in the ILBI for the implementation of this provision in ABNJ. The US proposed further discussion on “whether,” in addition to “what,” thresholds and criteria should be used for identifying activities requiring EIAs.

STRATEGIC ENVIRONMENTAL ASSESSMENT: The African Group drew from the definition in the Kyiv Protocol on SEA, noting that SEAs allow for addressing potential cumulative impacts at an early stage and assessing alternatives against agreed criteria. The EU urged including SEAs under the ILBI, noting challenges in SEA governance in ABNJ.

Supporting SEAs as an MSP tool, Australia stated that SEAs can reduce administrative burdens on states concerned. Expressing interest in SEAs’ role in evaluating cumulative impacts, the US highlighted that SEAs go beyond UNCLOS scope, and decision making on SEAs involving all states would be challenging. Eritrea proposed clarifying that SEAs should also cover fiscal policies.

IUCN underscored: the value of SEAs in analyzing environmental, economic and sustainability issues of existing and emerging activities in ABNJ; and precedents in the oil and gas, wind and wave energy, carbon capture and storage, and fisheries sectors. WWF and the High Seas Alliance underscored that SEAs: should not be a one-off exercise but periodically improved; may encompass ocean acidification and climate change effects, together with their interactions; facilitate MSP; address potential cross-sectoral conflicts; and provide the means to meet relevant UNCLOS obligations. Greenpeace and the High Seas Alliance stated that SEA management plans could assist in defining the scope of EIAs, and the ILBI should provide for monitoring, review and compliance with EIAs.

INSTITUTIONAL ARRANGEMENTS: The G-77/China suggested an advisory scientific and technical body, and including, in a step-wise process: description of proposed activities, potential impacts and mitigation measures; decision making; and a monitoring and compliance mechanism. Venezuela underscored the need for a guarantee from users, including private entities, to fulfil EIA obligations.

The African Group noted that procedural decisions should be made by a COP, advised by a scientific committee, while for EIAs and TEIAs the burden would lie with proponents supervised by state parties, with stakeholders providing input at different stages of the assessment. Noting that stakeholders should be allowed to provide inputs, AOSIS emphasized engaging proximate SIDS. The FSM suggested that: in addition to flag states, an international body or a sponsoring state could mandate or review an EIA, and an international body should decide to conduct an EIA; a participatory approach through joint EIAs should facilitate participation of small countries including SIDS; and the proponent should bear the cost. Mexico stated that SEA costs may be shared by those affected by cumulative impacts. IUCN suggested creating: an EIA fund to cover the costs of EIAs for non-commercial or public-interest activities; a technical body to advise on standards; an evaluation body; a decision-making body representing the global community; and EIA requirements “with teeth.”

The EU stressed that each state party should be responsible for: deciding that an EIA is required for activities under its jurisdiction or control, applying the decided thresholds or criteria; and deciding whether an activity should proceed or not on the basis of an EIA. The EU proposed for the ILBI to: require state parties to ensure that EIAs and SEAs are carried out according to agreed criteria prior to authorizing activities that may cause harmful effects; provide for monitoring of effects and compliance; and oblige parties to publicly report on EIAs.

The US favored: supported by New Zealand, a tiered approach ranging from the identification of activities with no significant effects to the EIA requirement proportional to the level of impact; and EIAs being carried out by states or under

states' direction, allowing for public participation and making reports publicly available, and being subject to state approval, as opposed to being carried out or approved by a BBNJ institution. New Zealand suggested the ILBI: support states in meeting their obligations, involving organizations with relevant mandates; and provide for a central information repository available to those preparing, assessing and deciding on EIAs. Norway suggested that: EIAs be conducted by the operator under flag states' responsibility, making reports public through an information-sharing mechanism; the ILBI provide general principles and guidelines, focusing on activities not covered by other organizations; with the EU, stakeholders provide inputs before decisions are made; and final decisions and responsibilities be left with flag states.

Canada and CARICOM said that state parties should be responsible for conducting EIAs, making decisions and bearing costs. Canada also suggested a mechanism for reviewing the ILBI's implementation, including EIA provisions. Japan supported developing a tiered approach, considering it unrealistic for a new body to review a large number of EIA reports. Australia opined that if EIA mechanisms do not exist, states have to meet UNCLOS obligations through domestic legislation regulating activities and ensuring that EIAs are carried out by operators beyond national jurisdiction.

Greenpeace, the High Seas Alliance and the Deep Sea Conservation Coalition cautioned against allowing states to unilaterally proceed with an activity if an ILBI scientific committee or COP finds shortcomings in the EIA findings or in the proposed mitigation measures. CARICOM urged subjecting EIAs to an independent, publicly available assessment as part of a broader consultation process. Palau proposed: assessing not only impacts on the physical environment, but also economic, social, and health considerations; and developing a transparent and tiered approach with an independent review, approval and oversight mechanism in light of possible "EIA flags of convenience"; and a COP as a last resort if EIA guidelines are not respected. Algeria underscored the need for a governing body or a scientific and technical body to define activities subject to EIAs and provide guidelines, and an appeal mechanism. Cameroon favored an international mechanism for oversight, beyond being a mere repository. Chile called for a peer-review process for EIAs to allow for transparency and accountability. Eritrea stressed the importance of a global governing body to determine whether a planned activity could occur, as well as to monitor and enforce EIAs in ABNJ.

Costa Rica recommended that: the activity proponent submit an application to the state; the state assess the activity's potential for harm in light of threshold criteria in the ILBI; if the criteria are met, the state be responsible for conducting EIAs and making the outcome publicly available; public consultation with all stakeholders, including existing organizations, be opened; an ILBI scientific committee review EIA outcomes and make recommendations; and an appeals process be created. She suggested discussing whether the state or the COP should make decisions, followed in either case by a period for comments and by reporting and monitoring by the state, with oversight by an ILBI scientific committee or COP.

The EU suggested specifying as general rules of procedure for EIAs the requirements for minimum content of assessment reports, for quality control and public availability, including on: activity description; baseline information and duration of proposed activities; severity of impacts; methods used and uncertainties; proposed mitigation measures; and monitoring plans. The FSM called attention to performing EIAs jointly as "meaningful participation rather than building capacities of developing countries."

Norway noted a lack of convergence on the need for: an international procedural layer for coordination with existing sectoral and regional organizations, supported by Iceland; and an independent scientific review of reports, pointing to flag state responsibility to conduct assessments. Canada, Japan, Iceland and China favored further discussion of procedural steps for EIAs, with the US recommending discussion of the need for "any" international involvement or oversight, and Australia proposing discussion on the timing of involvement, if needed. Singapore, supported by Australia, suggested removing references to the global level, in the procedural steps.

Consultations: Japan, supported by Argentina, Singapore and Iceland, called for further discussion of modalities for stakeholder consultations, including stakeholder identification. The EU, opposed by Australia, Argentina and the FSM, proposed consulting with "relevant states," rather than adjacent coastal states, for EIAs; and further discussing procedural steps concerning independent scientific review, consideration and publication of reports. Switzerland, supported by Paraguay, cautioned against distinguishing between adjacent coastal states and land-locked countries. Singapore suggested compromise language on "effective participation of stakeholders and consultation with relevant states, including adjacent coastal states." Eritrea highlighted the need to consult communities with customary and traditional rights on coastal and marine resources. IUCN emphasized that "we are all stakeholders," including industry, scientists, NGOs, and children, drawing attention to the ISA's online public consultations on draft regulations for the exploitation of deep seabed minerals.

During the final plenary, the African Group preferred including relevant stakeholders "including coastal states," while PSIDS, supported by Kenya, requested reference to "local communities" and indigenous peoples. The EU, with the US, Algeria and Costa Rica, suggested stating "including through the involvement of states and relevant stakeholders." Argentina preferred "relevant stakeholders," noting that determining who the stakeholders are requires further discussion. Australia, opposed by the US, suggested "including through involvement of, and consultation with, coastal states, relevant stakeholders, indigenous entities and local communities." Iceland noted that states and relevant stakeholders should not be grouped together.

Reporting: Bangladesh highlighted that publicly available reports are a requirement under UNCLOS Article 205 (publication of reports). Iran recommended that EIA reports be made publicly available for transparency purposes. Venezuela noted that EIA reports are a form of capacity building, and supported "parking" this issue. Iran and Eritrea suggested that consequences of negative EIA reports could be the discontinuation of proposed activities. The FSM proposed that

the assessments could be reassessed and the proponent allowed to propose alternative activities. The US underscored that the need for discussion on consequences of EIA reports is still to be negotiated.

EXISTING INSTRUMENTS: Japan, Norway and Australia, recommended avoiding duplication of EIA procedures under other frameworks. IOC-UNESCO suggested making data resulting from EIAs available through an open-access system as a form of technology transfer, using existing mechanisms such as the IOC's Ocean Biogeographic Information System (OBIS). Chile pointed to the ISA. Costa Rica preferred that existing instruments "guide and/or inform" the development of EIAs and TEIAs, arguing that the ILBI should not depend on these instruments. Norway preferred language that existing instruments should guide "and" inform the development of EIAs and TEIAs, and cautioned against considering as less valuable inputs from organizations without a conservation mandate. The EU, supported by Iceland, favored using existing frameworks to guide and inform the development of "procedures," rather than "measures," for EIAs and TEIAs.

With regard to language noting that "existing instruments and frameworks should not be undermined and duplicated," Argentina, supported by the FSM, Costa Rica and Morocco, but opposed by Iceland, the Russian Federation and Japan, recommended deleting reference to duplication, favoring the language contained in General Assembly resolution 69/292, which refers to "not undermining existing instruments." Costa Rica, supported by Venezuela, suggested compromise language stating that existing instruments and frameworks should not be "undermined, avoiding duplication." Chair Charles suggested "parking" reference to "existing instruments and frameworks, in particular, UNCLOS, as well as procedures under existing bodies should not be undermined, avoiding duplication," with Iceland requesting a written version of the amended list of possible areas of convergence of views.

During the final plenary, the African Group, with the EU, Morocco and Venezuela, preferred that existing relevant legal instruments and frameworks should not be undermined "as stipulated in resolution 69/292, with the understanding that duplication should be avoided." Costa Rica preferred only reference to "as stipulated in resolution 69/292."

Final Outcome: According to the Chair's understanding, possible areas of convergence of views include that:

- EIAs should contribute to BBNJ conservation and sustainable use;
- existing relevant legal instruments and frameworks, in particular UNCLOS, as well as relevant, global, regional and sectoral bodies, should not be undermined, as stipulated in resolution 69/292, and should guide and inform the development of EIA measures/procedures under the ILBI;
- the EIA process needs to be transparent, including by involving states and relevant stakeholders, and disseminating assessment reports; and
- EIA reports should be made publicly available.

According to the Chair's understanding, possible issues requiring further discussion include that:

- the ILBI address EIAs for activities in ABNJ that may have an impact that reaches an agreed threshold in ABNJ;

- UNCLOS Article 206 is the point of departure for discussing thresholds and responsibility for EIAs, and guidance is needed in the ILBI for implementing this provision in ABNJ;
- capacity building should address the capacity of SIDS, African states and developing countries to participate in and conduct EIAs;
- the territorial integrity, sovereignty, and state sovereign rights must be respected; and
- EIAs cover activities in areas within national jurisdiction that may have an impact in ABNJ.

In addition, according to the Chair's understanding, possible issues requiring further discussion include:

- the role of coastal states and the UN in any TEIA being conducted for activities in ABNJ that may have an impact in areas within national jurisdiction;
- the potential development of a list of prohibited activities;
- the specific content of assessment reports;
- the inclusion of SEAs in the ILBI and their link to MSP;
- clarification of the concept, scope and procedural aspects of SEAs, with an option about including fiscal policy, taking into account existing definitions and approaches; and
- the identification of stakeholders and consultations modalities.

According to the Chair's understanding, possible issues requiring further discussion also include whether:

- TEIAs should be included, and if so, whether they should be as a consideration within EIAs or a separate procedure; and, if so, what thresholds and criteria should be used for identifying activities requiring EIAs;
- a list of activities should be used to require EIAs/EIAs and TEIAs, including for new and emerging activities, or exempt from EIAs/EIAs and TEIAs, criteria, or a combination of these approaches;
- a lower threshold should apply for areas identified as significant;
- the EIA/EIA and TEIA process should follow the following procedural steps: screening, scoping, access to information, public notification and consultation/at the global level, including effective participation of stakeholders and consultation with states/relevant states/relevant states, including adjacent coastal states, coordination with existing sectoral and regional organizations, /independent scientific review of reports/at the global level, consideration of reports and publication of reports;
- the costs for conducting the EIA should be borne by the proponent of an activity;
- there should be any oversight or international involvement in the EIA process, including deciding that an EIA/EIA or TEIA is required, conducting it, reviewing assessment reports, deciding on the admissibility, and if so, whether it should be at the regional or at the global level, and at what stage in the EIA process it should occur;
- the ILBI should include mandatory/voluntary monitoring and review, and an indication of who will conduct them;
- the ILBI should include provisions for compliance and liability; and
- a clearinghouse or central repository for EIAs and SEAs is needed, and whether the function could be fulfilled by existing bodies or should be assigned to a new body.

CAPACITY BUILDING AND TECHNOLOGY TRANSFER

This item was addressed in an informal working group, facilitated by Rena Lee (Singapore), on Wednesday, 31 August, and Thursday, 1 September; and then in plenary on Tuesday and Wednesday, 6-7 September. Discussions focused on common approaches, institutional arrangements and funding.

APPROACHES: The G-77/China noted the importance of building both individual and, with AOSIS, institutional capacity. Iran cautioned against distinguishing between institutional capacity building and human capacities. Mauritius highlighted Sustainable Development Goal (SDG) target 14.a on marine technology and the intertwining of CB&TT, and recommended integrating and adapting Aichi Biodiversity Target 19 (biodiversity knowledge and technology) into the ILBI. Morocco emphasized tripartite cooperation to expand CB&TT, ongoing training and lasting financing. Noting the 2030 Agenda for Sustainable Development concept of leaving no one behind, Zambia recommended establishing a coordinating body and emphasized project monitoring. Argentina underscored relating CB&TT to ILBI objectives, vulnerable states' needs, and decision making based on best available science. Nepal recommended: with the FSM, an indicative list of potential CB&TT areas; and easier access to marine information for land-locked developing countries (LLDCs). India focused on: CB&TT for the blue economy; with Kenya, capacity retention; the need for global participation in CB&TT; and strengthening regional mechanisms. Kenya called for reporting mechanisms and transparency. Chile noted that most CB&TT initiatives are bilateral, favoring a horizontal approach to technology transfer.

China called for targeted CB&TT to improve capacities for BBNJ conservation and sustainable use. Japan called for a common understanding of the scope of CB&TT directly related to BBNJ conservation and sustainable use. The US underscored RFMOs' capacity-building activities. Australia cautioned against prescriptive language on CB&TT, with Canada suggesting a mechanism for prioritizing capacity-building areas.

The EU suggested: CB&TT for implementation, compliance and monitoring; and cooperation on technology transfer and development of new technologies. Lamenting the under-representation of least-developed countries (LDCs) at PrepCom 2, Eritrea called for addressing gaps in data sharing, and between science and policy formulation. IOC-UNESCO suggested: linking international, regional and national approaches; and providing resources to coordinate activities and create new regional and global programmes.

Japan proposed stating that CB&TT are essential to "assist," rather than "enable," developing states to conserve and sustainably use BBNJ, with the US suggesting "vitaly important to enable/assist/help" developing states. Costa Rica accepted considering CB&TT "vitaly important to enable" developing states to conserve and sustainably use BBNJ.

The G-77/China called for CB&TT to be country-driven, foster inclusiveness, and be responsive to national needs, priorities and interests. The EU emphasized national ownership, gender equality, as well as bilateral and multilateral approaches. Ecuador stressed that capacity building should be needs-driven rather than demand-driven. CARICOM underscored equitable participation through needs-based and country-driven capacity

building. The US argued that CB&TT should be responsive to requests, rather than country-driven per se. The EU, supported by Japan and the US, proposed including regional concerns, by stating that "CB&TT should be needs-driven, country-owned and responsive to priorities related to the ILBI, with flexibility to adapt as needs and priorities change." Costa Rica recommended that CB&TT be "responsive to national, local and regional needs, priorities and requests, with flexibility to adapt as needs and priorities change." The EU, supported by CARICOM, favored language that "capacity building, including institutional CB&TT should be responsive to national, local and regional needs." Argentina, supported by the US, preferring eliminating reference to "local" needs.

Legal nature: Nepal stressed that CB&TT should be carried out on a mandatory basis, calling for an indicative list of activities for which marine technology is necessary. Fiji stressed the need to go beyond voluntary procedures and mutually agreed terms for technology transfer, noting that CB&TT provisions could form part of the conditions for permits or contracts, as under the ISA. Japan noted that technology transfer should be done based on agreed terms, with the US adding it can be done either voluntarily or under mutually agreed terms and conditions. The Republic of Korea said that states should cooperate under fair conditions, underscoring voluntary CB&TT and due regard for IPRs. The Asian-African Legal Consultative Organization underscored challenges related to hard technology transfer due to IPR constraints, noting the role of joint ventures and contracts.

Special needs: The G-77/China recommended considering the special needs of SIDS. The African Group requested taking into account also the special circumstances of African countries. WWF highlighted LDCs' and LLDCs' particular needs to ensure intra-generational benefits. Costa Rica proposed referring to the special needs of "LDCs and developing countries, including SIDS, LLDCs, African countries and geographically disadvantaged countries." The Philippines suggested adding states highly vulnerable to climate change. Bangladesh stated that there is no UNCLOS provision directly supporting the inclusion of SIDS, African states and states vulnerable to climate change. The EU noted that there are other instruments dealing with capacity building regarding adaptation and mitigation. Ecuador, supported by Venezuela, Honduras and Costa Rica, proposed including also middle-income countries, with Australia and the EU querying the expansion of the list. Eritrea recommended assessing capacities of countries with special needs, ensuring compatibility between implementing and monitoring tools and existing capacities. Venezuela suggested including indigenous peoples' capacity needs.

During the final plenary, the G-77/China noted convergence regarding the need to consider the needs of all developing countries. Costa Rica supported consideration of the special needs of middle-income countries, noting that this represented convergence. Chair Charles clarified the need for further discussions on text regarding states that are highly vulnerable to climate change.

Stakeholders: Japan, supported by the US and opposed by Mauritius, favored further discussion on the need for multi-stakeholder partnerships. Costa Rica proposed underscoring the "importance of involving relevant stakeholders," with Sri

Lanka suggesting reference also to “multiple stakeholders in the CB&TT process.” Japan, supported by the EU and CARICOM, proposed reference only to the importance of involving relevant stakeholders in CB&TT. Delegates agreed to “park” the language proposed by Japan, with Chair Charles suggesting multi-stakeholder partnerships as an issue requiring further discussions.

Existing arrangements: CARICOM recommended that the ILBI operationalize the IOC Criteria and Guidelines on the Transfer of Marine Technology (hereafter, IOC Guidelines), with provisions on access, regional focal points, and *in situ, ex situ* and *in silico* technology transfer. Delegates agreed to “park” reference to the IOC Guidelines being a useful guiding tool for further work on technology transfer in the ILBI. Morocco recommended also considering other institutions, and noted the need for technology transfer to be adequately financed, including by the World Bank and other organizations.

Chile, supported by Costa Rica, suggested including reference to enhanced cooperation, in addition to coordination of CB&TT activities, as an area for further discussion. The Philippines suggested adding that “existing mechanisms should not be undermined or duplicated, but rather strengthened, harmonized and/or simplified.” The US called for discussing references to harmonizing and simplifying. The Philippines, opposed by Japan, then proposed: “The work and lessons learned from existing instruments and mechanisms should be built upon, or improved. Existing mechanisms should not be undermined or duplicated, rather should be strengthened and/or simplified.” In the final plenary, Venezuela, opposed by the EU, called for deleting a reference to duplicating. The Philippines called for “strengthening existing programmes/mechanisms.” Delegates agreed to further discussions on this issue.

CAPACITY BUILDING: Emphasizing mutual learning between developed and developing countries, the FSM stressed the need to: retain knowledge acquired through capacity building in developing countries; include research institutions and private actors; create conditions for enhanced access to information, data and samples; strengthen research institutions in developing countries; and collaborate in problem solving. The Philippines stressed that the costs of sponsorship and training activities should be borne by BBNJ users, calling for access to developed-country laboratories and long-term disciplinary partnerships. The African Group called for capacity on all elements of the 2011 package, including capacity in marine taxonomy, genetics, chemistry and oceanography, as well as technological equipment. AOSIS highlighted: the role of regional centers; knowledge-sharing through R&D; joint scientific research cooperation; and the need for regular assessments of capacity. Papua New Guinea emphasized capacity building for adjacent areas affected by activities in ABNJ, and institutional strengthening, including of national focal points.

Norway underscored the need to: link capacity building to ILBI implementation by developing countries, as well as to specific elements of the package; promote joint programmes, including in commercial activities; and go beyond developing countries being mere recipients of development aid. ICCAT noted that capacity building can be found in many legal instruments but results are not commensurate with expectations. IUCN pointed to a potential mechanism to enhance cooperation

on MSR, building capacity for drafting legislation, and technical and scientific requirements to implement the ILBI. The Ocean Policy Research Institute highlighted long-term commitment for capacity building and the role of stakeholders in cooperation and coordination.

TECHNOLOGY TRANSFER: AOSIS drew attention to, *inter alia*, the SIDS Accelerated Modalities Of Action (SAMOA) Pathway, reaffirming support for SIDS’ efforts “to gain access, on mutually agreed terms, to appropriate, reliable, affordable, modern and environmentally sound technologies and know-how.” CARICOM prioritized the duty to promote MSR development in all states and provide preferential treatment to developing countries, pointing to the Nagoya and Cartagena Protocols’ treatment of SIDS’ special circumstances. Iran prioritized training over technology transfer. Algeria stressed that UNCLOS is not only about technology transfer, but also technology development. Underscoring transfer of knowledge and infrastructure, AOSIS called for country- and content-specific technology transfer. The FSM highlighted strengthening research institutions, including through equipment transfers.

Requesting a discussion paper clarifying types of technologies, developing countries’ priorities, and addressing how to avoid overlap with existing frameworks, Japan, with the US and the EU, recommended referring not only to the definition and meaning of marine technology, but also to its scope, and further discussing which technology should be transferred, with the US proposing reference to “consideration of the benefit of transferring a particular technology.” Costa Rica emphasized the need to clarify who will decide what the benefits will be. The EU stressed technology transfer through multi-stakeholder partnerships, and, with the US, pointed to the IOC Guidelines including non-physical aspects of transfer.

India requested that technology be transferred on fair and reasonable terms and conditions. Noting that certain technologies are available to developed countries and emerging economies, Mauritius underscored the idea of universality. Eritrea recommended identifying enabling and disabling conditions for technology transfer in global instruments.

INSTITUTIONAL MECHANISMS: Calling for building on work under the ISA and IOC-UNESCO, the African Group expressed openness to discuss the need for a new institution. Jamaica favored building on existing institutions, including the ISA.

Clearinghouse: The G-77/China considered the clearinghouse mechanism promoting and facilitating technological and scientific cooperation, and data sharing, a cross-cutting issue. China called for a comprehensive information-sharing mechanism. Singapore proposed a coordination mechanism assisting in identifying and matching marine technology users and providers. Venezuela suggested: equitable access to research data through an open-access platform and clearinghouse; an international cooperation and capacity-building mechanism on MSR, including bioprospecting and EIAs; and a global network of research and training centers. The EU supported access to information through a clearinghouse mechanism. Costa Rica, supported by Australia, pointed to a clearinghouse as a virtual information-sharing mechanism and a coordination platform assisting parties in ILBI implementation. Highlighting CB&TT

for ABMTs, including MPAs and EIAs, Greenpeace called for a clearinghouse to facilitate implementation and monitoring. Argentina noted that the proposed clearinghouse could identify capacity needs. Australia proposed a mechanism to promote a dynamic dialogue to give international visibility to available projects, while allowing states to articulate needs and lessons learned over time through a clearinghouse or COP.

Fund: Noting the need to ensure adequate, predictable and sustainable funding to realize the ILBI's objective, the G-77/China stressed that the Voluntary Trust Fund cannot be the only option; and called for: financial contributions to the Fund; drawing lessons from the Global Environment Facility (GEF) and the Green Climate Fund; and channeling mandatory benefit-sharing from MGRs into capacity-building areas. Sri Lanka, Nepal, and Greenpeace proposed a fund to facilitate capacity building, with IUCN suggesting: a multilateral fund to support regional centers with pooled global resources for technology transfer; payments by developers in the event of commercialization; and a mechanism to monitor the impacts of CB&TT programmes with periodic reviews to assess funding needs and sources. The African Group underscored the need to explore a new global fund, pointing to the World Bank, regional banks, and the UN Financing System for Science and Technology for Development.

AOSIS called for simple, targeted and user-friendly funding modalities. The FSM favored a mechanism that is less burdensome than the GEF. The EU, supported by Japan, proposed including as an issue for further discussion "if and how a funding mechanism should be established and its modalities of operation." The US stressed that any new trust fund should be voluntary.

Final Outcome: According to the Chair's understanding, possible areas of convergence of views include that:

- CB&TT are cross-cutting and vitally important to enable developing states to conserve and sustainably use BBNJ;
- CB&TT, including institutional capacity building, should be responsive to national and regional needs, priorities and requests, with flexibility to adapt as needs and priorities change;
- the IOC Guidelines are useful as a guiding tool for further work on technology transfer in the ILBI; and
- the involvement of relevant stakeholders in CB&TT is important.

According to the Chair's understanding, possible issues requiring further discussions include that:

- the work and lessons from existing instruments and mechanisms should be built upon, without undermining or duplicating existing programmes/mechanisms;
- traditional knowledge from IPLCs can provide an important source of capacity building in connection with the ILBI elements. Similarly, capacity building can enable IPLCs to engage in activities relevant to the ILBI;
- monitoring, reporting and evaluation should be consistent with other existing instruments; and
- the special needs/specific/particular circumstances/challenges of developing countries, including LDCs, SIDS, LLDCs, African states, middle-income states and geographically disadvantaged states need to be considered, with an option

to also list states that are particularly vulnerable to climate change,

According to the Chair's understanding, possible issues requiring further discussions also include:

- terms and conditions for CB&TT;
- definition/meaning/scope of marine technology and the kind of technology that should be transferred, and from which category of countries/consideration of benefits of transferring particular technologies; and
- the possible establishment, modalities and nature of any funding mechanism, including whether it is global and whether funding is provided on a voluntary or mandatory basis.

In addition, according to the Chair's understanding, possible issues requiring further discussions include:

- whether CB&TT should have a broad and general focus or be specific to the issues identified in the ILBI;
- how CB&TT needs and priorities would be reviewed periodically;
- if and how to address the issue of IPRs;
- whether and how to address innovation with reference to marine science and technology transfer;
- if and how to link a CB&TT mechanism with a benefit-sharing regime under the ILBI;
- how to incentivize CB&TT, including with reference to the private sector;
- whether to establish a clearinghouse mechanism for CB&TT, or use existing ones;
- what mechanisms are required to follow-up on the results of CB&TT programmes;
- how to enhance cooperation;
- what is the role of partnerships; and
- how to coordinate CB&TT activities under the ILBI with existing programmes/mechanisms, with the option also to harmonize CB&TT activities under the ILBI vis-à-vis existing programmes/mechanisms across different partnerships/organizations.

CROSS-CUTTING ISSUES

Cross-cutting issues were first addressed in an informal working group, facilitated by Chair Charles, from Wednesday - Friday, 7-9 September; and then in plenary on 9 September. Discussions focused on: objectives; principles; scope; definitions; relationships with other instruments; institutional arrangements; responsibility and liability; dispute settlement; and final clauses.

OBJECTIVES: The African Group, supported by PSIDS, CARICOM, the FSM and Monaco, suggested that the ILBI address "existing legal and implementation gaps" in order to ensure BBNJ conservation and sustainable use through effective implementation of relevant UNCLOS provisions. The FSM underscored elements of the package as part of the ILBI objectives, and benefits stemming from BBNJ conservation and sustainable use, including climate change mitigation and poverty eradication. Japan, supported by the EU and Canada, stressed that the objective of BBNJ conservation and sustainable use is clear, cautioning against adding or subtracting language included in resolution 69/292. Costa Rica suggested developing specific objectives for each package element.

Argentina, with Australia, underscored the need for a focused objective, noting that provisions not strictly connected to the overall objective could be reflected in the ILBI preamble.

Australia, supported by Canada, the US, Iceland and Cameroon, proposed as the objective to ensure long-term conservation and sustainable use of BBNJ through effective implementation of relevant UNCLOS provisions.

Algeria suggested including benefit-sharing among the ILBI objectives, noting its linkages to all package elements and ecosystem services. The EU underscored that the package is indivisible, and cautioned against mentioning one part of the package in isolation, with Canada noting that under resolution 69/292, BBNJ conservation and sustainable use include all package elements.

Paraguay, supported by Venezuela, stressed revitalization and recovery of life in the oceans. Suggesting an informal working group on BBNJ and humanity as a whole, Venezuela, supported by Ecuador, highlighted threats and imminent dangers, urging for a systemic approach. The EU, supported by Canada and Iceland, stated that a number of these threats are dealt with by other instruments. PSIDS called for the adoption of an integrated approach, and universal participation in the ILBI. Norway highlighted UNCLOS Articles 192 (duty to protect) and, with Monaco, 197 (duty to cooperate). Palau called attention to MSP as a key objective for the ILBI.

PRINCIPLES: CARICOM suggested: including transparency and inclusiveness; supported by PSIDS, further discussing the importance of cultural values, as well as rehabilitation and restoration; and, supported by the African Group, considering the need for capacity building cutting across all elements of the package.

The FSM highlighted, *inter alia*, the principles of adjacency, preventing the ILBI from being dominated by corporate interests, and disproportionate burdens. The EU questioned their status as principles, calling for respecting the balance of rights under UNCLOS without cherry-picking. Argentina, supported by Norway, highlighted the importance of respecting the balance of established obligations under UNCLOS, and referenced the need not to transfer disproportionate burdens to developing states in the Port State Measures Agreement. Noting the importance of respecting established UNCLOS principles, Paraguay highlighted the rights of LLDCs.

Japan, supported by the US, favored the science-based, ecosystem and precautionary approaches; and requested further discussions on adjacency and the polluter pays principle. Iceland supported non-duplication, coastal states' sovereign rights and high seas freedoms. Australia, supported by Norway, stressed: the importance of precise terminology; and the inclusion of a commitment not to undermine existing instruments. New Zealand, with the Russian Federation, called for further discussions on the applicability of the principles. The US, supported by Norway, prioritized discussing how each principle will be used in the ILBI.

IUCN suggested including the common concern of humankind, as enshrined in the CBD, explaining that it entails stewardship, collaboration, partnership, inter- and intra-generational equity, solidarity, accountability, and benefit- and burden-sharing through cooperation, which are all compatible

with UNCLOS. India supported including the common heritage principle, high seas freedoms, ABS, science-based approach, transparency and participation.

Greenpeace and the High Seas Alliance recommended including principles in a stand-alone article, similar to the UNFSA, pointing to the principles of: protection and restoration of the health, productivity and resilience of oceans and marine ecosystems, and maintenance of BBNJ; sustainable and equitable use of marine life for the benefit of present and future generations; and cooperation between and among states to achieve the ILBI purposes.

Common but differentiated responsibilities: The African Group, supported by Costa Rica, Ecuador and others, called for including the principle of common but differentiated responsibilities. Japan, with the US, requested further discussion of this principle, underscoring that it is not incorporated in the CBD, UNCLOS and the UNFSA, and is inappropriate for the ILBI. Algeria emphasized the link between common but differentiated responsibilities and climate impacts on the high seas. Eritrea referred to the Rio Declaration on Environment and Development, and its relevance to BBNJ with regard to developing states' special needs.

SCOPE: Many called for the ILBI to be open to all. Emphasizing the need for universal participation, the G-77/China recommended including UNCLOS non-parties, with the African Group cautioning against crafting a "watered down" agreement just to accommodate a large number of states. Iran proposed including provisions incentivizing participation and ratification, drawing from UNFSA Articles 17 (non-members and non-participants) and 23 (port-state measures). The EU supported drawing from UNFSA for inspiration on UNCLOS non-parties, and moving towards enhancing coherence. Japan cautioned against creating disincentives for MSR, noting its benefits to humankind and implications for ensuring wide membership. Emphasizing the need to address the geographical scope of the ILBI, the African Group, with CARICOM and Mexico, cautioned against obstructing progress by focusing on a long list of definitions.

RELATIONSHIPS: With UNCLOS: The G-77/China, the EU and others highlighted that the ILBI shall not undermine UNCLOS rights and obligations. CARICOM, with the EU, Japan, the US, Canada, Argentina and others, considered UNFSA Article 4 (relationship with UNCLOS) as a possible model. India said the ILBI should fill legal and implementation gaps, especially on MGRs. Argentina noted that the relationship with UNCLOS could be addressed in the ILBI objective, inspired by UNFSA Article 2 (objective). Australia, supported by Canada, stressed that as an implementing agreement, the ILBI should assist parties in implementing UNCLOS obligations.

With other agreements: Norway: noted that the meaning of "not undermining" other agreements has not been agreed upon; pointed to UNFSA Article 44(1) on the relationship with other agreements as a possible model; and underscored the possibility of stipulating what the ILBI will not do, such as direct management. China highlighted that the ILBI should: not interfere with the mandate of Food and Agriculture Organization of the UN (FAO), RFMOs, IMO and ISA; promote coordination and cooperation; and avoid duplication or overlap

with existing mandates. New Zealand underscored the need to: supported by the US, build on BBNJ expertise in regional and sectoral organizations; and improve the current framework by creating incentives for enhanced performance through global guidance and standards, pointing to UNFSA Article 8(6) on consultation with RFMOs as a model. Japan cautioned against giving the ILBI authority to intervene in existing frameworks. The US stressed the need to secure relationships with existing organizations and to establish new bodies where necessary. Australia cautioned against weakening the role of existing regional and sectoral bodies. Canada highlighted that the relationship between the ILBI and other instruments will help ensure universal participation. Iceland underlined that the PrepCom is not a venue to renegotiate existing mechanisms.

Costa Rica underlined that the ILBI should standardize criteria used by existing bodies and support their work without undermining them, cautioning against using terms not agreed upon in resolution 69/292 such as non-interference or non-duplication. Argentina noted that no existing instrument has BBNJ conservation and sustainable use as its core mandate, calling, supported by NRDC, for a global mechanism to address this gap through a comprehensive approach drawing on existing bodies with expertise and jurisdiction over activities in ABNJ, particularly relating to ABMT establishment.

Greenpeace and the High Seas Alliance argued that “not undermining” under the UNFSA implies “not reducing the effectiveness of measures” adopted by existing bodies, thereby avoiding the lowest common denominator “trap,” without preventing the application of best practice.

INSTITUTIONAL ARRANGEMENTS: Several supported a scientific body, a secretariat and a decision-making body. CARICOM suggested establishing: a scientific and technical body, with Argentina; a process for monitoring and review, including reporting requirements; a clearinghouse mechanism, supported by the FSM; an annual COP meeting at UN Headquarters; and a periodic review conference. The FSM called for compliance, dispute resolution, and ABS mechanisms.

The EU highlighted the need for a decision-making body such as a COP, which could establish subsidiary organs like a scientific committee. Australia favored light arrangements to support: sharing of data and science; visibility of capacity-building opportunities; improved coordination; discussions on the implementation at the relevant level of ILBI standards; and potentially sharing details on MGR access. Norway underscored possible mechanisms for information sharing, a clearinghouse for EIAs and measures taken, oversight or review of implementation, and compliance. Canada favored: a COP or review conference; an avenue to ensure science is included in decision-making, noting that existing organizations can bring their measures to the ILBI decision-making body’s attention; and a compliance mechanism with public scrutiny. The US supported a decision-making structure, open to all and meeting every two years, modeled after the UNFSA review conference. Japan highlighted the importance of a discussion and science forum on EIAs and MPAs. The Russian Federation stated that scientific cooperation should be addressed by existing scientific committees under regional agreements.

Bangladesh, opposed by Japan and the Russian Federation, supported a cost-effective expansion of the ISA’s mandate. Costa Rica suggested: a COP, a CB&TT mechanism, including a clearinghouse, a financial mechanism, and a scientific and technical advisory body on ABMTs and EIA measures, which could be part of an organization running in parallel to the ISA; and a dispute-resolution mechanism. Algeria recalled that a report assessing, *inter alia*, the feasibility of expanding the ISA’s mandate is due in July 2017.

The Russian Federation cautioned against a global mechanism governing MPAs. The North Pacific Fisheries Commission highlighted existing expertise and cost-effectiveness, noting that RFMOs are evolving, and suggested filling gaps in capacities, capabilities and current mandates rather than adding another bureaucratic layer.

IUCN underscored: the benefits of a global mechanism, including consistency, international legitimacy, coordination and strength in numbers; a possible mechanism for enhancing capacities of existing bodies, highlighting the potential development of regional and sectoral biodiversity strategies and action plans and the importance of a global reporting mechanism; and the need for a common scientific basis. NRDC and the High Seas Alliance called for, *inter alia*, a global scientific committee and a compliance committee.

RESPONSIBILITY AND LIABILITY: IUCN suggested, *inter alia*, that any ILBI state party and competent international organizations be entitled to invoke, also on behalf of the international community, the responsibility of any state that has breached its obligations to protect the marine environment; and all environmental damage should be subject to reparation.

Mexico pointed to the option of a responsibility, liability and accountability framework referring to specific sanctions or responses to specific violations. Australia considered UNCLOS and UNFSA provisions on responsibility and liability as a starting point, noting that in light of the International Tribunal on the Law of the Sea (ITLOS) Seabed Disputes Chamber’s Advisory Opinion on Responsibilities and Obligations of States Sponsoring Persons and Entities with respect to Activities in the Area, there may not be need for further elaboration in the ILBI.

Iran underscored the need to link the legal nature of ILBI obligations, consequences in terms of responsibility, and state obligations concerning environmental and biodiversity conservation, arguing that ILBI obligations will be towards the community of states as a whole. The FSM highlighted as a way to operationalize the polluter pays principle the establishment of a liability fund or bond informed by the evaluation of risks to the environment during the EIA process. Bangladesh pointed to UNFSA Article 35 and UNCLOS Article 235 on responsibility and liability. Iran expressed doubts about the need for ILBI provisions on responsibility and liability, pointing to customary international law as codified by the International Law Commission (ILC) in this connection, and the opportunity for the ILBI to refer to the Draft Articles of the ILC to avoid fragmentation.

DISPUTE SETTLEMENT: Mexico, supported by Iran, proposed considering dispute resolution mechanisms under UNCLOS. Iran stressed the need for a conciliation committee. CARICOM suggested a mechanism under the ITLOS. IUCN

pointed to UNFSA as a model and to the issue of legal standing, noting that an advisory opinion could be sought from ITLOS or the Seabed Disputes Chamber. Greenpeace and the High Seas Alliance supported an accessible, rapid, transparent and cost-effective dispute resolution mechanism, noting that ITLOS is not sufficient; and pointed to the Espoo Convention's Implementation Committee, the Aarhus Convention's Compliance Committee, and the South Pacific RFMO opt-out provisions as sources of inspiration.

Mexico, supported by Paraguay and the FSM, favored a broader range of options as reflected in UNCLOS Part XV, including ITLOS specialized chambers and advisory opinions. Australia, with the FSM, favored UNCLOS and UNFSA dispute settlement mechanisms as a starting point, and pointed to UNFSA Article 28 on dispute prevention at the regional or subregional level. Chair Charles remarked that regional mechanisms may fall short in a global multilateral context. Cameroon cautioned that not all regions have appropriate mechanisms in place. Bangladesh considered it premature to discuss dispute settlement clauses, noting that disputes should be resolved peacefully on the basis of international law.

ENTRY INTO FORCE: Mexico called for: supported by Iran and CARICOM, a simple entry into force clause setting out the number of ratifications required; and, supported by CARICOM, a transitional application clause. Iran recommended consideration of the relationship between the number of ratifications and the legal weight of the ILBI, noting that the higher the number of ratifications, the greater the certainty that the ILBI codifies international law. CARICOM considered the UNFSA and Port State Measures Agreement final clauses as possible examples to draw from. IUCN also suggested clauses on reservations, relations to other agreements, authentic texts, and participation of international organizations.

AREAS OF CONVERGENCE AND ISSUES FOR FURTHER DISCUSSION: During the final plenary, Chair Charles made an oral presentation of his understanding of possible areas of convergence and issues for further discussion. Japan, supported by the US, Norway and the Russian Federation, proposed either circulating a written version of the list at that point and continuing discussions at the current session, or circulating the list intersessionally for discussions at PrepCom 3.

The African Group cautioned against delaying discussion to PrepCom 3, emphasizing the need for intersessional work. The EU noted that several delegations had already left New York and suggested considering all cross-cutting issues as issues requiring further discussion. Mexico, supported by PSIDS, emphasized that all the documents to be circulated by the Chair, including those offering the Chair's understanding of the possible areas of convergence on all the elements of the package, are the Chair's responsibility and not for endorsement by the PrepCom, recalling Chair Charles' indication that "parked" items can always be reopened. Chair Charles requested UNDOALOS to circulate a written version of his understanding of the cross-cutting issues prior to PrepCom 3.

CLOSING PLENARY

Chair Charles outlined as next steps: the preparation of a Chair's non-paper based on delegations' views presented at PrepCom 2 and submissions to be made electronically by 5

December 2016, in order to outline possible middle-ground under the Chair's responsibility, which will be circulated in late January/early February 2017; the Chair's reflections on PrepCom 2, including his understanding of areas of possible convergence of views and areas requiring further discussion; and a procedural preparatory meeting at UN Headquarters in late January/early February 2017 to discuss the provisional agenda and work programme for PrepCom 3. Chair Charles commended delegates for the good work done at PrepCom 2, invited contributions to the Voluntary Trust Fund, and gavelled the meeting to a close at 6:26 pm.

A BRIEF ANALYSIS OF PREPCOM 2

RIDING THE WAVE

Riding on the wave of good intentions set in motion at the start of the formal preparatory process in April, expectations were high for continued, tangible progress towards a wide-reaching instrument to better protect the precious, finite living resources of the deep seas. PrepCom 2 convened against a backdrop of increased international media coverage on the importance of a new treaty on marine biodiversity in areas beyond national jurisdiction, a heightened clamor for action from international civil society and personalities like Emma Thompson, and the spotlight on the anticipated expansion of the Papahānaumokuākea MPA off the coast of Hawaii by US President Barack Obama.

With a deadline to meet by the end of 2017, during the intersessional period delegates were provided with a non-exhaustive list of questions, prepared by PrepCom Chair Eden Charles, giving structure to the many issues discussed at PrepCom 1. Few, however, responded to a call for written submissions ahead of PrepCom 2. Nevertheless, once in New York, delegates delved right into the details of the possible elements of an ILBI on BBNJ, catching by surprise those who had expected/dreaded (depending on their eagerness to conclude the ILBI) PrepCom 2 to be a slightly more elaborate repeat of PrepCom 1. From the start, delegates shared significantly more fleshed-out proposals, including some textual suggestions, in a bid to elaborate their positions on each element of the 2011 package. Those who remained skeptical of an ILBI had to be reassured by Chair Charles that the PrepCom was engaged in the consideration of "specific language proposals," rather than "treaty language" proposals. Given that the PrepCom's mandate refers to the ambiguous expression "elements of a draft text" of an ILBI, this discussion reflects the fact that there is no agreement among delegations yet as to what format the PrepCom's final outcome will take, and how close it will look like a draft treaty, to allow for further negotiations at an intergovernmental conference to be convened by the General Assembly.

Many saw the second session as a good step forward towards fulfilling the PrepCom's mandate, with near-unanimous praise for Chair Charles' able and good-humored leadership. This brief analysis assesses progress by diving under the surface of the discussions on marine protected areas, as the hype about the Papahānaumokuākea MPA did not seem to make big waves in the PrepCom. The analysis then considers the cross-cutting

discussion of the possible relationship between the ILBI and existing arrangements, and concludes by returning to the question on how to maintain momentum, as much work remains to be done before the PrepCom's mandate expires in 2017.

DIVING UNDER THE SURFACE OF MPAS

Scientists have agreed on the need for MPAs, which seems indisputable. The appropriate type of MPA, however, is often the object of disagreement. This became evident at PrepCom 2 with regard to possible definitions, which led to lengthy discussions as well as several bilateral conversations in the corridors. MPA management categories vary from strict management ("marine reserves" or no-go/no-take areas) to less stringent forms of supervision (e.g. natural habitats are protected, while allowing sustainable collection of resources). So MPAs do not need to be homogenous in their management. No-go areas are very attractive to the general public and singled out by several scientists as the most effective for biodiversity conservation, and have beneficial spill-over effects on fish recovery, too. Hence, some quarters of civil society call for including marine reserves in the ILBI. According to politically-savvy BBNJ participants, however, differentiated management approaches to MPAs are a more realistic option to ensure the ILBI has universal membership. "The choice of management options does not need to be pre-empted and, therefore, must not be feared at this stage," said one delegate.

As discussions progressed on MPAs, another divergence in views appeared under the surface with regard to long- vs short-term conservation. A few states called for time-bound MPAs, with one referring in passing to such an initiative being discussed at CCAMLR. The well-informed were quick to make a connection with ongoing deliberations under CCAMLR on a possible timeline attached to the proposed high seas Ross Sea MPA, which could set a precedent for the ILBI, as well as other regions, and even "trickle down to national levels." While the details of the proposed timeline are still not in the public domain, rumor has it that different proposed time-frames range from 5 to 25 years. Some expressed concern in the corridors at the idea of temporary MPAs, noting that scientific evidence points to the need for long-term conservation measures and that both IUCN and the CBD see MPAs in that light. That is, in fact, as one delegate argued, the main difference between MPAs and "other effective conservation area-based management measures," which encompass short-term, sector-specific tools such as areas temporarily closed to fishing. "How often do terrestrial national parks expire?" an expert asked provocatively. "It is one thing to have regular reviews of MPA management plans, particularly in light of climate change impacts, but quite another to have an MPA with an expiration date!" quipped another.

These and other substantive issues related to MPAs are intrinsically linked, in the eyes of many, to questions of governance. A few detailed proposals were put forward before and during the meeting, including a four-page joint submission by Costa Rica and Monaco on institutional arrangements for MPAs that attracted some preliminary expressions of support from both states and NGOs. But there was no time for in-depth discussion of the details and, according to some, these will be carefully considered intersessionally. The greater and more vocal presence of RFMOs at PrepCom 2 than at PrepCom 1 also

reflects an increasingly acute interest for the possible governance implications of the ILBI. RFMO executive secretaries were keen to highlight their respective good practices, while arguing that the ILBI should not interfere with their mandates. This led to heated exchanges during the meeting and in the corridors, as contrasting views were offered by some NGOs, which pointed to insufficient consideration of biodiversity conservation in RFMOs' regular activities. While conservation is an obligation under the UNFSA and has been reflected in more modern RFMO conventions or their amendments, "RFMO members' primary interest is still fisheries," summed up a veteran. NGOs were thus calling repeatedly for additional checks and balances for RFMOs' contribution to biodiversity protection. In this regard, the specific requirements set out by UN General Assembly resolution 61/105 on bottom fishing were highlighted by some participants as an example of how minimum standards, coupled with a review mechanism, can help achieve better implementation of general international obligations. As alluded to by a couple of delegations at this session, the workshops to review implementation of General Assembly resolutions concerned with bottom fishing have also provided an interesting model for active involvement by civil society. And, as discussed in a side-event, these workshops have served to identify specific areas requiring more effort: for instance, the workshop held in early August 2016 called attention to EIAs and cumulative impacts.

NAVIGATING AROUND RELATIONSHIPS

It is still unclear to many how oceans governance can be improved in practical terms without "undermining existing instruments and frameworks," as per resolution 69/292. While the phrase was carefully negotiated by the General Assembly, different delegations seem to attach to it a range of diverse meanings ranging from: not interfering with, or duplicating, existing regional and sectoral mandates; not engaging in direct management at the global level; or not impairing the effectiveness of existing measures (in other words, not stopping or inhibiting sectoral or regional good practices). The laying out of all these options, however, has been seen by some as setting the groundwork for potentially constructive bilateral discussions intersessionally, which may lead to new proposals for PrepCom 3 to creatively solve the impasse.

This divergence of views resurfaced in discussions about vertical and horizontal approaches across all the 2011 package elements. Some favored a global top-down approach mandating necessary changes at the regional and sectoral levels. Others opposed the idea that, under the ILBI, specific management approaches would be dictated on topics already regulated by competent bodies. Yet others expressed openness to a global process setting minimum standards for sectoral and regional management, rather than detailing specific modifications or restrictions of activities per se.

Moving to monitoring, some favored oversight at the regional level with a light-touch global approach similar to the UNFSA, encouraging the creation of regional organizations where there are none and spurring cooperation with non-members of such organizations. Others counter-argued that the UNFSA does not provide strong global oversight through its Review Conference process. Still others suggested a mixed approach reinforcing

the experiences and expertise of existing arrangements, while building global oversight and compliance mechanisms to improve effectiveness and coherence. To that end, convergence appeared around the creation of an ILBI COP and a scientific body to address the four 2011 package elements. That said, different options may exist, including in relation with existing bodies—the notable case being the ISA. With cost-effectiveness expected to be a key concern in the minds of donor countries pondering the institutional structure of the ILBI, the possibility of expanding the ISA's mandate was mentioned again at PrepCom 2. A veiled reference was made, by more countries than at PrepCom 1, to possible functional parallelism that would separate the existing mining-focused apparatus from a possible biodiversity branch. A consideration of the desirability and legal feasibility of this option may be informed by the expected review of the ISA's performance, the final report for which is due during the summer of 2017, as pointed out by a PrepCom delegate.

The ISA also came to the fore in connection with another aspect of governance—stakeholder involvement and consultation. Many called for transparency as a key principle of the ILBI. As frequently pointed out by IUCN, the conservation of biodiversity is a common concern of humankind under the CBD and as a result “we are all stakeholders.” Putting transparency into practice, however, will require further thought and discussion, as delegates were not able to find more specific convergence on stakeholder involvement modalities, once discussions began on specific approaches for inputs and peer review of EIAs and MPAs, or on creating partnerships for sharing benefits, building capacity, and/or developing and transferring technologies.

“TIME AND TIDE WAIT FOR NO MAN”

At the end of the session, it was apparent that a good amount of progress had been made in developing specific proposals, but it was not so clear whether delegates had been successful in finding common ground on certain areas that had been “parked,” as suggested by Chair Charles, with a view to spending more time on thornier issues at PrepCom 3. The “parking” exercise, paradoxically, ended up creating a long “laundry list” of issues that need further discussion, rather than focusing on issues that could be set aside. This result seemed due to the fact that some delegates remained nervous about opportunities to re-open “parked” issues down the line, notwithstanding Chair Charles' assurances to the contrary. Many were exhausted by the end of the parking process. As one delegate put it, expressing a common feeling among many, we got “bogged down by prolonged discussions on the minutiae” at this “early” stage of negotiations and “hit a wall.” However, another participant noted that, on the whole, she is returning to capital with a “better understanding of the homework that needs to be done,” expressing hope that the announced Chair's non-paper will both succeed in getting more written submissions on the UNDOALOS portal and in intensifying intersessional preparations for PrepCom 3.

Such homework could also draw from discussions on marine spatial planning and Aichi Target 11 on protected area systems to be held at CBD COP in December 2016. For the ILBI to be at the vanguard on oceans governance, a seasoned participant opined, “it will be helpful to draw from the CBD on this when the time comes.” Others were rather worried about the need to increase global awareness of the BBNJ process beyond “oceans

circles,” wondering whether the anticipated UN Conference on the Implementation of SDG 14, which will be held in New York in June 2017, may more widely communicate the sense of urgency about enhancing oceans governance in order to contribute to the achievement of the SDGs. With this in mind, one delegate joked that “all the pieces are aligned for us Earthlings to make headway” before the time comes for the PrepCom to report back to the General Assembly on the ILBI building blocks needed to ensure more effective conservation of life in the oceans.

UPCOMING MEETINGS

2016 Our Ocean Conference: The 2016 Our Ocean Conference will focus on key current ocean issues: MPAs, sustainable fisheries, marine pollution, and climate-related impacts on the ocean. **dates:** 15-16 September 2016 **location:** Washington D.C., US **contact:** US Department of State Bureau of Oceans and International Environmental and Scientific Affairs **email:** OurOcean2016@state.gov **www:** <http://ourocean2016.org>

71st General Debate of UN General Assembly: The General Debate of the 71st session of the UN General Assembly (UNGA 71) will begin on 20 September 2016 and will take place during “up to 9 working days” (para. 2, Resolution 57/301). As announced by UNGA 71 President-elect Peter Thomson, the theme of the General Debate is “The SDGs: a universal push to transform our world.” The opening of the 71st session of the General Assembly will take place on 13 September. **dates:** 20-30 September 2016 **location:** UN Headquarters, New York **contact:** UN Secretariat **phone:** +1-212-963-1234 **fax:** +1-212-963-4879 **email:** inquiries@un.org **www:** <http://www.un.org/en/ga/71/agenda/index.shtml>

Second Annual Solutions Summit: The Second Annual Solutions Summit will highlight projects and exceptional innovators that are working to develop solutions to one or more of the SDGs. The Summit will showcase actions and projects that advance the objectives of upcoming UN global Summits and Conferences on climate change, the new urban agenda, urbanization, oceans, refugees and migrants, and partnerships. The Summit will convene during the 71st UN General Assembly's high-level week. **dates:** 21 September 2016 **location:** UN Headquarters, New York **contact:** UN Non-Governmental Liaison Service **phone:** +1-212-963-3125 **fax:** +1-212-963-8712 **email:** join@solutions-summit.org **www:** <http://www.solutions-summit.org/>

CITES CoP17: The 17th meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES CoP17) will be considering 62 proposals to increase or decrease controls on international trade in wildlife and wildlife products, submitted by 64 parties. **dates:** 24 September - 5 October 2016 **location:** Johannesburg, South Africa **contact:** CITES Secretariat **phone:** +41-22-917-81-39/40 **fax:** +41-22-797-34-17 **email:** info@cites.org **www:** <http://www.cites.org/>

Sustainable Ocean Initiative (SOI) Global Dialogue with Regional Seas Organizations and Regional Fisheries Bodies on Accelerating Progress Towards the Aichi Biodiversity Targets: This meeting aims to facilitate dialogue to exchange

experiences and to identify options and opportunities to enhance cross-sectoral collaboration among regional fisheries bodies and regional seas organizations, with a view to supporting their key role in facilitating achievement of the Aichi Targets and the relevant SDGs. **dates:** 26-29 September 2016 **location:** Seoul, Republic of Korea **contact:** CBD Secretariat **phone:** +1-514-288-2220 **fax:** +1-514-288-6588 **email:** secretariat@cbd.int **www:** <https://www.cbd.int/doc/?meeting=SIOIOM-2016-01>

18th Global Meeting of the Regional Seas Conventions and Action Plans: The 18th Global Meeting of the Regional Seas Conventions and Action Plans will convene back-to-back with the CBD Sustainable Ocean Initiative Global Dialogue with Regional Seas Organizations and Regional Fisheries Bodies on accelerating progress towards the Aichi Biodiversity Targets. **dates:** 30 September - 1 October 2016 **location:** Incheon, Republic of Korea **contact:** Kanako Hasegawa, UNEP Regional Seas Programme **phone:** +254-20-7624791 **email:** kanako.hasegawa@unep.org **www:** <http://www.unep.org/ecosystemmanagement/water/regionalseas40/Meetings/18thGlobalMeetingoftheRSCAPs/tabid/1061162/Default.aspx>

Lomé Conference: Protect Our Oceans: The Extraordinary Summit of Heads of State and Government of the African Union of Maritime Security and Development in Africa will meet with experts and leaders from the business world to establish a roadmap on Maritime Security in Africa, including an African strategy for protecting its oceans and seas that provides peace, security and stability. **date:** 15 October 2016 **location:** Lomé, Togo **contact:** Ministry of Foreign Affairs and Cooperation, Togo **phone:** +228-213601 **email:** info@republicoftogo.org **www:** <http://www.african-union-togo2015.com/en/accueil>

35th Meetings of the CCAMLR Commission and Scientific Committee: The 35th Meeting of the CCAMLR Scientific Committee will convene concurrently with the 35th Meeting of the Commission to discuss the conservation of Antarctic marine life. The Scientific Committee will convene from 17-21 October. The Commission meeting will take place from 17-28 October. **dates:** 17-28 October 2016 **location:** Hobart, Tasmania, Australia **contact:** CCAMLR Secretariat **phone:** +61-3-6210-1111 **fax:** +61-3-6224-8744 **email:** ccamlr@ccamlr.org **www:** <https://www.ccamlr.org/en/ccamlr-xxxv>

IWC66: The International Whaling Commission (IWC) will hold its 66th biennial meeting in Portoroz, Slovenia. The Commission meets on a biennial basis to ensure implementation of its decisions and workplans on the conservation and management of whale species. **dates:** 20-28 October 2016 **location:** Portoroz, Slovenia **contact:** IWC Secretariat **phone:** +44 (0) 1223-233-971 **fax:** +44 (0) 1223-232-876 **email:** secretariat@iwc.int **www:** <https://iwc.int/index.php?cID=28&cType=event>

70th Session of the IMO Marine Environment Protection Committee: The IMO Marine Environment Protection Committee considers any matter within the IMO's scope that is concerned with prevention and control of pollution from ships. **dates:** 24-28 October 2016 **location:** IMO headquarters, London, UK **contact:** IMO Secretariat **phone:** +44 (0) 20-7735-7611 **fax:** +44 (0) 20-7587-3210 **email:** info@imo.org **www:** <http://www.imo.org/en/MediaCentre/MeetingSummaries/Pages/Default.aspx>

SOI Regional Capacity Development Workshop for the South Pacific: The workshop will provide a valuable opportunity for dialogue and experience-sharing across different sectors, and aims to, *inter alia*, identify and consolidate common priorities among different sectors and stakeholders for conservation, management and sustainable economic growth in marine and coastal areas. **dates:** 31 October - 4 November 2016 **location:** Apia, Samoa **contact:** CBD Secretariat **phone:** +1-514-288-2220 **fax:** +1-514-288-6588 **email:** secretariat@cbd.int **www:** <https://www.cbd.int/doc/?meeting=SOWS-2016-03>

International Coral Reef Initiative General Assembly: This meeting of the International Coral Reef Initiative (ICRI) will address the degradation of coral reefs and related ecosystems around the world, including discussion of the status of coral reefs; the impacts of climate change on coral reefs; coral bleaching; and initiatives in the Indian Ocean region. **dates:** 2-4 November 2016 **location:** Paris, France **contact:** Francis Staub, ICRI Coordinator **email:** fstaub@icriforum.org **www:** <http://www.icriforum.org/ICRIGM31>

UNFCCC COP 22: During COP 22 of the UN Framework Convention on Climate Change (UNFCCC), parties will meet to, *inter alia*, begin preparations for entry into force the Paris Agreement **dates:** 7-18 November 2016 **location:** Marrakesh, Morocco **contact:** UNFCCC Secretariat **phone:** +49-228 815-1000 **fax:** +49-228-815-1999 **email:** secretariat@unfccc.int **www:** <http://unfccc.int/>

CMS Standing Committee: The 45th meeting of the Standing Committee of the Convention on the Conservation of Migratory Species of Wild Animals (CMS) will be preceded by a meeting of the CMS Budget and Finance Sub-Committee on the afternoon of Tuesday, 8 November. **dates:** 9-10 November 2016 **location:** Bonn, Germany **contact:** CMS Secretariat **phone:** +49-228-815-2401 **fax:** +49-228-815-2449 **email:** cms.secretariat@cms.int **www:** <http://www.cms.int/en/news/2015028-dates-45th-meeting-cms-standing-committee>

CBD COP 13, COP/MOP 8 to the Cartagena Protocol on Biosafety and COP/MOP 2 to the Nagoya Protocol on Access and Benefit-sharing: The thirteenth meeting of the CBD COP, the eighth meeting of the COP serving as the Meeting of the Parties to the Cartagena Protocol on Biosafety (COP/MOP 8), and the second meeting of the COP serving as the Meeting of the Parties to the Nagoya Protocol on Access and Benefit-sharing (COP/MOP 2) will be held concurrently. The CBD COP will address, *inter alia*, EBAs, marine spatial planning, biodiversity and acidification in cold-water areas, marine debris and underwater noise, and biodiversity mainstreaming, including in the fisheries sector. **dates:** 4-17 December 2016 **location:** Cancún, Mexico **contact:** CBD Secretariat **phone:** +1-514-288-2220 **fax:** +1-514-288-6588 **email:** secretariat@cbd.int **www:** <https://www.cbd.int/>

117th Meeting of the IMO Council: The IMO Council is elected by the IMO Assembly for two-year terms beginning after each regular Assembly session, and is responsible for supervising the IMO's work. **dates:** 5-9 December 2016 **location:** IMO headquarters, London, UK **contact:** IMO Secretariat **phone:** +44 (0) 20-7735-7611 **fax:** +44 (0) 20-7587-3210 **email:** info@imo.org **www:** <http://www.imo.org/en/MediaCentre/MeetingSummaries/Pages/Default.aspx>

CGRFA 16: The sixteenth regular session of the Commission on Genetic Resources for Food and Agriculture (CGRFA) of the FAO is expected to address a series of sectoral and cross-sectoral issues of relevance to genetic resources for food and agriculture, including aquatic genetic resources for food and agriculture with regard to ABS. **dates:** 30 January - 3 February 2017 **location:** Rome, Italy **contact:** CGRFA Secretariat **phone:** +39-06-5705-4981 **fax:** +39-06-5705-5246 **email:** cgrfa@fao.org **www:** <http://www.fao.org/nr/cgrfa/en/>

World Ocean Summit 2017: This Economist event will be the fourth World Ocean Summit, and will discuss how to finance a sustainable ocean economy, including consideration of the types of investment frameworks and capital necessary to bring the blue economy to scale, in order to address the risks and opportunities involved in pursuing a blue economy approach and showcase examples of successfully aligned economic activity with the sustainable management of the oceans. **dates:** 22-24 February 2017 **location:** Bali, Indonesia **contact:** Economist Events **phone:** + 852-2585-3312 **email:** oceanspeakers@economist.com **www:** <http://www.economist.com/events-conferences/asia/ocean-summit-2017?cid1=eve/Soc/FB/home/none/na/none/FB/WOS/WOS-FB-announcement/none/none/asia/none%22>

BBNJ PrepCom 3: PrepCom 3 will address marine genetic resources, area-based management tools, environmental impact assessments, capacity building, transfer of marine technology, and crosscutting issues. **dates:** to be confirmed **location:** UN Headquarters, New York **contact:** UNDOALOS **phone:** +1-212-963-3962 **email:** doalos@un.org **www:** <http://www.un.org/depts/los/biodiversity/prepcom.htm>

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

GLOSSARY

ABMTs	Area-based management tools
ABNJ	Areas beyond national jurisdiction
ABS	Access and benefit-sharing
AOSIS	Alliance of Small Island States
Area	Sea-bed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction
BBNJ	Marine biodiversity in areas beyond national jurisdiction
CARICOM	Caribbean Community
CBD	Convention on Biological Diversity
CB&TT	Capacity building and technology transfer
CCAMLR	Commission for the Conservation of Antarctic Marine Living Resources
COP	Conference of the Parties
EBSAs	Ecologically or biologically significant marine areas
EIA	Environmental impact assessment
FAO	Food and Agriculture Organization of the UN
FSM	Federated States of Micronesia
ICCAT	International Commission for the Conservation of Atlantic Tunas
ILBI	International legally binding instrument
IMO	International Maritime Organization
IOC-UNESCO	Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization
IPLCs	Indigenous peoples and local communities
IPRs	Intellectual property rights
ISA	International Seabed Authority
ITLOS	International Tribunal for the Law of the Sea
ITPGR	International Treaty on Plant Genetic Resources for Food and Agriculture
IUCN	International Union for the Conservation of Nature and Natural Resources
LDCs	Least developed countries
LLDCs	Landlocked developing countries
MGRs	Marine genetic resources
MPAs	Marine protected areas
MSP	Marine spatial planning
MSR	Marine scientific research
NEAFC	North East Atlantic Fisheries Commission
NRDC	Natural Resources Defense Council
PSIDS	Pacific Small Island Developing States
PrepCom	Preparatory Committee
R&D	Research and development
RFMOs	Regional fisheries management organizations
SDGs	Sustainable Development Goals
SEAs	Strategic environmental assessments
SIDS	Small island developing states
TEIAs	Transboundary environmental impact assessments
UNCLOS	UN Convention on the Law of the Sea
UNDOALOS	UN Division of Ocean Affairs and the Law of the Sea
UNFSA	UN Fish Stocks Agreement
VMEs	Vulnerable marine ecosystems
WWF	World Wildlife Fund