



# Briefing Note on the WG on Marine Biodiversity

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## SUMMARY OF THE EIGHTH MEETING OF THE WORKING GROUP ON MARINE BIODIVERSITY BEYOND AREAS OF NATIONAL JURISDICTION: 16-19 JUNE 2014

The eighth meeting of the UN General Assembly's *Ad Hoc* Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction (BBNJ) took place from 16-19 June 2014, at UN Headquarters in New York. It was the second of three meetings (April 2014, June 2014 and January 2015) to discuss the scope, parameters and feasibility of a possible new international instrument on marine biodiversity in areas beyond national jurisdiction under the UN Convention on the Law of the Sea (UNCLOS). The outcome of these meetings is expected to contribute to a decision to be taken at the sixty-ninth session of the UN General Assembly (UNGA) on the development of a new international instrument under UNCLOS, as mandated by the 2012 UN Conference on Sustainable Development (Rio+20).

Approximately 200 participants attended the meeting, including national delegations, intergovernmental organizations and non-governmental organizations (NGOs). The meeting was largely considered successful in clarifying a series of substantive elements of a new agreement on BBNJ that were considered necessary to prepare recommendations to the UNGA at the next meeting of the Working Group in January 2015.

Delegates delivered general statements on Monday, and engaged in plenary discussions on the scope and parameters of a new international instrument under UNCLOS (Monday to Wednesday) and on its feasibility (Wednesday). They also discussed next steps in the process (Wednesday and Thursday). This briefing note summarizes the discussions and outcome of the eighth meeting of the Working Group, and is organized according to its agenda.

### OPENING SESSION

On Monday morning, 16 June 2014, Co-Chair Liesbeth Lijnzaad (the Netherlands) opened the meeting, suggesting the further refinement of the list of issues elaborated at the previous meeting and discussion of next steps. She reported that five additional written submissions from national delegations had been received and added to the compilation of state views. Miguel de Serpa Soares, Under-Secretary-General for Legal Affairs and UN Legal Counsel, delivered opening remarks on

behalf of UN Secretary-General Ban Ki-moon. He emphasized that the April meeting of the Working Group had been generally recognized as one of the most successful to date and referred to a series of oceans-related events in 2014, including the twentieth anniversary of the entry into force of UNCLOS, the discussions on oceans under the Open Working Group on Sustainable Development Goals and the third United Nations Conference on Small Island Developing States (SIDS).

**ORGANIZATIONAL MATTERS:** Co-Chair Lijnzaad introduced the provisional agenda and the organization of work (A/AC.276/L.13-14), proposing that the Co-Chairs produce a summary of this meeting including key issues and proposals to be transmitted to the UNGA at its sixty-eighth session. The agenda and organization of work were adopted without amendment.

**GENERAL STATEMENTS:** Several delegations lauded the constructive atmosphere at the previous meeting. Bolivia, for the Group of 77 and China (G-77/China), called upon parties and non-parties to UNCLOS to work together to ensure the conservation of BBNJ, by developing an implementing agreement under UNCLOS subjecting the exploration and use of marine genetic resources (MGRs) to the common heritage regime, and establishing an overarching institutional framework to address gaps and shortcomings in the existing legal framework. Trinidad and Tobago, for the Caribbean Community (CARICOM), urged starting negotiations on a new implementing agreement, noting emerging consensus to that end. He emphasized the common heritage regime and suggested an expanded mandate for the International Seabed Authority (ISA) to oversee implementation of the obligations under a new agreement. Vietnam urged developing a new international instrument setting out an international mechanism similar to that for the Area (the seabed and its subsoil beyond the limits of national jurisdiction).

Liberia, for the African Group, considered as the starting points for discussion the common heritage regime and the package of issues agreed on by the Working Group in 2011 (hereinafter, the "2011 package" that comprises: "MGRs, including questions on benefit-sharing, measures such as area-based management tools, including marine protected areas (MPAs), environmental impact assessments (EIAs), capacity building and the transfer of marine technology"). Mexico called for a pragmatic approach to MGRs, emphasizing the need to share both monetary and non-monetary benefits. Cuba underscored the need to share non-monetary benefits and clarify

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the geographic origin of MGRs. Guatemala stressed the need for a new agreement to be respected by parties and non-parties and to build upon UNCLOS principles. Papua New Guinea, on behalf of Pacific SIDS, highlighted the need for urgent actions at all levels to conserve BBNJ. Thailand called for equitable benefit-sharing, including transfer of marine technology and capacity building, and avoiding the tragedy of the commons. Brazil opined that the regulatory gap on BBNJ justifies the negotiation of a new implementing agreement on the basis of the 2011 package. China reiterated support in principle for starting negotiations of a new implementing agreement once consensus has been reached on its scope, parameters and feasibility, noting the need to fully respect rights to marine scientific research (MSR).

Greece, on behalf of the European Union (EU) and its Member States, argued that the April meeting demonstrated the political will of the majority of states to move forward on BBNJ, and welcomed the revised compilation of state views and a paper circulated by Norway. She reiterated that the negotiations on a new implementing agreement should address all aspects of the 2011 package and offer a global, coherent approach to existing sectoral and regional frameworks by establishing procedures for coordination among them. Australia expressed satisfaction about an emerging consensus for a new agreement to fit into, recognize and complement the existing legal architecture on the basis of the 2011 package, noting the need to create an effective and efficient governance structure that does not inhibit existing frameworks.

Norway proposed that the Working Group provide a clear formulation of the goals to be achieved by a new implementing agreement. Canada pointed to agreement on the need to avoid duplication of work with existing organizations and instruments, called for more in-depth discussion to prevent forum-shopping, and opined that feasibility depends on demonstrating the added value of a new instrument. She queried whether a new instrument would: only recommend designation of MPAs, leaving the determination of management implications to existing organizations; tackle the relationship among different activities in areas beyond national jurisdiction (ABNJ) rather than the activities as such; and avoid intellectual property rights (IPRs), which fall under the mandate of the World Intellectual Property Organization (WIPO). The US called for specificity in the Working Group's discussions, noting that many of the questions already posed in April remain outstanding, such as: how would a new instrument interact with existing international mechanisms? What benefits would be shared, how and with whom? And would access to and transfer of MGRs also be regulated? He also drew attention to the "Our Ocean" Conference organized by US Secretary of State John Kerry in parallel with the Working Group. The Republic of Korea stated that the scope of a new instrument should be limited to areas where regional instruments do not exist. Iceland cautioned against focusing on gaps other than legal ones.

The Permanent Commission for the South Pacific expressed support for the development of an international legal regime on MGRs. The Food and Agriculture Organization of the UN (FAO) drew attention to the State of the World Fisheries Report 2014 and the endorsement by the FAO Committee on Fisheries in June

2014 of the Voluntary Guidelines for Flag State Performance. The UN Environment Programme reported on coordination of regional seas conventions.

The International Union for Conservation of Nature (IUCN) emphasized the need for global goals and principles on BBNJ, enhanced programmes of MSR and monitoring to inform management at all levels, and the establishment of a global body such as a conference of the parties to a new implementing agreement to which countries should report on their performance. The High Seas Alliance emphasized that "oceans provide oxygen for every second breath we take, but they are under siege," calling on the Working Group to identify pragmatic, but also aspirational and inspirational, solutions. Greenpeace called upon the US to support the development of an implementing agreement. The Natural Resources Defense Council (NRDC) urged expeditious negotiations towards an implementing agreement on the basis of the 2011 package, including a mechanism for cross-sectoral monitoring, control and surveillance of activities in ABNJ. She also urged continued transparency in the Working Group's deliberations.

### **SCOPE AND PARAMETERS OF A NEW INTERNATIONAL INSTRUMENT**

Throughout the week, several delegations stressed that the meeting is meant to clarify positions on the scope, parameters and feasibility of a new instrument with a view to identifying points of convergence, but not to engage in actual negotiations.

**OBJECTIVE:** New Zealand noted that the objective of a new instrument is to achieve conservation and sustainable use of BBNJ. The EU stated that a new implementing agreement would spell out UNCLOS obligations of a general nature related to the protection of the marine environment in ABNJ. Guatemala underscored the need to regulate activities affecting BBNJ. India pointed to the need for better coordination of different sectoral governance mechanisms by establishing a new institutional framework or expanding scope of existing institutions, to enhance implementation and compliance, and provide technical assistance at the regional and national levels.

**LEGAL NATURE:** Australia favored a legally binding instrument with a legally binding dispute settlement mechanism, creating an incentive for states to comply in order to avoid litigation. New Zealand and the EU also called for a legally binding agreement. Brazil explained that coordination without a legally binding instrument could only achieve limited results, such as raising awareness and the sharing of good practices. Trinidad and Tobago underscored the role of a legally binding instrument in allowing less developed countries to participate in research on MGRs that otherwise would remain subject to agreement among developed countries. The Russian Federation opined that the 2011 package does not necessarily need to be tackled in its entirety through a legally binding agreement, calling for focus on legal gaps.

**MEMBERSHIP:** New Zealand, Australia, the EU, Algeria and Guatemala called for a universal instrument open also to non-parties to UNCLOS. The US remarked that even if a new instrument is open for universal ratification, it may not be ratified by all states and it may not muster the necessary political will. Colombia and Peru cautioned that the participation of non-

parties to UNCLOS in future negotiations of a new instrument based on UNCLOS would not mean that non-parties accept UNCLOS obligations.

Delegates also discussed whether a future agreement could have implications for non-parties, with China, the US, Argentina and the Russian Federation recalling that under international law a treaty cannot bind non-parties. IUCN noted that measures to discourage non-parties could be put in place through a multilateral framework.

**GEOGRAPHIC SCOPE:** Many delegations noted that a new agreement should cover both the Area and the high seas, with Argentina and others noting the need to take into account the rights of coastal states over their extended continental shelf. Norway noted the need to further discuss implications for the rights of coastal states.

**GUIDING APPROACHES:** Several countries pointed to the 2011 package. New Zealand favored a global and integrated approach, as well as efficient and cost-effective governance structure. Australia emphasized the need to take a global, holistic, ecosystem-based management framework complementary to regional and sectoral efforts to manage BBNJ equitably. Iceland argued that global and regional approaches are in contradiction with each other. Norway saw no contradiction in setting international goals at the global level and implementing them through regional efforts.

**PRINCIPLES:** Jamaica proposed drawing principles from UNCLOS, the Convention on Biological Diversity (CBD) and the Nagoya Protocol on Access and Benefit-Sharing (ABS). Australia called for innovation and ingenuity in dealing with MGRs, given that neither the high seas nor common heritage regimes are adapted to non-consumptive uses of resources. Thailand referred to equitable utilization and cooperation, as well as to ABS in relation to MGRs. New Zealand favored: precaution, the ecosystem approach, consideration of cumulative impacts, science-based decision-making, and transparency. The US cautioned that some of the proposed items are not principles, and that on some items there is no common understanding.

**RELATIONSHIPS WITH OTHER INSTRUMENTS:** The EU proposed drawing on the UN Fish Stocks Agreement (UNFSA) Article 4 (Relationship between this Agreement and UNCLOS) to clarify that a new implementing agreement will not prejudice the rights and obligations arising from other treaties. She noted the need to establish procedures for cooperation and coordination among existing regional instruments mandated to regulate activities in ABNJ or to protect the marine environment. The EU further explained that a new implementing agreement will not regulate activities in ABNJ, but will take account of their impact, such as the impact on fisheries, in the context of multi-purpose assessments, leaving it up to sectoral or regional organizations to take response measures.

Australia also considered UNFSA Article 4 a possible template, reiterating that a new implementing agreement would complement and build upon existing agreements such as the Convention on Migratory Species of Wild Animals and the CBD, and that it would provide mechanisms and incentives for cooperation and coordination. He suggested that standards could be developed, updated and disseminated under a new implementing agreement, and reporting from sectoral and

regional entities could be set up. New Zealand stated that a new agreement could provide for coordination of sectoral and regional regimes, including fisheries, with a view to facilitating information-sharing and providing guidance to existing organizations, but not enforcing specific standards.

Japan queried how a new international agreement would address legitimate activities such as navigation, fishing, the laying of pipelines, and MSR. Canada asked how a new agreement would take into account guidelines on area-based tools already elaborated by FAO, regional fisheries management organizations (RFMOs) and the International Maritime Organization (IMO), as well as the CBD criteria on ecologically or biologically significant marine areas (EBSAs), and how it would allow sufficient flexibility for sectors' and regions' specific circumstances. Costa Rica argued that value added would derive from a new instrument that: ensures all instruments work towards common objectives and report back to a global body; and provides guidelines on how to implement international obligations and make information on implementation public. She argued that these functions would increase political will or put pressure on unwilling states. Australia argued that a new agreement would give broader application to positive developments at the regional and sectoral level.

Iceland objected to including fisheries in a new implementing agreement, because the proposed global approach to BBNJ would conflict with the regional approach supported by the UNFSA. The Russian Federation and China argued against the inclusion of fisheries in a new implementing agreement because fisheries are already fully regulated under UNFSA. Japan cautioned against a global approach that would damage efforts under existing agreements.

IUCN noted that destructive fishing techniques in the deep seas have been addressed by the UNGA, which demonstrates a regulatory gap, and pointed to the need for a formalized and institutionalized review process for RFMOs coupled with a dispute resolution process. Pew, Greenpeace and WWF argued that no sectoral activity, including fisheries, should be excluded from a new implementing agreement that aims at ecosystem-based management. He noted that the UNFSA obligation to protect marine biodiversity needs to be operationalized and could be complemented by a new implementing agreement. IUCN also emphasized that any new agreement should be focused on the role of states to strengthen pre-existing institutions on the basis of principles spelled out in the new agreement and standards to guide performance of these institutions, similarly to the UNFSA. The Russian Federation stated that better coordination should be achieved by strengthening the mandate of existing organizations, rather than through harmonization.

**MPAs:** Norway queried the definition of MPAs, and referred to information-sharing on vulnerability, including in relation to the CBD work on EBSAs. Argentina noted that clarifying the definition of MPAs could clarify expectations in relation to the scope of a new implementing agreement. IUCN explained that MPAs are a specific type of area-based management tool aimed at the long-term conservation of nature, as opposed to other area-based management tools that only provide activity-specific protection to discrete areas but are insufficient to conserve BBNJ. Australia drew attention to the IUCN definition of MPAs,



the need to focus on multi-purpose MPAs, and the possibility to adopt measures that have implications for non-parties, as long as state consent is ensured.

The EU recommended that, in light of the international commitment to a global MPA network, a new implementing agreement should: provide procedures for the identification and designation of globally recognized multi-purpose MPAs; establish management measures; provide monitoring and surveillance; and detail procedures for global recognition of MPAs established by regional or sectoral instruments. She also noted that CBD work on EBSA should be considered. With Canada, Australia and the Republic of Korea, the EU stressed the purely scientific and technical nature of CBD work on EBSAs. The US queried the implications of the proposed “global recognition” of regional or sectoral MPAs, with the EU explaining that it would result in making these MPAs binding on all parties to a new implementing agreement. Iceland expressed concern about the EU proposal on MPAs established by RFMOs for protecting fish stocks or vulnerable marine ecosystems from the negative impacts of fisheries, since RFMOs have the mandate to establish such MPAs as binding on non-members of RFMOs that are party to the UNFSA. Iceland argued that a global review of regional MPAs would undermine their validity, and asked whether the EU proposal could be limited to regional environmental conventions rather than including RFMOs. IUCN noted that areas closed to fisheries do not qualify as MPAs, according to IUCN and CBD definitions, as they usually target only one activity without taking into account cumulative effects of multiple activities.

The Republic of Korea queried whether MPAs would be enforced under a new implementing agreement, with the EU stressing that they had made reference to “monitoring and surveillance,” but not to “enforcement and control.” The Bahamas considered a centralized monitoring system necessary. New Zealand called attention to both top-down and bottom-up approaches to MPAs, where the global level would rely on expertise from regional, sectoral and international processes such as, but not limited to, the CBD work on EBSAs, to identify the value of areas that would need protection.

Australia underscored the recommendatory nature of procedures, criteria and guidelines adopted under a new agreement to help competent bodies to identify, establish and manage MPAs. He noted that the CBD work on EBSAs is but one stream of scientific input, and that only MPAs established by RFMOs for biodiversity conservation purposes would be considered under a future agreement, whereas areas established by RFMOs for the recovery of fish stocks would not fit into a global MPA network. The Russian Federation opined that flag states could establish requirements for the conservation of BBNJ independently, without the need for an implementing agreement. The EU said it is impossible to establish MPAs unilaterally and recalled the global commitments to a global MPA network under the Aichi Biodiversity Targets and the outcome of Rio+20.

**MGRs:** Trinidad and Tobago urged inclusion in a new agreement of the common heritage principle or “something resembling it” in relation to benefit-sharing from MGRs. Japan pointed to lack of agreement on the status of the common heritage principle as customary international law and about

its applicability to MGRs, noting that it would not fit the peculiarities of MGRs.

Guatemala indicated that a new instrument should prevent abuses in the commercialization of MGRs, ensure benefit-sharing, monitor implementation, and create a database on information on MGRs to be taken into account in the examination of patent applications. Mexico called for a new instrument to ensure that MGRs are used for the benefit of humankind and create positive externalities in terms of scientific and technological cooperation, with adequate economic incentives and respect for property. He also noted, supported by Cuba and Costa Rica, that ISA could acquire new capacities to regulate MGRs. The Russian Federation questioned the ability of ISA to regulate MGRs, noting that it is not possible to simply extend its work on minerals to MGRs in the seabed, as bioprospecting does not need licensing or lengthy access to resources.

Cuba and Costa Rica called attention to benefit-sharing from research activities, while Iceland clarified willingness to discuss benefit-sharing from the “exploitation” of MGRs. Brazil prioritized fairness, technology transfer and capacity building. The EU proposed that a new agreement ensure that: MGRs are collected in a manner consistent with conservation and sustainable use; access to MGRs include notification or authorization, based on flag state jurisdiction or related to an international mechanism to be established by a new agreement; and monetary and non-monetary benefits are shared, considering existing regimes such as the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGR) and the Nagoya Protocol. Costa Rica made reference to the provision on a global multilateral benefit-sharing mechanism under the Nagoya Protocol. Norway supported the development of an ABS regime in ABNJ.

The US argued that there is no legal gap in relation to MGRs, as they fall under the high seas regime. He opposed the development of a benefit-sharing regime for MGRs in ABNJ, but reiterated support for sharing research results and for scientific collaboration. He invited delegates to further elaborate on how a benefit-sharing mechanism may work, noting that the bilateral negotiation approach under the Nagoya Protocol is suited to genetic resources under national jurisdiction and the standardized approach under the ITPGR and the World Health Organization (WHO) Pandemic Influenza Preparedness Framework is narrowly tailored to specific sub-sectors. He further queried whether some delegations are arguing in favor of a hybrid approach covering all sectors, different users, basic research, as well as commercial research. New Zealand reiterated that the absence of a regime on MGRs is a legal gap, arguing that in the absence of a perfect model in existence, a *sui generis*, pragmatic approach should be considered. Thailand proposed investigating the possibility of an international public trusteeship model. China favored a pragmatic approach to share benefits that would avoid defining the legal status of MGRs, and argued against compromising non-commercial scientific research. Australia supported a pragmatic approach to developing an ABS regime for MGRs, expressing interest in exploring non-revenue-based benefit-sharing, and recommending leaving IPR issues to WIPO. Argentina cautioned against a pragmatic approach that would

treat in the same manner resources in the Area and the high seas. Japan argued that including the water column within the scope of common heritage would amount to an amendment of UNCLOS.

Argentina argued that: not only the resources in the Area, which are defined as mineral resources under UNCLOS, fall under the common heritage regime, but also the Area itself; UNCLOS Article 143 (Marine Scientific Research) requires that MSR in the Area benefits humankind, without excluding any kind of scientific research and therefore also encompassing research on BBNJ and MGRs in the Area; the Nagoya Protocol, albeit not a good fit for MGRs, may contain elements, such as its list of monetary and non-monetary benefits, that can help negotiations; and the ITPGR is the most likely model in existence. She also stressed that, in the context of MGRs in ABNJ, usually private companies engaged in research and development obtain access to samples free of charge, because bioprospecting is usually conducted by publicly-funded researchers.

**EIA:** Australia suggested that a new instrument provide standards for the preparation and review of EIAs of activities in ABNJ that may pose a risk to biodiversity; and with Argentina, noted the need for EIAs to be made public and subject to review by the international community. Australia clarified that a new instrument should create a recommendatory framework that in time will lead to capacity development through technical support. The US questioned how a new agreement would relate to pre-existing EIA requirements under sectoral and regional agreements, particularly when certain activities in ABNJ would be considered subject to EIA requirements at the global level but excluded at the regional or sectoral level. Japan opined that the UNCLOS obligation on EIA under Article 206 (Assessment of Potential Effects of Activities) is addressed to states, not to international organizations. New Zealand stated that Article 206 is “very” partially implemented, lamenting lack of consideration of the cumulative impact of multiple stressors on the marine environment, and called for a new agreement to establish procedures and standards for assessment, monitoring, reporting and management of EIAs leading to the development of a central information-sharing mechanism. Canada queried whether flag states, responsible organizations or others would be responsible for assessing cumulative impacts. China favored addressing EIAs in a new agreement, but cautioned against creating new obligations for states.

The High Seas Alliance, Pew, Greenpeace, WWF and NRDC identified as the essential elements on EIAs: a commitment to conduct prior EIAs, including cumulative impact assessments, for activities under states’ jurisdiction or control that may have a potential adverse impact on the marine environment or marine biodiversity in ABNJ; the authorization of an activity only after having ascertained that it is regulated in line with UNCLOS obligations on addressing identified effects and does not compromise the objectives of a future implementing agreement; and a requirement for strategic environmental assessments for programmes, plans or policies that may have a potential adverse impact on the marine environment or marine biodiversity in ABNJ, including cumulative and synergistic impacts. He further noted that an implementing agreement should provide for: criteria to identify the activities that might require EIAs and a

threshold for EIAs; standards or guidelines for the conduct of EIAs; procedures for reporting, assessment, and monitoring of EIAs; verification and follow-up action; and the identification of the entities that should carry out the assessment and those to whom the results should be reported.

#### **TECHNOLOGY TRANSFER AND CAPACITY**

**BUILDING:** Argentina noted that UNCLOS Part XIV on marine technology transfer is the least widely implemented. Thailand argued that technology transfer is essential for capacity building. New Zealand advocated for a partnership model between donors and recipients and for public-private partnerships, underscoring the need to share knowledge and expertise in conservation and sustainable use of BBNJ. The Republic of Korea supported capacity building and technology transfer through collaboration and coordination among developed and developing countries, and between capacity-building programmes. Canada noted that technology transfer is one of several steps to build capacity for conservation of BBNJ. Algeria noted that capacity building will be delivered through benefit-sharing, technology transfer and development aid. South Africa emphasized participation in scientific research. The International Oceanographic Commission reported on its role in marine technology transfer and in giving impulse to its member states’ implementation of relevant UNCLOS obligations.

#### **FEASIBILITY OF A NEW INTERNATIONAL INSTRUMENT**

On Wednesday, Australia opined that a new agreement is feasible because it would: continue and not disrupt the work of UNCLOS; address gaps including fragmented oceans governance and lack of coordination of sectoral approaches; fill the legal gap related to MGRs; and be based on suitable, modest, non-duplicative governance arrangements to generate efficiencies and address present and emerging threats to BBNJ. The African Group remarked that: all but few believe that an implementing agreement is needed; its scope should be based on the 2011 package; there is no need to detail all objects that will be included in a future agreement, as this will be debated in actual negotiations; and there is no difficulty with feasibility.

New Zealand said the added value of a new agreement is the opportunity to: unify the current fragmented regime through a centralized mechanism providing common objectives and guiding principles; fill the legal gap related to MGRs; create a platform for coordination and cooperation; set up a legal framework to coordinate implementation on a cross-sectoral basis of agreed international targets on MPAs; and develop consistent guidelines and provide a platform for coordinating the conduct of EIAs to enable the consideration of cumulative impacts. She underscored that such an agreement would enhance transparency; provide legal certainty; operationalize UNCLOS obligations in the specific context of BBNJ; supported by Algeria, fill not only legal but also regulatory gaps and address regulatory fragmentation; and offer a comprehensive and equitable approach. Argentina elaborated that a new instrument would fill gaps in the UNFSA and UNCLOS, providing for more transparency with regard to RFMOs’ work on BBNJ.

The Philippines stated that a new implementing agreement is feasible because it is necessary, noting that a new instrument on BBNJ would contribute to ensuring predictability in the conduct of states. Thailand noted that narrowing down the scope of a new

instrument could provide a way forward. The Russian Federation argued that not all elements of the 2011 package need to be included in a future agreement, only those that constitute legal gaps. Japan emphasized that the international community should address BBNJ by reinforcing the implementation of existing frameworks. Argentina stated that feasibility depends on the extent of the guarantees offered to states in future negotiations, outlining as essential procedural elements: consensus and a package deal, and an exhaustive delineation of the material mandate of the negotiations, including the necessary details such as the extent of the incorporation of fisheries.

The Republic of Korea pointed to the need to discuss in depth the role of existing instruments and bodies. Peru and Ecuador underscored increasing consensus on the existence of a legal gap on MGRs and on the need to fill it. Brazil considered that the US argument that the living resources of the Area fall under the high seas regime is not reason to prevent the development of an implementing agreement, since UNFSA was developed even though there were rules in UNCLOS. The Dominican Republic and Guatemala underscored the need for transparency in all activities in ABNJ. The EU affirmed that feasibility is not a legal question but a question of political will.

Canada considered that the question of feasibility needs to be addressed, taking into account the views expressed in other fora, and that the launch of negotiations at the global level would affect positive dynamics underway at the regional and sectoral levels. The US stated that the feasibility question is whether an implementing agreement would contribute to the effective conservation of BBNJ, noting that existing bodies, notably the UNGA, can achieve enhanced cooperation and coordination and the development of guidelines. Iceland affirmed that feasibility depends on what will be and what will not be covered in the agreement, supporting a new legal instrument on MGRs and on the coordination of regional environmental conservation organizations.

IUCN noted that a new implementing agreement should provide for a more equitable balance among sectoral institutions, transparency, and accountability with regard to the implementation of international obligations. The High Seas Alliance, NRDC and Greenpeace pointed to ample and increasing interest among states to start negotiations, and lauded the exchange of ideas at the meeting. Greenpeace asserted that: political will under the UN can and must materialize for the benefit of all; states should not use the negotiations of a new agreement as an excuse for inaction under existing agreements; and the current, fragmented oceans framework is damaging the oceans and benefits no one in the long term.

### **NEXT STEPS**

During Wednesday and Thursday, delegates discussed next steps. Ecuador and Mexico underscored the need to start discussing the way forward to complete the Working Group's mandate. The African Group, supported by many, proposed that the next meeting be devoted to finalizing recommendations to the UNGA and invited the Co-Chairs to produce, on the basis of the points of convergence that emerged at this meeting, draft elements for recommendations as a starting point for deliberations in January 2015. The African Group further cautioned that the Co-Chairs' draft should not attempt to expand

or reduce the 2011 package. New Zealand and Norway suggested that the 2011 package is the minimum core, with Norway recommending the inclusion also of basic benchmarks for future negotiations, such as the relationship between a new instrument and existing ones. Costa Rica proposed discussing how to articulate the 2011 package in the Co-Chairs' draft elements. The US recommended some degree of specificity rather than mere reference to the 2011 package.

The G-77/China recommended that the draft elements of recommendations should take into account the views manifested in the April and June meetings of the Working Group, taking as a basis the 2011 package and the principles of consensus-based and good faith negotiations. Argentina underscored the need for further discussion on the elements of consensus that could be incorporated in the Co-Chairs' draft elements, and, supported by many, called for a further round of written submissions from states to support the Co-Chairs' work. The US requested that written submissions be again compiled and shared with national delegations.

Guatemala, supported by the G-77/China, recommended including a procedural roadmap in the draft elements. She suggested that such a roadmap focus on: convening negotiations on the basis of the 2011 package, identifying issues to be addressed in the negotiations; calling for transparent negotiations based on consensus; and outlining a timeline and the need for preparatory meetings or for an intergovernmental expert committee to prepare a report to narrow down the scope of the negotiations, although she noted that the latter would not be her preference. New Zealand agreed that timelines are useful, but that the process should not be overly complicated. Australia noted the need to discuss options for a roadmap in detail. Iceland emphasized the need for further discussion on scope and parameters. The US, Japan and Canada opposed including a roadmap in the Co-Chairs' draft elements, and, opposed by Ecuador, Pakistan and the Dominican Republic, affirming, that it would pre-empt the decision by the UNGA on a new instrument. Thailand noted the need to identify which international instruments and which of their provisions, as well as which international bodies, will be relevant in future discussions on a new implementing agreement.

New Zealand, supported by Australia, Ecuador and Turkey, also requested a Co-Chairs' summary to record the variety of views expressed at this meeting. The Russian Federation proposed that the Co-Chairs' summary should pay special attention to issues on which consensus is taking shape. Australia suggested distinguishing areas of convergence from areas of consensus in the Co-Chairs' summary.

Japan queried the need for a fourth meeting of the Working Group, with Guatemala, the EU, New Zealand, Uganda, Thailand and CARICOM stating that such a meeting is unnecessary. Australia affirmed that the UNGA would decide on the need for further meetings. Iceland noted the need to consider an additional meeting if consensus is not achieved at the January meeting. The Russian Federation proposed to continue discussions bilaterally, with New Zealand, Thailand and Ecuador supporting informal dialogue in the lead-up to the January meeting. The Russian Federation also stated that if the January meeting is unable to reach consensus, discussions on BBNJ should continue in the



current format. Brazil cautioned against prolonging the process without need, which would send the wrong message. Australia, New Zealand, Vietnam and Pakistan expressed confidence that the January meeting will reach consensus. New Zealand and Mexico emphasized that the January meeting should not further discuss substantive details of negotiations. Pakistan and South Africa considered the question of a further meeting premature. Norway, Iceland and Canada proposed not to exclude the option of an additional meeting of the Working Group. Guatemala affirmed that the January meeting should be the last meeting and the General Assembly may have to decide on divisive issues after that.

The EU emphasized that all major issues had been discussed and clarifications had been given on scope, parameters and feasibility in an exhaustive fashion, as demonstrated by the early closing of the meeting. The Philippines considered that consensus had already been achieved on scope, parameters and feasibility based on the 2011 package, and urged delegations to launch negotiations in good faith for the sake of the oceans. Norway argued that spending time on sensitive issues in the Working Group would ultimately save time. Iceland noted the need for more clarity on the scope of a new instrument than that provided by the 2011 package. CARICOM underscored that no country had replied to the question of why the common heritage principle should not be included in a new implementing agreement, but stressed that lack of complete clarity should not prevent the Working Group from completing its mandate.

The US emphasized the value of consensus, noting that there are shared views regardless of whether all delegations support the negotiation of an implementing agreement. Thailand emphasized that consensus is not the unanimous opinion among all states, but a shared general direction that allows for the inclusion of different views that could be subject to further discussion, noting that the Working Group had already achieved this. CARICOM recalled that when consensus could not be reached on the launch of the negotiations of the Arms Trade Treaty, the UNGA voted in its favor, suggesting that consensus on BBNJ can rather be reached during the negotiations of a new agreement. China recommended that the Working Group reach consensus on recommendations to the UNGA, underscoring that the few countries with reservations are prominent global actors in oceans affairs and that a new agreement could not reach universality if the views of all countries are not considered from the beginning. Iceland argued that consensus and unanimity have the same meaning, cautioning that taking a decision by majority voting in the UNGA would be an unfortunate start. Turkey considered that transparency in the Working Group will help in reaching consensus on a recommendation to the UNGA.

Co-Chair Palitha Kohona (Sri Lanka) expressed commitment to preparing draft elements of a recommendation, based on the 2011 package, for consideration at the January meeting, which would also outline the main elements of convergence that have emerged in the Working Group, together with a revised compilation of state submissions and a Co-Chairs' summary of discussions at this meeting.

## CLOSING PLENARY

On Thursday morning, the G-77/China reiterated the need for a specific legal framework to deal with BBNJ in a forward-looking manner and in coordination with UNCLOS and its existing implementing agreements, and stated that: technology transfer is essential for building developing countries' marine scientific capacity to benefit from MGRs; the exclusive exploitation of MGRs in the seabed beyond national jurisdiction by a few states is inconsistent with the common heritage principle; the feasibility of a new international instrument depends on the growing awareness of the urgent need to further develop the law of the sea and prevent unilateral approaches to BBNJ; and UNCLOS obligations to conserve the marine environment must be built upon and strengthened.

Mexico lauded the positive atmosphere at this meeting and the significant convergence on many points on which previously there had been divergent opinions. Algeria noted that the meeting had been very enriching, and thanked IUCN and the High Seas Alliance for having organized a workshop for the African Group before the meeting. The EU praised the meeting's substantive discussions in clarifying views and making it easier to prepare for the January meeting, and reminded delegates of the global commitment to protect and restore marine ecosystems.

Co-Chair Kohona noted that, while some elements remain contentious, the meeting had been very productive. Co-Chair Lijnzaad drew the meeting to a close at 12:36 pm.

## GLOSSARY

ABNJ	Areas beyond national jurisdiction
ABS	Access and benefit-sharing
Area	Seabed and its subsoil beyond the limits of national jurisdiction
BBNJ	Marine biodiversity in areas beyond national jurisdiction
CBD	Convention on Biological Diversity
EBSAs	Ecologically or biologically significant marine areas
EIA	Environmental impact assessment
FAO	Food and Agriculture Organization
IMO	International Maritime Organization
IPRs	Intellectual property rights
ISA	International Seabed Authority
ITPGR	International Treaty on Plant Genetic Resources for Food and Agriculture
IUCN	International Union for Conservation of Nature
MGRs	Marine genetic resources
MPAs	Marine protected areas
MSR	Marine scientific research
NRDC	Natural Resources Defense Council
RFMOs	Regional fisheries management organizations
Rio+20	UN Conference on Sustainable Development
SIDS	Small island developing states
UNCLOS	UN Convention on the Law of the Sea
UNGA	UN General Assembly
UNFSA	UN Fish Stocks Agreement
WIPO	World Intellectual Property Organization
WWF	World Wide Fund for Nature



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