

Summary of the Fourth Session of the Intergovernmental Conference on an International Legally Binding Instrument under the UN Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biodiversity of Areas Beyond National Jurisdiction: 7-18 March 2022

After a two-year delay due to the COVID-19 pandemic, delegates came back together at UN Headquarters in New York to resume negotiations on an international legally binding instrument under the UN Convention on the Law of the Sea (UNCLOS) on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ).

The fourth session of the Intergovernmental Conference (IGC-4) was the last one mandated by UN General Assembly resolution 72/249 and had initially been scheduled for March 2020. Yet after two weeks of discussions, delegates attending IGC-4 did not conclude their work, and requested IGC President Rena Lee to take the necessary steps to obtain a UN General Assembly decision to convene a fifth session in August 2022.

Nevertheless, this session was lauded by many as the “most productive meeting of the IGC process.” Others pointed to the “unprecedented progress” made in discussions on the four elements of the 2011 package, namely marine genetic resources (MGRs), including questions on benefit sharing, area-based management tools (ABMTs), including marine protected areas (MPAs), environmental impact assessments (EIAs), and capacity building and the transfer of marine technology (CB&TT). They also made progress on cross-cutting issues and institutional arrangements. Some were grateful for the unplanned hiatus occasioned by the pandemic, as it provided the “breathing room” necessary to gain perspective on the common goal of a BBNJ instrument.

Meeting in an informal-informal setting and with COVID-19 restrictions only permitting two representatives per delegation in the room at one time, delegates addressed a revised draft text of the agreement. For the first time, delegations prepared and submitted textual proposals, many times jointly, to facilitate progress. Delegations were in full negotiation mode, engaging in text-based negotiations, small group discussions on similar proposals, and cross-regional drafting exercises to submit consensus text.

Notably, a group of developing countries announced their intention to submit a joint proposal on MGRs and benefit sharing, with another regional group noting their work on a proposal on the

same. However, diverging views still persist on the establishment of an access and benefit sharing (ABS) mechanism. On EIAs, delegates agreed to base future negotiations on a cross-regional proposal on a tiered approach to conduct EIAs, although they were unable to reach consensus on who would ultimately be responsible for decision making.

On CB&TT, a group of delegations proposed a capacity building mechanism, with a regional group proposing a cooperation and coordination mechanism addressing all relevant sections of the agreement. There remained diverging views on the mandatory or voluntary nature of this issue. Under ABMTs, unlike at other sessions of the IGC, entrenched positions softened, and delegations took small steps toward agreement on the establishment and

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governance of MPAs. They held extensive discussions on the instrument's future financial mechanism, requesting the revised text to include a reference to the Global Environment Facility (GEF), so as to "keep the door open to the possibility" of the GEF as the BBNJ instrument's financial mechanism.

IGC President Rena Lee carries a heavy burden into the intersessional period to revise the draft treaty text to meet the expectations of all delegations, who are now, more than ever, 100% engaged in the treaty negotiation process.

IGC-4, which convened from 7-18 March 2022 at UN Headquarters in New York, began under the cover of COVID-19 restrictions, with observer participation prohibited during the first week and only lifted to allow three silent observers to enter into the conference room each day during the second week. During the closing plenary, many states called for observers to be accorded full participation rights at the next session.

A Brief History of the IGC on BBNJ

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

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

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

Following more than a decade of discussions convened under the United Nations General Assembly, the Assembly, in its resolution 72/249 of 24 December 2017, decided to convene an IGC to elaborate the text of an international legally binding instrument (ILBI) under UNCLOS on the conservation and sustainable use of BBNJ, with a view to developing the instrument as soon as possible. The IGC was mandated to meet for four sessions, with the fourth session originally scheduled for the first half of 2020.

Key Turning Points

Working Group: Established by General Assembly resolution 59/24 of 2004, the *Ad Hoc* Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of BBNJ served to exchange views on institutional coordination, the need for short-term measures to address illegal, unregulated, and

unreported (IUU) fishing and destructive fishing practices, MGRs, marine scientific research on marine biodiversity, MPAs, and EIAs. It met three times from 2006 to 2010.

The "Package": The fourth meeting of the Working Group (31 May-3 June 2011, New York) adopted, by consensus, a set of recommendations to initiate a process on the legal framework for the conservation and sustainable use of BBNJ, by identifying gaps and ways forward, including through the implementation of existing instruments and the possible development of a multilateral agreement under UNCLOS. The recommendations include a "package" of issues to be addressed as a whole, namely:

- MGRs, including questions on benefit-sharing;
- ABMTs, including MPAs;
- EIAs; and
- CB&TT.

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

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

Preparatory Committee: Established by UN General Assembly resolution 69/292, the PrepCom was mandated to make substantive recommendations to the General Assembly on the elements of a draft text of 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 IGC to elaborate the text of the ILBI. The PrepCom considered the scope of an ILBI and its relationship with other instruments, guiding approaches and principles, as well as the elements of the package. Despite diverging views, with a wide majority of countries arguing that the PrepCom had exhausted all efforts to reach consensus, the PrepCom outcome that was eventually adopted by consensus comprised:

- non-exclusive elements of a draft ILBI text that generated convergence among most delegations;
- a list of main issues on which there is divergence of views, with the indication that both do not reflect consensus; and
- a recommendation to the UN General Assembly to take a decision, as soon as possible, on convening an IGC.

The UN General Assembly, in resolution 72/249, established the IGC with a mandate to meet for four substantive sessions and conclude its work by the first half of 2020.

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

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

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

IGC-3: Delegates at the third session of the IGC convened from 19-30 August 2019 and delved, for the first time, into textual negotiations based on a "zero draft," containing treaty text, developed by IGC President Lee. The document's structure addressed general provisions and cross-cutting issues, as well as the four elements of the package identified in 2011.

Virtual Intersessional Work: As a consequence of the COVID-19 pandemic, delegations worked remotely from September 2020 to February 2022 via an online discussion platform to share views on the more contentious issues in the draft text. President Lee noted that intersessional work would not substitute negotiations at IGC-4, but would allow for clarifying positions and enhancing mutual understanding.

IGC-4 Report

On Monday, 7 March, IGC President Rena Lee opened the meeting, noting the informal webinars and discussions undertaken during the prolonged intersessional period, due to the COVID-19 pandemic and consequent restrictions. Noting that this is the fourth and final conference scheduled, she highlighted the progress made at IGC-3, including streamlining text where there was consensus. She drew attention to the revised text issued in November 2019 based on the proposals made at IGC-3 and expressed hope that the long intersessional period had helped delegations to clarify positions. She called on delegations to use this session to take the "giant step" to middle ground to reach consensus.

Miguel de Serpa Soares, Secretary-General of the IGC, Under-Secretary-General for Legal Affairs and UN Legal Counsel, underlined the growing, persistent threats to the ocean, pointing to the Special Report on the Ocean and Cryosphere in a Changing Climate (SROCC) of the Intergovernmental Panel on Climate Change (IPCC) and the Second World Ocean Assessment and noting that both reports called for enhanced cooperation and coordination at all levels of governance. He drew attention to the upcoming second Ocean Conference and the fifteenth Conference of the Parties to the Convention on Biological Diversity (CBD COP-15), noting

that the latter is set to agree on the post-2020 global biodiversity framework, which will address marine and coastal biodiversity, among other topics. He urged delegations to focus on flexibility to broker mutually acceptable solutions, noting that this year marks UNCLOS's 40th year.

Vladimir Jares, Director, UN Division for Ocean Affairs and the Law of the Sea (UNDOALOS), introduced the documents for the session, and informed delegations of rooms allocated for bilateral and small group meetings.

The UK, with the EU, the US, and NORWAY, underscored that Russia's invasion of Ukraine is reprehensible and goes against international law and the UN Charter, with the UK noting that Russia should be held accountable. They called for the immediate cessation of military action and hostilities, the removal of troops from Ukraine and the resumption of peace negotiations.

Delegates then adopted the agenda (A/CONF.232/2022/L.1). IGC President Lee introduced the revised programme of work (A/CONF.232/2022/L.2/Rev.1), noting that the general exchange of views would occur on Friday, 18 March 2022. The UK expressed hope that civil society could join the meeting in person and requested clarification on who would be the facilitators for each issue area under discussion. IGC President Lee noted that the informal-informals would be facilitated, highlighting that Renée Sauvé (Canada) had agreed to guide discussions on ABMTs. Delegates adopted the programme of work.

On Friday, 18 March 2022, delegates adopted the report of the Credentials Committee (A/CONF.232/2022/3), as presented by the Chair of the Credentials Committee Carl Grainger (Ireland).

The following report is organized according to sections presented in the draft text, discussed over the two-week meeting. The meeting was held in an informal-informal setting, with speaking rights only accorded to states. Because of the nature of the setting of this meeting, this summary will not attribute statements to speakers, unless otherwise noted. Delegates based their discussions on the revised draft text of an agreement (A/CONF.232/2020/3), and on sets of questions prepared by the facilitators for each issue area circulated by e-mail periodically throughout the meeting.

Delegates briefly addressed the use of terms on Thursday, 17 March, but did not conclude this discussion. Some delegates underlined that definitions and substance have a circular relationship, highlighting that setting definitions in stone would mean significant revisions to the draft text of the agreement.

Marine Genetic Resources, including Questions on the Sharing of Benefits

Delegates discussed this issue on Tuesday and Wednesday, 8-9 March, and Monday, 14 March. IGC President Lee facilitated these discussions.

Delegates discussed **collection of and/or access to MGRs in ABNJ** (draft Article 10, including Alt 1 and 2). In a general comment, one group, supported by a number of others, stressed that the draft articles related to access and benefit sharing are at the heart of the operationalization of the instrument, governed by equity and the common heritage of humankind. He stressed that benefit sharing must be mandatory and include both monetary and non-monetary benefits, and underlined the importance of a complex international regime to govern the exploration and exploitation of MGRs in ABNJ. One delegation proposed changing the title of the draft article to "sharing of benefits at the stage of collection of MGRs in ABNJ."

MGRs collection/access notification system: One delegation requested clarification on the definition of the word “access,” with a regional group stating that collection should also encompass *ex situ*, digital sequence information, and or *in silico* collections.

Several delegations underlined the need for free and open collection of MGRs in ABNJ to facilitate MSR, pointing to UNCLOS provisions in this regard. Another group underlined the limitations of MSR as delineated by UNCLOS, urging delegations to curb “maximalist” tendencies.

On the notification system, one regional group, expressing preference for a permitting and licensing system for accessing MGRs in ABNJ, noted flexibility to use a notification system instead. One other group suggested a user-friendly electronic notification system, relying on the good faith of users and generating a unique identifier when used, which could also assist in mapping access and utilization of MGRs, and trigger the sharing of benefits. A group of countries, supported by many, stated that its position on the contours of a notification system is based on marine scientific best practices developed under UNCLOS Article 248, which governs ABS within the scope of national jurisdiction, and which should be similar for ABNJ the sake of consistency and harmonization that would not place unnecessary burdens on scientific research. One delegate noted that the notification system should distinguish the type of information to be provided according to different stages, such as MSR pre-cruise and post-cruise reports. They stressed that pre-cruise notifications should be provided in a timely manner and contain the necessary information to enable participation by developing country scientists. Others stressed that notification should trigger benefit sharing.

A number of delegations expressed a preference for pre- and post-cruise reports. Others highlighted that pre-cruise reporting is burdensome to researchers, preferring only post-cruise reporting. A group of countries, supported by others, stated that notifications, at the very least, should include the date, location, resources, and institutions participating in the access/collection of MGRs. Regarding post-cruise notifications, the group stated that these should include a report summarizing the results of the expedition. One delegation indicated that the time frames for pre-cruise and post-cruise notifications should be differentiated and noted that six months would be reasonable for the former, while a one-year period would be reasonable for the latter. Another stressed the need to build on existing best practice on pre-cruise notification, saying that post-cruise information is more detailed and should be lodged with the clearinghouse. Another delegation preferred that any notification be lodged with the secretariat.

One delegation said that any additional notification mechanism may undermine the functioning of existing bodies.

Several delegations noted the importance of transparency and traceability of MGRs accessed and/or collected in ABNJ. One delegation, supported by others, noted that future collection technology may not require cruises. Another delegation cautioned against setting up an expensive tracing system.

Benefit-sharing in relation to access: Stressing the need for fair and equitable benefit-sharing, another regional group, supported by others, proposed the establishment of a light ABS mechanism, which supports both monetary and non-monetary benefits. Underscoring new knowledge since the entry into force of UNCLOS, one delegation stressed the importance of a fair and equitable benefit-sharing regime for MGRs which are governed by the common

heritage of humankind, sharing that a tiny bucket of seawater can yield multiple benefits for humankind.

Ex situ access: A number of delegations preferred open and free *ex situ* access, with others stating that it should be publicly accessible, and others supporting that it should enable benefit sharing. Many called for the information to be deposited in repository and made publicly accessible. Others noted that the sharing of this information should adhere to best scientific practice, which may mean some access restrictions.

One cautioned not to confuse access to genetic sequencing data to access to MGRs in ABNJ, and also stressed the difference between MGRs in ABNJ and mineral resources in ABNJ.

One delegation noted that this was a three-stage process: the pre-stage notification, the post-collection notification with facilitated access, and the notification of utilization stage. She noted that discussions on digital sequencing information (DSI) under the BBNJ agreement may have to move ahead of discussions under the CBD. She called for a separate article on benefit sharing related to DSI.

Access to traditional knowledge (TK) of Indigenous Peoples and local communities (IPLCs) associated with MGRs collected/ accessed in ABNJ: One regional group highlighted changes proposed by a group of states to the draft article (10 bis) noting that parties shall take legislative, administrative, or policy measures with the aim of ensuring that TK associated with MGRs “collected” in ABNJ that is held by IPLCs shall only be accessed with the “free prior and informed consent” or approval and involvement of these IPLCs. Many delegations supported the spirit of the draft article, with several offering to work with the proponents to streamline the language. One delegation proposed that access to TK be on “voluntary” mutually agreed terms.

Fair and equitable sharing of benefits (draft Article 11): Delegates discussed sharing of benefits based on questions posed by the facilitator regarding:

- the nature of the obligation to share benefits (mandatory/voluntary);
- the activities that would trigger the sharing of benefits;
- what type of benefits might be shared;
- purposes for which benefits may be used; and
- measures or other mechanisms for the sharing of benefits.

On the nature of obligations, as reflected in draft Article 11.1 and 11.2, one group of countries, supported by many others, underscored the importance of the mandatory “fair and equitable” sharing of benefits, explaining that this was one of the fundamental pillars of a BBNJ instrument, covering both monetary and non-monetary benefits and apply to *in situ*, *ex situ*, and *in silico* access to MGRs. In line with this, other delegations indicated that “utilization” should trigger monetary sharing of benefits especially when it involved commercialization of MGRs. Another group of countries, supported by others, indicated that while they supported the idea of benefit sharing, the issue of what would trigger that obligation and its nature (monetary/non-monetary) was still in question, given that considerable non-monetary benefits were derived from the collection, maintenance, and research of MGR samples.

Types of benefits to be shared: On the types of benefits that should be shared (draft Article 11.3), several countries underlined both monetary and non-monetary benefits. Many delegations supported monetary benefit-sharing on the commercialization of MGRs in ABNJ. A number of others supported mandatory sharing of non-monetary benefits, with one providing examples of such

benefits as sharing information on mapping of the original samples, accessibility of samples, and research results.

A group of countries explained that different types of benefits would be shared at different stages of the process, beginning with access/collection, including research, and ending with utilization. The group representative said monetary and non-monetary benefits were essential to the agreement and underscored the importance of monetary benefits associated with commercial utilization of MGRs. Regarding non-monetary benefits, the group stated that these should include access to samples and sample collections, sharing of information, such as pre-cruise or pre-research information, capacity building, and technology transfer. Another group of countries noted that the types of benefits ought to be listed under the article to gain a better understanding of their scope. One delegation, supported by others, objected to the inclusion of monetary benefits, arguing that the collection/access, maintenance, and research of MGRs entailed costs and investments and explained that they supported the sharing of information under certain conditions, including safety-related ones.

Delegates also considered a proposal introduced by a regional group, with support from other groups and several delegations, on the establishment of an ABS mechanism to operationalize the fair and equitable sharing of benefits. The aim of the proposal, as explained by the group, is to effectively operationalize ABS of MGRs from ABNJ through a lean mechanism that would provide expertise and the necessary assistance to parties to reach a universal understanding that benefits should be shared fairly and equitably. The mechanism would facilitate implementation by enabling the immediate sharing of benefits upon entry into force of the agreement and would also facilitate monitoring. The body would make recommendations to the conference of the parties (COP) on ABS, including on the rate of payment for monetary benefits. In response to this proposal, another regional group said there were many elements in the proposal that could forge common ground including on: the fair and equitable sharing of benefits; COP decisions on ABS; links between draft Article 11 (fair and equitable sharing of benefits) and draft Article 13 (monitoring); a meaningful ABS mechanism; a role for the clearinghouse mechanism to ensure transparency; and the need for a special ABS fund. Some noted this was in line with a recently created High Ambition Coalition for BBNJ.

Monitoring: Delegates discussed monitoring related to MGRs (draft Article 13), addressing text proposing a monitoring role for: the COP in adopting rules, guidelines, or a code of conduct for the utilization of MGRs in ABNJ; and a scientific and technical body. The text also proposed a role for parties administering a track and trace system. There were divergent views on the need for a monitoring element under this part of the text, with some stressing its importance and others calling for a more global text on monitoring that addresses the entire agreement. Many delegations expressed opposition to any track and trace system, noting that this may prove to be burdensome, cumbersome, and expensive.

One group, supported by other delegations, suggested a transparency system to replace the monitoring system, with a role for a scientific and technical body, linking the clearinghouse mechanism to the pre- and post- MGR collection notification system to promote traceability, and sharing of information through a repository.

Several other groups and delegations stressed the need for a monitoring system to specifically address access and utilization of

MGRs in ABNJ, with some preferring that any transparency system be established in addition to a monitoring system for access and utilization of MGRs. They also addressed whether the monitoring/transparency system should involve traceability through unique identifiers of MGRs.

A regional group, supported by many, indicated that monitoring should be principally achieved through the sharing of information via a clearinghouse mechanism on access of MGRs in ABNJ, noting that this would ensure transparency. Several delegations, opposed by others, expressed reservations related to tracking and tracing MGRs through unique identifiers as a part of the monitoring/transparency regime.

Several delegations indicated that the monitoring/transparency system should be lean and nimble and need not involve the creation of fixed and dedicated subsidiary bodies since the COP oversees decision making and could do this through the establishment of *ad hoc* committees, as necessary.

On **application** (draft Article 8), they discussed the inclusion of fish as genetic resources, with many supporting this inclusion. Many, but not all, agreed to exclude fish and other biological resources as commodities under this part of the agreement. A delegation acknowledged that not all fish should be excluded from the scope since scientific research on certain types of fish is important and should benefit all. Another group of countries said that the treaty should not apply to “fishing activities and the management of marine living resources.” One delegation said that clear definitions of the activities listed might be helpful towards an agreement. They also debated the inclusion of derivatives but were unable to agree. A group of countries, supported by others, were of the view that fish as genetic resources and derivatives should be included under the treaty, otherwise the effectiveness of benefit sharing would be compromised.

They discussed the temporal scope, with some groups supporting including MGRs *in silico* before entry into force of the agreement. Others supported MGRs collected *in situ* after entry into force.

In her summary of the discussions, President Lee noted the continued lack of consensus on key issues, but pointed to discussions on new proposed text conducted by various states and regional groups.

On Friday, 18 March, during the final stocktaking plenary, one regional group reported on productive informal discussions on their proposal to operationalize an ABS mechanism for fair and equitable benefit sharing. In this regard, one developing-country regional group shared that access to MGRs should be understood under a broader definition, including collection of *in situ*, and access to *ex situ*, derivatives and other forms of storage, including DSI. He announced that a number of developing country regional groups would work on a joint cross-regional proposal on MGRs and benefit-sharing, calling for an extended deadline to submit this proposal. One other regional group also highlighted plans to submit a proposal on MGRs. Another regional group reported on successful informal consultations on the free, prior and informed consent for access to TK of IPLCs associated with MGRs collected/accessed in ABNJ. She highlighted that access to such TK shall be facilitated by the clearinghouse mechanism, noting the need for intersessional consultations on additional proposals.

Area-based Management Tools, including Marine Protected Areas

This issue was discussed on Thursday and Friday, 10-11 March, and Monday, 14 March, facilitated by Renée Sauv  (Canada).

On the **identification of areas (draft Article 16)** requiring protection, Facilitator Sauv e invited comments on the related indicative criteria/principles. Many were supportive of including a reference to the TK of IPLCs. One delegation called for further clarification on the application of TK of IPLCs in the high seas.

There were diverging views on whether the “precautionary principle” or the “precautionary approach” should be used for identification of areas. One delegation, supported by others, said that the “precautionary approach” was more commonly used in ocean-related agreements, whereas the “precautionary principle” was a more stringent term reserved only for agreements related to toxic chemicals and wastes. One delegation noted that other conventions have overcome this by creatively drafting text defining their intent around precaution.

On best available science vs scientific information, views differed. One delegation highlighted the use of “scientific evidence” under the UN Fish Stocks Agreement (UNFSA). Some others favored “best available science” over “scientific information” pointing to the continuous evolution of scientific knowledge.

On the title of the draft article regarding identification of areas “requiring protection,” some highlighted that not all ABMTs required protection, calling for the text to adhere to the ideals related to both conservation and sustainable use.

One delegation noted the importance of precise definitions for ABMTs in order not to undermine the mandates of existing organizations. Another called for standardization of ABMTs and MPAs throughout the agreement, noting that these areas and their designation relate to the temporal and spatial scope of the agreement.

Delegates discussed the use of **indicative criteria** specified in an annex (draft Article 16.3) that shall/may be revised as necessary by a scientific and technical body/COP. While there was general recognition of the need for criteria to identify MPAs, there were differing views on the modalities. A group of countries, supported by many, said the criteria should be listed under an indicative annex and periodically updated by the COP in the form of a decision. A regional group preferred that criteria for identification of areas should be listed in an indicative annex to be reviewed periodically by the COP with assistance from subsidiary bodies.

Some concurred with this idea but clarified that the annex needs to be “robust” in the sense that it should be an integral part of the treaty and would only be revised following amendment procedures. Others were of the view that the list of criteria could be contained in a separate record and provide some guidance to the COP with the possibility of periodic review “as necessary.” Several delegations concurred with a review process for the criteria to keep them updated and “future proof” the treaty. One delegation said that the criteria under the current draft annex/list were vague, while another delegation noted that this set was taken from the ecologically or biologically significant areas (EBSAs) text under the CBD and could serve as a guideline.

Delegates discussed the application of the indicative criteria (draft Article 16.4), including by the proponents of ABMT proposals and/or by relevant global, regional, subregional, and sectoral bodies. Most delegations favored the application of specified criteria by proponents of proposals and rejected the application of criteria to other relevant bodies not governed directly by the BBNJ convention. A few delegations, however, indicated that using applicable criteria with entities and bodies outside the purview of the treaty could help break the silos and promote consistent practices.

International cooperation and coordination: Delegates discussed international cooperation and coordination (draft Article 15) related to ABMTs, including MPAs, calling on states to promote coherence and complementarity through existing instruments and frameworks at the global, regional, subregional, and sectoral levels. Many delegations called for streamlining the text, noting many of the provisions contained under this article are already addressed under general provisions on international cooperation and coordination pertaining to the entire agreement (draft Articles 4 and 6), as well as decision making provisions (draft Article 19). One regional group outlined the importance of considering cooperation when first establishing MPAs; complementing existing work, when additional proposals for MPAs are put forward; recognizing ABMTs and MPAs where relevant organizations do not have global recognition; and establishing ABMTs where there are no existing management measures. One group noted that the text should be revised to bring about stronger complementarity. However, several delegations expressed objection to the use of the word “complementarity” in the context of promoting coherence in the establishment of ABMTs since it was not clear whether this would undermine or weaken existing ABMTs and related bodies. One delegation, supported by many, said that there should not be a hierarchical structure where the COP would be a “parent” of existing bodies, including regional ones, but rather the COP should be a “sibling.”

Many delegations, but not all, expressed reservations regarding text on states’ cooperation in establishing new instruments and/or frameworks to ensure the conservation and sustainable use of BBNJ where none exist. Some highlighted that this provision should not be obligatory. Others noted that this could hinder or slow down the establishment of ABMTs. In this regard, one delegation cited UNCLOS Article 118 to indicate that the new instrument should be aligned with the aim of states cooperating with each other in the conservation and management of living resources in the high seas, including through subregional or regional fisheries organizations. Another delegation said that the solution might lie in shifting away from “binary” positions and seeking a hybrid combination of global and regional mechanisms with the aim of the conservation and sustainable use of marine biological diversity. In line with this, another delegation indicated that the COP could provide a useful platform for existing bodies to come together, learn from each other, and fill the gaps. A delegation said there are different avenues to establish a network of ABMTs and these avenues should be reflected in the instrument.

One delegation, speaking from the perspective of a regional fisheries management organization (RFMO), described the structure and functioning of a majority of RFMOs, noting their role in marine biodiversity conservation, including by identifying vulnerable marine ecosystems. He opined that RFMOs have ample experience and human resources to address the establishment and management of ABMTs, including MPAs; and stressed that any new arrangement would create “unproductive solutions” and confuse and undermine the existing architecture. Another underlined the importance of not undermining existing instruments, noting that text calling for measures to “complement” existing measures was subjective and would only result in a never-ending debate at the COP level about its definition.

Delegates also discussed **consultation to enhance coordination with existing instruments** on ABMTs, including MPAs (draft Article 15.3), with many supporting “conservation and sustainable

use measures” as opposed to “conservation and management measures.” One regional group proposed the establishment of a cooperation and coordination mechanism. Many delegations were of the view that the arrangements should be decided by the COP and not by individual parties. Many supported a proposal to create a platform within the COP to enhance coordination and cooperation among these different entities, with one saying that there were different avenues to this end that should be defined in the instrument.

On **not undermining measures by adjacent coastal states** (draft Article 15.4), some delegations asserted the rights of coastal states over the extended continental shelf, with one delegation calling for text suggested during IGC-3 to be reintroduced into the text. Another called for measures to be taken if the designation of ABMTs impedes the rights of coastal states. One delegation opposed the inclusion of the draft article, noting a lack of clarity and that the language currently referenced is taken from the UNFSA, whose scope is limited to fish stocks.

On **measures that fall under coastal states jurisdictions** (draft Article 15.5), many states concurred that ABMT under BBNJ would cease to exist in areas of national jurisdiction, including adjacent areas. Many island nations with volcanic activity noted the importance of this provision given that new island territory could emerge as a result of such activity, which would have a bearing on the delimitation of marine areas within national jurisdiction. One delegation, supported by several others, made a proposal to include a provision to indicate that in cases where measures affect the superjacent waters above the seabed and subsoil of submarine areas over which a coastal state exercises sovereign rights in accordance with UNCLOS, such measures shall give due regard to the sovereign rights of such coastal states.

Decision making: On decision making related to ABMTs, including MPAs (draft Article 19), delegations considered two options related to objectives, criteria, modalities, and requirements guiding COP decisions on ABMTs, including MPAs. In the first option, the COP can decide on submitted proposals on a case-by-case basis, taking into account scientific or other advice related to, *inter alia*:

- the identification of areas requiring protection;
- the establishment of ABMTs;
- whether to recommend that states promote the adoption of relevant conservation and sustainable use/management measures under existing measures or whether to adopt measures complementary to those adopted under the existing instruments in cases where there are relevant legal instruments; and
- the adoption of conservation and sustainable use/management measures where there are no existing instruments.

This was supported by several regional groups. One regional group noted that the COP shall be the decision-making body on ABMTs, working on filling regulatory gaps, building on existing effective measures, and establishing new measures where none exist.

In the second option, the COP would take decisions on matters related to ABMTs, including MPAs, with respect to identifying potential area-based management tools, including marine protected areas; and make recommendations relating to the implementation of related management measures, while recognizing the primary authority for the adoption of such measures within the respective mandates of existing instruments. This was supported by a number of delegations.

Several regional groups and delegations supported streamlining this draft article, basing their suggestions on one country’s proposal

that the COP take decisions on ABMTs based on recommendations made during an extensive consultation process with relevant stakeholders. Another proposal that generated support was for the establishment of extensive consultation procedures with existing instruments and bodies before proposals for ABMTs, including MPAs, are tabled at the COP. Others proposed differentiating the COP’s role in scenarios where there are existing instruments and when there are none.

One regional group, supported by a number of delegations, proposed a voting system in the event that all efforts to reach consensus on the designation of ABMTs are exhausted. This was opposed by a number of delegations. One delegation explained that the COP’s recommendations could be considered by existing instruments, which would ultimately take the final decision; and, supported by a few other delegations, proposed an “opt-out” option from COP decisions on ABMTs to encourage universal ratification of the instrument, particularly for states with strong regional ABMT governance measures. One delegation, supported by others, submitted a proposal to avoid the bifurcation of COP roles on ABMTs in terms of whether other relevant bodies exist or not.

Some delegations called for a non-hierarchical structure, with the COP respecting the roles of existing instruments but also supporting those existing instruments that may require additional assistance in implementing their mandates. One delegation urged reaching an acceptable consensus to prevent it from spilling into future COP discussions.

In her summary of the discussions, Facilitator Sauvé highlighted a general emerging consensus on a number of issues, underlining the need for further discussions on the more contentious issues.

On Friday, 18 March, during the final stocktaking plenary, one regional group, speaking for several other regions and delegations, reported on productive discussions on streamlining the sections on international cooperation and coordination and decision making, highlighting they would submit a proposal on a provisional structure.

Environmental Impact Assessments

Delegates discussed this issue on Wednesday and Thursday, 16 and 17 March, facilitated by René Lefeber (the Netherlands). Delegates used a set of guiding questions tackling interrelated draft articles under six issue areas:

- triggering the conduct of EIAs (draft Articles 24, 27 and 29);
- internationalization of EIA process (draft Articles 23, 25, 27, 29, 30, 32, 37, 38, 40, 41);
- decision making (draft Article 38);
- relationship with other EIA processes (draft Article 23);
- strategic environmental impact assessments (SEAs) (draft Article 28); and
- monitoring, reporting and review (draft Articles 39, 40 and 41).

On the **obligation to conduct EIAs** (draft Article 22), three regional groups and several delegations supported that states would assess the potential effects of planned activities under their jurisdiction or control in accordance with their obligations under UNCLOS Articles 204 (monitoring of the risks or effects of pollution), 205 (publication of reports), and 206 (assessment of potential effects of activities). One delegation stressed the voluntary nature of UNCLOS Article 206 and called more broadly for definitions on cumulative and strategic environmental assessments.

On the **relationship between this agreement and EIA processes under other instruments, frameworks, and bodies** (draft Article 23), many delegations saw a role for the scientific and technical/

technological body to consult and/or coordinate with relevant legal instruments and frameworks and relevant global, regional, subregional, and sectoral bodies with a mandate to regulate activities with and/or without impacts in ABNJ, or to protect the marine environment. Many also agreed that procedures for consultation and/or coordination shall include the establishment of an *ad hoc* inter-agency working group or the opportunity for participation of representatives of the scientific and technical bodies of those organizations in meetings of the scientific and technical/and technological body. Calling for the deletion of reference to the *ad hoc* inter-agency working group, one regional group proposed that the COP develop a consultation and coordination mechanism to work with relevant instruments, frameworks, and bodies regulating activities or working in ABNJ.

Further, there was growing consensus that, in addition, states could cooperate in promoting the use of EIAs and modern standards and guidelines in relevant legal instruments, frameworks, and bodies for planned activities meeting or exceeding the threshold of the BBNJ instrument. One delegation said that all processes of EIAs should be country-led and country-owned but acknowledged that a certain degree of internationalization would be good for transparency. He preferred that states cooperate to promote the use of EIAs in relevant legal instruments and bodies for planned activities that meet or exceed the threshold contained in the agreement.

Delegates diverged on the **development of global minimum standards or guidelines** for the conduct of EIAs, and on whether these should be developed by the scientific and technical/and technological body or through consultation or collaboration with relevant existing instruments, frameworks, and bodies. Some delegations supporting the development of these standards recalled the voluntary minimum standards under the CBD and the minimum standards under the World Health Organization. One regional group outlined that a BBNJ instrument should reflect global minimum standards for activities that have impacts in ABNJ, including standards related to the notification of stakeholders, and proposed measures to minimize effects, highlighting the role of the scientific and technical/and technological body working with other instruments, frameworks, and bodies to implement these standards. Another supported global minimum standards, pointing to their role in addressing fragmentation, with another noting that standards, procedures, and practices can be based on UN Environment Programme (UNEP) standards and the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention). One delegation underlined the non-legally binding nature of these standards. Another called for the COP, in consultation with existing bodies, frameworks, and instruments, to develop these standards. In this regard, one delegation noted that the instrument should serve as a partnership platform for states and others to work together towards the conservation and sustainable use of BBNJ.

Those who did not support the development of global minimum standards noted that the BBNJ instrument would not have the authority to impose any obligations on other bodies. Some recalled that the instrument should not undermine existing instruments, bodies, or frameworks, calling to promote coherence instead. Another delegation opposed global minimum standards and guidelines for the conduct of EIAs, noting that this would create a hierarchy with other relevant frameworks and bodies.

One delegation called for the deletion of a reference to the scientific and technical body.

Requirement to conduct EIAs: Several regional groups and delegates were amenable to proposed language noting that where a planned activity under the jurisdiction or control of a state in ABNJ is already covered by existing EIA obligations and agreements, or has already been assessed, it is not necessary to conduct another EIA of that activity, provided that the state with jurisdiction or control over the planned activity determines that the assessment already undertaken is “substantively equivalent” to the one required under the BBNJ instrument or “comparably comprehensive,” including regarding the assessment of cumulative impacts. Opposing the inclusion of the terms “comparably comprehensive” and “cumulative impacts,” one delegate outlined key elements of an EIA to determine substantive equivalence, including, among others:

- a description of the activity;
- marine environment likely to be affected;
- analysis of the potential effects and impacts;
- analysis of reasonable alternatives;
- time for stakeholders to provide comments;
- responses to comments;
- states taking account of the EIA; and
- making decisions publicly available.

Other delegation also saw the merit of including language noting that other relevant bodies, frameworks, and instruments should conform to the strict EIA standards established by the BBNJ instrument, noting the links to global minimum standards. One delegation also noted the links to the common heritage of humankind.

Although they preferred language to the effect that no EIA is required for any activity conducted in accordance with the rules and/or guidelines established under relevant instruments, frameworks, and bodies, regardless of whether or not an EIA is required under those rules or guidelines unless the state with jurisdiction or control determines that an EIA is required even under those rules, a few delegations expressed flexibility to consider a role for the BBNJ instrument in the conduct of EIAs in ABNJ. One noted that the development of the instrument’s role in this regard would take time.

On **thresholds and criteria** (draft Article 24), some delegations expressed preference for a single trigger for EIAs. A number of regional groups and delegations supported the “more than minor or transitory effects” trigger, with some pointing to the Madrid Protocol on Environmental Protection to the Antarctic Treaty in this regard. Others supported the “substantial pollution of or significant and harmful changes” trigger, in line with UNCLOS Article 206. One delegation called for consideration of separate triggers depending on the level of threat, further noting that triggers and thresholds should be defined by the scientific and technical/and technological body. One delegation opposed the reference to the Antarctic Treaty, noting that this is an especially vulnerable ecosystem with no comparison to most marine areas in ABNJ. Another opposed the inclusion of the provision altogether.

Several delegations were supportive of the scientific and technical/and technological body also developing criteria to determine when EIAs are to be conducted, with one regional group and one delegation noting that these should be reviewed on a regular basis, and another stating that this would be mandatory. One delegation supported an indicative set of criteria to ensure coherence. Another delegation supported including the criteria in an annex to the agreement.

One delegation, supported by others, pointed to the need to distinguish between two different issues: the threshold for EIAs under UNCLOS Article 206; and criteria for activities leading up to what would eventually meet the threshold under Article 206 for an EIA. She indicated that bringing in the notion of minor or transitory effects as a part of the screening criteria instead of as a requirement to meet the Article 206 threshold might be a solution towards common agreement and noted that an indicative list of criteria might be helpful to this end as well. While acknowledging the value of adding a layer of protection to EBSAs, she noted that having a separate threshold was unnecessary since they were already protected through the process that was being set up for EIAs under the agreement. One delegation noted that having a more ambitious threshold than the one under UNCLOS Article 206 was not problematic according to the principle of subsidiarity since the aim of BBNJ is to further develop UNCLOS.

One regional group, supported by another, presented a **tiered approach for the conduct of EIAs and SEAs**. On the threshold for EIAs, he indicated that the threshold ought to be activities that “have more than a minor or transitory effect on the marine environment,” but combining state- and COP-led decision making depending on the scenario. In explaining this, he noted that if a screened activity is found to have minor and transitory effects, the EIA would be subject to state review, but if the activity is found to have more than a minor and transitory effect, the EIA would be subject to international review. He noted this approach was based on the Antarctic Treaty and added that activities impacting EBSAs or vulnerable areas would automatically trigger an EIA.

The proponents of this proposal stressed this approach represented evolutions in science and practice since the adoption of UNCLOS. They also stated that UNCLOS Article 206 does not prohibit a tiered approach or mandate an approach but, rather, is a foundation on which states can build a robust process. Several delegations welcomed the proposal and called for more time to consider it. One delegation registered opposition to this approach. Another delegation opined that bodies under the BBNJ instrument would be overburdened if the threshold were set too low, pointing also to the extended time it may take to conduct a single EIA. Expressing openness to a tiered approach, one regional group highlighted that this approach would only be acceptable if the COP was removed from decision-making processes and if only one EIA would be conducted for planned activities in the second tier.

Another regional group emphasized the importance of having an effective and implementable benefit-sharing mechanism linked to the achievement of Sustainable Development Goal (SDG) 14. He referred to the role of EIAs for the effective protection of the marine environment, particularly with regard to environmentally sound management as critical to the protection of the common heritage for humankind. He also said that internationalization of EIAs was necessary if the global commons were to be effectively protected, explaining the region’s preference for a tiered approach. Supporting the tiered approach, one delegation proposed a preliminary assessment to ascertain when effects are more than minor or transitory. One regional group pointed to their proposal on a non-exhaustive list of criteria including the duration of the activity, as well as some aspects related to transboundary impacts. This was supported by several delegations.

On **cumulative impacts** (draft Article 25), many delegations supported the consideration of cumulative impacts in the conduct of an EIA, but preferred it be merged with the provision on thresholds and criteria. One delegation pointed to their proposal to streamline

the text. Another delegation, however, noted cumulative impacts have not been well defined, and their inclusion in the text would need further discussion.

On **areas identified as ecologically or biologically significant or vulnerable** (draft Article 27), two regional groups supported the conduct of EIAs in EBSAs even if the effects of the proposed/planned activity are transitory because of the vulnerability of these areas. One regional group opposed an automatic trigger of EIAs in EBSAs. Many delegations acknowledged the importance of conducting EIAs for planned activities in EBSAs but did not support a differentiated approach, supporting merging this provision with the provision on thresholds and criteria. Supporting this proposed merging, one regional group suggested that scientific criteria for such areas could be included in a list, which would mean that the threshold criteria could be met more rapidly for EIAs in these areas. One delegation opposed the mention of EBSAs in the agreement, saying that they were not an ABMT and should only be considered under the CBD.

On **strategic environmental assessments** (draft Article 28), a regional group supported SEAs since they are essential to “future proof” the agreement to provide for the types of complex and large-scale human endeavors that will take place in the high seas including, for example: multi-technology energy fields; conglomerate aquaculture; floating urban centers; and marine plastic collection. He noted that endeavors of this nature require adequate planning and preparation and must take account of temporal aspects and cumulative impacts that could entail risks that industry had to factor in for predictability and cost analysis.

On the relationship between SEAs and EIAs, he said that SEAs can also help to determine the scope of EIAs, have a bearing on the consultation processes, and noted that the former were proactive while the latter were reactive. Although SEAs had to feature somehow in the agreement, there could also be room for an enabling clause to mandate the COP/scientific and technical/and technological body to develop voluntary SEA guidelines, similar to those developed by UNEP, the UN Framework Convention on Climate Change (UNFCCC), and the CBD, he added. He objected to the application of the process for EIAs *mutatis mutandis* to SEAs (draft Article 28(2)), since EIAs are project-based, and SEAs are plan and programme-based, underscoring that the responsibility to ensure that SEAs are carried out rests with the states and not the COP. He added that the group would be introducing a definition of SEAs under Article 1 to bring clarity to the concept. Several groups and delegations concurred on the need to have SEAs feature in the agreement, while other delegations preferred an enabling clause calling on the COP/scientific and technical/and technological body to define SEAs and voluntary guidelines.

A group of countries, supported by many, spoke about the usefulness of SEAs for cumulative impacts but noted that the same processes for EIAs should not apply *mutatis mutandis* to SEAs. He referred to the fact that SEAs were more regionally focused and said that the region was working on two interactive tracks on SEAs and management tools for the mapping of ecosystems, particularly in highly vulnerable areas.

A few delegations objected to the inclusion of SEAs, indicating that they went beyond the scope of UNCLOS on EIAs. Others said that while they could agree to considering SEAs either in the instrument or by the COP or scientific and technical/technological body in the future, they could not agree to mandatory provisions, which is why they preferred the use of the word “may decide” instead of “shall” in the chapeau of the draft article.

On the **list of activities requiring or not requiring an EIA** (draft Article 29), several regional groups did not support this list in the agreement, with two noting that the threshold constitutes the basis on whether an EIA is conducted. One delegation was supportive of a negative list, of activities not requiring an EIA. One regional group noted that a dynamic, indicative, non-exhaustive list could be a useful guide for states but was ambivalent on its inclusion in the agreement. Several other delegations noted that the list could be developed by the scientific and technical body at a later stage, with one delegation noting that the list would then be subject to COP approval. Others noted that a list would not “future-proof” the instrument. One supported a role for the COP in developing the list, with another proposing the COP regularly update it. Another noted that this list could be requested by the COP at a later stage. One delegation registered their opposition to the list, noting that it was not required. Others noted that a list would obviate the need for a case-by-case consideration. One delegation was not supportive of the list, noting that the level of impact will depend on the location of the planned activity and the receiving environment.

On **screening** (draft Article 30), several delegations preferred a clear delineation between this provision and the criteria-related provision. One delegation said that there should be no need to conduct a screening if the proposed activity will obviously have impacts on the marine environment. Expressing flexibility to involve the scientific and technical/and technological body to ascertain that a planned activity does not require an EIA, one regional body stated that this would be contingent on the COP being excluded from additional decision making.

One regional group working with a delegation proposed a new consolidated article on steps in the EIA process (a proposed Article 29 bis), including, *inter alia*, screening, scoping, impact analysis, mitigation and impact management, report preparation, public notification and consultation, and decision making. Many expressed a willingness to consider this text. Others supported the provision that states would determine whether an EIA is required with respect to a planned activity under its jurisdiction or control, with some also supporting informing the scientific and technical body. One delegation supported verification by the subsidiary scientific and technical/technological body if a state determines that an EIA is not required for a planned activity under its jurisdiction or control. One opposed the provision, noting that it goes beyond UNCLOS requirements.

On **impact assessment and evaluation** (draft Article 32), they focused on the establishment, by the scientific and technical/technological body, of a pool of experts to conduct third party EIAs, with a number supporting the use of the proposed experts’ pool.

On **public notification and consultation** (draft Article 34), one delegation proposed that this be open to all states and stakeholders, precluding the long list of stakeholders included in draft Article 34.2.

On **publication of assessment reports** (draft Article 36), one regional group proposed an additional provision to the effect that a party that has conducted an EIA under a relevant legal instrument, framework, global, regional, subregional, or sectoral body, shall/should publish the EIA report through the clearinghouse mechanism. One delegation suggested a role for the secretariat in the notification of published reports. One delegation underlined that monitoring reports should only be shared on a case-by-case basis.

On the **consideration and review of assessment reports** (draft Article 37), one regional group, with a number of delegations, underlined the importance of the scientific and technical/technological body in the review process, noting that many developing countries lack the capacity to perform these reviews. One other regional group queried the need for this provision, calling for clarity on purpose, need, and follow-up requirements of such an exercise, while another opposed its inclusion altogether.

On **decision making** (draft Article 38), views diverged on whether individual states or the COP should be ultimately responsible for determining whether a planned activity may proceed. Presenting a proposal submitted by two regions, one regional group outlined a “bridge-building” proposal, envisioning four different decision-making scenarios, including state-led decision making for activities at the screening stage, and activities screened and found with minor effects. For activities within national jurisdiction with potential impacts in ABNJ, also known as the effects-based approach, they stated that the scientific and technical body would provide recommendations to states but shared that decision making would rest with the coastal state. This was opposed by a regional group and several delegations. They highlighted that the COP would make decisions for activities likely to have more than a minor or transitory effect, which would also be reviewed by the scientific and technical/technological body. One regional group supported a role for the COP and the scientific and technical/technological body in decision making, and for the clearinghouse mechanism for transparency. One regional group stressed the importance of state-led decision making, with the COP providing guidance. One delegation preferred the designation of decision making to the COP, with another also seeing a role for regional bodies in this regard. One delegation suggested that the BBNJ instrument elaborate a decision-making process, but would not be the body that took decisions.

Many delegations supported the publication of EIA decisions, with some noting that this would also promote transparency. Some emphasized the publication of only the final decisions to maintain confidentiality within the decision-making process, while others wanted to publish discussions on the decision-making process. Others preferred the clearinghouse mechanism for the distribution of published EIA decisions.

On **monitoring** (draft Article 39), one delegation suggested that this provision operationalize UNCLOS Article 204, with many others supporting a provision on monitoring in the text. One called to include environmental monitoring and management plans in case the EIA is insufficient. One delegation stressed that monitoring is a state function for activities under its jurisdiction.

On **reporting** (draft Article 40), one regional group preferred that parties ensure the environmental impacts of the authorized activity are reported on periodically, with one preferring these reports “at regular intervals.” Some delegations preferred that states and relevant legal instruments and frameworks, and relevant global, regional, subregional, or sectoral bodies shall periodically report on the environmental impacts of the authorized activity, also supporting that reports be submitting to the scientific and technical body, as opposed to the clearinghouse mechanism. Another supported the operationalization of UNCLOS Article 205 in this provision.

On **review** (draft Article 41), many delegations supported a review requirement. One delegation, supported by many, suggested that states ensure the environmental impacts of the authorized

activity are reviewed should the results of the monitoring required identify “significant” adverse impacts not foreseen in the EIA.

Some delegations preferred that all states and “in particular adjacent coastal states” be kept informed of/consulted actively on, the monitoring, reporting, and review processes with respect to activities in ABNJ. Others saw a role for these states in follow-up, monitoring, and reporting. Still others stressed that all states are equal in ABNJ, with one noting they should be consulted but not accorded special status. Another preferred to keep all interested states informed.

One regional group called for the **establishment of a compensation and rehabilitation fund**, with proponents paying into it to defray the cost of environmental disasters, noting their proposal under cross-cutting issues, which had not been discussed at this session.

In his summary, Facilitator Lefeber, *inter alia*, encouraged delegates to use the cross-regional proposal on a tiered approach as a basis for discussions at IGC-5. He noted the flexibility of states, acknowledging that more work is needed to clarify positions at the next meeting.

Capacity Building and the Transfer of Marine Technology

Delegates discussed this issue on Monday and Tuesday, 7 and 8 March, and Monday, 14 March. The discussion was facilitated by IGC President Rena Lee. Several delegations stressed the need for CB&TT for the effective implementation of a future treaty as they embarked on an article-by-article consideration of this section.

On **objectives related to CB&TT** (draft Article 42), several delegations supported the objectives related to, *inter alia*:

- assisting parties, in particular developing states parties, in implementing the Agreement, to achieve its objectives;
- enabling inclusive and effective participation in activities under the agreement;
- promoting or ensuring access to and transfer of marine technology for peaceful purposes to developing states parties;
- increasing, disseminating, and sharing knowledge on the conservation and sustainable use of marine biodiversity in ABNJ; and
- developing the marine scientific and technological capacity of states parties for the conservation and sustainable use of marine biodiversity in ABNJ.

One group called for the deletion of reference to ABNJ to advance the effects-based approach to be discussed under the EIA. This was opposed by others.

One group, supported by other delegations, proposed deleting the reference to “peaceful purposes,” noting that this should be included in the global objectives of the agreement. Another suggested the addition of marine technology transfer for “ethical purposes.” A few called for the deletion of this section, noting the importance the global section on objectives for the entire agreement, to avoid inconsistencies.

Delegates considered the **elements characterizing CB&TT** (draft Article 44.3), specifically that CB&TT shall be transparent and country-driven and shall not duplicate existing programmes. Several delegations noted that the programmes should not overlap with existing programmes.

Delegations also discussed whether CB&TT should be “needs-driven” or “country-driven,” with diverging opinions. Some delegations expressed a preference for both needs- and country-driven CB&TT.

One delegation, supported by several others, called for ensuring “complementarities” as opposed to “not duplicating existing programmes.” Another suggested that CB&TT should “build on” existing programmes, with others questioning whether this could constrain new programmes by tying their development to existing programmes.

One delegation called for agreement on the scope of the instrument before discussing specific parameters. She noted there are organizations working in the Area (the seabed and ocean floor and the subsoil thereof, beyond the limits of national jurisdiction), including on CB&TT.

Several delegations preferred the deletion of language reflecting that CB&TT “should be an effective, iterative process that is participatory, cross-cutting and gender-responsive,” noting that this is too detailed.

Delegations also differed on whether CB&TT “shall” or “should” not duplicate existing programmes, with some preferring the obligation denoted by the term “shall.”

One delegation suggested CB&TT “shall seek to fill gaps in current efforts and shall build on” existing programmes.

Delegates also addressed whether the **modalities, procedures and guidelines for CB&TT** “may” or “shall” be developed and adopted by the COP (draft Article 44.5). A number of delegations pointed to the existing guidelines under the Intergovernmental Oceanographic Commission (IOC) of UNESCO on CB&TT.

Several delegations suggested a timeline for the COP to develop the modalities, procedures, and guidelines. Some called for the COP to develop these within one year. Others noted one year would be too ambitious. Some delegations cautioned against establishing an ambitious timeline for a decision by the COP on these matters since it might compromise its ability for success. Others said that it could agree to a timeline defined with certain flexibility such as “as soon as possible,” or “ideally by X date.”

One delegate called for clarity on the technology to be transferred, stating the value of the CB&TT section of this draft text is not clear, as CB&TT is included under UNCLOS, which also supports technology transfer on mutually agreed terms.

Another stressed the need for clarity on whether CB&TT will be done on a mandatory or voluntary basis.

President Lee concluded noting, *inter alia*, that most delegations thought that having a timeline would be useful, but on the exact dates or such specificities, more consideration is necessary in view of what the treaty would be asking the COP to do.

On cooperation related to capacity building and transfer of marine technology, views diverged on whether CB&TT should be accorded on a voluntary or mandatory basis.

President Lee asked whether draft Article 44.1 (modalities for CB&TT) was necessary given that draft Article 43 (cooperation) addressed similar issues. One delegation noted that in drafting this treaty, delegations need to be mindful of agreed language reflected in UNCLOS, including on the transfer of marine technology, such as the fact that parties were called upon to “assist” in these matters, rather than using more mandatory language. Many delegations noted the topics covered in draft Articles 43 and 44 were closely related and, as such, should be merged and streamlined. Other delegations emphasized the modalities for capacity building and technology transfer were distinct from the more general topic of cooperation and emphasized the importance of the specificity of modalities to help effective implementation, particularly for developing countries. As such, draft Article 44, on modalities, should remain separate. Other

delegations noted that while there were differences in the issues covered under each of these draft articles, they could be streamlined. Some delegations called for a more flexible approach to language such as “endeavor to facilitate CB&TT.” One delegation, supported by others, suggested referencing language from Article 66.2 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, which calls to, “incentivize domestic enterprises and institutions for the purpose of promoting and encouraging technology transfer to least-developed country Members.” This would prevent developed countries from imposing mandatory requirements on the private-sector owners of technology.

One developing country group, supported by others, stressed the need for the treaty to ensure certainty in funding of CB&TT, underlining the need for CB&TT to be provided on a mandatory and voluntary basis. Another drew attention to the fact that in its 40-year history, the transfer of marine technology is the area where the least has been done under UNCLOS, underlining the importance of not repeating this error under the new BBNJ treaty.

One developed country delegation noted that mandatory CB&TT lacked legal certainty, suggesting that states “shall cooperate” to provide CB&TT could be a more acceptable formulation. One delegation pointed to “mandatory” in reference to CB&TT under the UNFSA and the Agreement on Port State Measures, as well as in regional agreements.

Another delegation called to separate discussions on capacity building from those on the transfer of marine technology, and, with others, called for the establishment of a process or structure for cooperative needs identification.

On ensuring **cooperation** (Article 43), one delegation noted the instrument under negotiation needs to be considered in the context of other international agreements, including UNCLOS, the CBD and its protocols, and the UNFSA. One delegation stated that looking at the issue from the binary perspective of mandatory/voluntary may not be helpful, since these types of considerations could lead to complex conversations on issues such as intellectual property rights (IPRs). In response to this, another delegation pointed out that objection to mandatory transfer of technology based on the argument that the IPRs were held by private companies, was not a real consideration given the fact that states often enact legislation prohibiting the transfer of certain types of technologies in certain circumstances. Consequently, states could also enact legislation to mandate the transfer of technology by private companies in certain circumstances, such as the protection of resources that are the common heritage of humankind. One delegation emphasized the importance of technology transfer given the fact that for more than 40 years under UNCLOS, the implementation of this aspect of the Convention had been unsatisfactory.

President Lee concluded that she would look for wording that moves away from the binary options of mandatory versus voluntary by looking for practical solutions that would ensure implementation, including setting up a mechanism to facilitate technology transfer, setting out exceptions to obligations or establishing different standards such as “best efforts” to take care of the concerns of different delegations.

Delegations then considered the **terms under which CB&TT could be provided** (draft Article 44.2), with views diverging on whether it shall/may be provided on a “mandatory and voluntary,” “voluntary,” or “bilateral, regional, subregional and multilateral” basis. Many developing countries supported provision on a mandatory or voluntary basis, with some stating that this

would be in line with the principle of common but differentiated responsibilities. Others stressed the need for both mandatory and voluntary, to ensure at least some technology is transferred.

Differing, and requesting to delete this draft article altogether, others reiterated that calling for the mandatory provision of CB&TT is lacking in legal certainty, and suggested drawing from Articles 10 and 11 of the Paris Agreement. Some delegations expressed strong support for provision of CB&TT on a voluntary basis. Others suggested exploring new language, to move away from the mandatory/voluntary dichotomy. Still others suggested a new CB&TT delivery mechanism, assigning clear roles for: a clearinghouse mechanism, a funding mechanism, and the COP.

President Lee called for delegations to consult informally on textual proposals.

Delegates then discussed **additional modalities of CB&TT** (draft Article 45.1), specifically that the “development and transfer” of marine technology be carried out “on fair and most favorable terms, including on concessional and preferential terms” or “according to mutually agreed terms (MAT) and conditions.” Many developing countries expressed strong support for “fair and most favorable terms, including on concessional and preferential terms,” with some noting that the two terms are not mutually exclusive. Many developed countries underlined the need to protect the IPRs of private companies, supporting MAT.

President Lee explained that when considering the merging of Articles 43 (cooperation) and Article 44 (CB&TT modalities), she had considered draft Article 45, which contains concrete options for technology transfer. In response to her observation that not many delegations opposed dropping a reference to “the development of technology,” a group of countries strongly objected by indicating that the development of new technology was not only a consequence of capacity building but also an expected result of effective technology transfer. Many developed countries rejected this notion by stating that the development of technology happened within national jurisdiction and, hence, this issue was outside the purview of the agreement. President Lee encouraged delegations to discuss this issue informally to come up with compromise solutions.

Delegates also discussed **the types of CB&TT** (draft Article 46), with most supporting the non-exhaustive list of CB&TT types (draft Article 46.1). Many agreed the non-exhaustive list as well as the list contained in the annex would ensure effective implementation. Others noted that any list contained in the treaty and in the annex would be difficult to amend without a two-thirds majority, preferring that any list is only contained in an annex to the treaty. One delegation responded by noting that the non-exhaustive nature of the list would make amendment easier. Another group, also supported by several delegations, expressed strong reservations to having an annex that could be amended by the COP since this could mean that the entire agreement could potentially be open for revision through COP decisions, which would affect the certainty of the instrument. Other delegations expressed flexibility in terms of having a list as long as it was not an integral part of the agreement requiring periodic amendments. Some conceded, however, that some form of periodic review of the treaty needs to be considered to “future proof” the BBNJ instrument.

One country explained the importance of the non-exhaustive list in both the treaty and the annex, stating that in the 40 years of UNCLOS there has only been one capacity-building exercise (under the International Seabed Authority). He underlined that including these lists will ensure more CB&TT for developing countries.

One delegation, supported by a number of others, proposed that the section pertaining to information dissemination and awareness-raising, including with respect to relevant traditional knowledge (TK) of Indigenous Peoples and local communities (IPLCs) also include language related to “free, prior informed consent.” Some others questioned whether this language would only qualify TK and IPLCs. President Lee requested the concerned delegations to work on text to better represent the sentiment of the proposal.

Another delegation, supported by others, requested that the list item related to the development and strengthening of relevant infrastructure, including equipment, also include a reference to “the resources and finances to use and maintain the technology and equipment, and monetary and non-monetary resources.” She explained that this would ensure that any marine technology transferred could be used and maintained in the destination country and would not become obsolete immediately after breaking down. President Lee called on interested delegates to work on suitable language to encapsulate the spirit of the proposal.

Other delegations queried inclusion of “biotechnological research activities,” noting this reference was too specific.

Another delegation underscored that UNCLOS already caters to CB&TT, preferring to bracket the whole draft article.

A group of countries, supported by several delegations, expressed strong support for an annex containing the types of CB&TT that would be relevant to developing countries in terms of effectively assisting them with the implementation of the instrument. One delegation, supported by many, suggested a solution that involved making the annex/list merely indicative and non-exhaustive to better reflect the need for dynamic adjustments. Some suggested that this list be reflected in a separate decision or record to serve as guidance to the COP. Others said that the revisions to CB&TT activities should be led by scientists and experts at the level of subsidiary body recommendations to the COP, which would enable more nimble periodic adjustments.

Delegates discussed **monitoring and review in relation to CB&TT** (draft Article 47). Several regional groups expressed support for periodic monitoring and review of CB&TT activities (draft Article 47.1). Some developed countries preferred discussing monitoring and review under a more global separate section also addressing implementation and compliance.

On **the aims of the monitoring and review** (draft Article 47.2), one group queried the need for performance reviews based on indicators, noting this decision should be left to the COP and highlighting this is a cumbersome and burdensome process. Others insisted that both donors and recipients of CB&TT report on implementation. Another stressed that, since CB&TT should not be mandatory, monitoring and review should also be voluntary.

One delegation suggested the provision include a reference to voluntary measures to enhance environmental performance, and corporate social responsibility.

Delegates considered **institutional arrangements and modalities for monitoring and review of CB&TT** (draft Article 47 paras 3, 4 and 5) on whether the COP would undertake this directly or with the aid of a subsidiary body established for this purpose. They also discussed whether the monitoring and review would involve “all relevant actors,” at the regional and subregional level, including through regional committees, as well as whether reports on CB&TT are to be voluntary or mandatory, and the nature of these reports.

A group of countries, supported by many delegations, underscored the importance of monitoring and review to ensure the functionality of the agreement and supported the idea of establishing a dedicated committee to this end. The group also underlined the role of the COP to provide oversight and emphasized that periodic reports should not be onerous in temporal or financial terms for certain categories of countries listed under the article. One delegation emphasized the importance of including archipelagic states in this categorization. The group also supported the involvement of “stakeholders” rather than “relevant actors” in the monitoring and review process. Other delegations supported the idea that periodic CB&TT reports should be mandatory, but clarified the monitoring and review of data should be undertaken at the national level and this information should be compiled and summarized by the Secretariat in a report for consideration by the COP. Many delegations expressed reservations regarding the role of “regional committees” in monitoring and review, since these committees do not fall under the authority or guidance of the COP.

On objectives related to CB&TT (draft Article 42), several delegations supported the objectives related to, *inter alia*:

- assisting states, in particular developing states parties, in implementing the Agreement, to achieve its objectives;
- enabling inclusive and effective participation in activities under the agreement;
- promoting or ensuring access to and transfer of marine technology for peaceful purposes to developing states parties;
- increasing, disseminating and sharing knowledge on the conservation and sustainable use of marine biodiversity in ABNJ; and
- developing the marine scientific and technological capacity of states parties for the conservation and sustainable use of marine biodiversity in ABNJ.

A few called for the deletion of this section, noting the importance the global section on objectives for the entire agreement.

One group, supported by other delegations, proposed deleting the reference to “peaceful purposes,” noting this should be included in the global objectives of the agreement. Another suggested the addition of marine technology transfer for “ethical purposes.”

One group called for the deletion of reference to ABNJ to advance the effects-based approach to be discussed under the EIAs. This was opposed by others.

One delegation stressed the need for a global section on objectives to avoid inconsistencies.

Delegates undertook discussion **on ensuring that developing states parties have access to elements related to ABS** (Article 42 (f)), including accessing, utilizing and benefitting from scientific information, including with respect to collection/access to MGRs *in situ*, *ex situ*, *in silico*, digital sequencing of information, and sequence data.

One group of countries, supported by several delegations, proposed including a reference to the “utilization of” scientific information resulting from access to genetic resources in ABNJ, in addition to “accessing” such information. The group objected to a reference to the “collection of” resources in the same context and supported the inclusion of references to endogenous and local research capabilities relating to MGRs and products, processes, and other tools. Other groups of countries supported the inclusion of a reference to the “equitable” sharing of benefits and the need for CB&TT for technological tools for monitoring and surveillance.

Another group of countries, supported by several delegations, acknowledged the importance of supporting developing states parties in implementing the provisions of the agreement, and specifying what this means in terms of CB&TT, but not to the degree of detail currently reflected in the draft article. Instead, this group proposed language for a single paragraph summarizing these issues to avoid unnecessary duplication with other parts of the agreement on MGRs. Some delegations opposed references to “strategic environmental assessments” citing that the scope would be difficult to define. One delegation noted that parties should “promote” instead of “ensure” CB&TT in the chapeau of the draft article on CB&TT objectives.

In her summary of the discussions, President Lee noted that the gaps between delegations’ position are not insurmountable, noting progress on, *inter alia*, reporting on CB&TT by all parties. She noted delegations were already consulting bilaterally and in small groups on outstanding issues.

On Friday, 18 March 2022, in the final stocktaking plenary, one delegation noted ongoing discussions with several others on aspects related to CB&TT, noting these discussions would continue during the intersessional period.

Cross-cutting Issues

Delegates discussed a number of cross-cutting issues from Monday to Thursday, 14-17 March, facilitated first by Thembile Joyini (South Africa) and then by IGC President Lee.

COP decision making: Delegates discussed options related to the COP’s decision making (draft Article 48.3), related to: the COP’s adoption of rules of procedure for itself and any subsidiary body; decision making, including by voting or consensus; and the availability of decisions.

On the adoption of **rules of procedure**, one regional group noted that the COP should also adopt its financial rules. Others called for a timeframe for the adoption of these rules to be indicated, with one delegation proposing that this be done at the first meeting of the COP. One regional group proposed measures for the interim period before the COP adopts its own rules of procedure, suggesting that the COP be governed by the rules of procedure established under the IGC.

On **decision making**, one regional group called for differentiating between general decision making, and the specific decision making related to ABMTs, suggesting that decisions shall be taken by consensus “unless otherwise decided by the agreement.” This was opposed by some delegations, one of whom noted that all decisions on ABMTs should be taken by consensus. One delegation proposed an opt-out clause in situations where a state is unable to implement an ABMT proposed by the COP where there are no existing instruments. One regional group also proposed, supported by several others, including that if all efforts to reach consensus are exhausted, that COP decisions on substantive matters “shall be taken by a two-thirds majority” of parties present and voting. Other delegations underlined that any voting procedures would apply as a last resort. A delegation suggested that a simple majority could be used for procedural issues. Another noted that clearly specifying rules on decision-making in the instrument was imperative since this would weigh heavily on states’ decisions to ratify or not, and added that an opt-out provision would help to “soothe” states that are heavily dependent on marine resources.

Another cautioned against “opt-out” provisions that could be used to render the entire agreement ineffective. Another delegation suggested a combination of voting and consensus decision-making

provisions based on the issues considered by the COP and added that a clearly circumscribed voting provision for the establishment of ABMTs would be one such example. One delegation stated that their preference for voting/consensus-based decision-making was contingent on other elements in the instrument taken as a package.

On the **availability of decisions**, views diverged on whether COP decisions should be transmitted to parties, “in particular to adjacent coastal states,” with some underlining that all states are equal under the agreement, and others supporting the reference to adjacent states. One delegation suggested that not all decisions of the COP should be made publicly available. This was opposed by a number of others.

COP functions: Delegates began by discussing the functions of the institutions envisioned under the new agreement, specifically the COP, the science and technical body, the secretariat, and the clearinghouse mechanism. They considered the functions of the COP (draft Article 48.4), on the COP’s role in adopting decisions and recommendations (part a), exchanging information (part b), promoting cooperation and coordination among relevant instruments (part c), establishing subsidiary bodies (part d), adopting a budget (part e), and undertaking other functions (part f). Many delegations supported that the COP keep under review the agreement’s implementation, with a few opposing the bracketed reference to monitoring. One delegation highlighted the need to outline the working languages of the COP.

On **adopting decisions** relating to the COP, one regional body noted that the COP would also need to adopt its own rules of procedure, noting that until that point, the UN General Assembly’s rules of procedure would be used. One regional group also highlighted the role of the COP in decision-making related to ABMTs, including MPAs.

With respect to adopting decisions and making recommendations related to the implementation of the agreement, based on the **exchange of information**, some delegations noted that the COP should also review this information since this was the only way to make informed decisions. One regional group proposed streamlining the text on **coordination and cooperation**.

One regional group, supported by others, called to exclude a list of possible **subsidiary bodies** that the COP could establish, preferring a less detailed list of COP functions. A group of countries, supported by many, said that an indicative list of subsidiary bodies reflected in the instrument would be of value since this would be an indication of the relevance of these subsidiary bodies. Two groups of countries said they had a combined proposal for a committee on implementation and compliance, with several delegations objecting to the idea. One regional group, supported by another, also called for the establishment of an implementation committee, noting that any perceived proliferation of subsidiary bodies reflected the need for effective implementation of the new instrument.

One regional group called for the inclusion of reference to the adoption of financial rules under the provision related to the **budget**. One regional group highlighted a proposal on operationalizing the participation of regional economic integration organizations in the agreement, citing similar language under the Minamata Convention.

Functions of a scientific and technical body: Delegates discussed provisions related to the functions of a scientific and technical body (draft Article 49.4), containing a list of 14 functions. Two regional groups supported the inclusion of “technological” to the title of the body. Many delegations supported truncating the list so as not to interfere with the role of the COP in designating such functions, and to avoid being too prescriptive. Many agreed that this

body is subsidiary to the COP and should be established to provide advisory services.

One regional group, supported by others, proposed that the scientific and technical body “shall provide scientific and technical advice to the COP, and perform such other functions as may be determined by the COP or assigned to it.”

One regional group proposed including a non-exhaustive list in the annex to help guide the COP in its establishment of a scientific and technical body.

Some delegations opposed reference to the role of the body in elaborating guidelines related to EIAs, while others took issue with the suggestion that the scientific and technical body could itself establish additional subsidiary bodies.

One delegation proposed deleting the provision, noting that it erodes the role of the COP in designating subsidiary bodies, and highlighted the importance of understanding the purpose of the entire agreement before addressing the functions of potential subsidiary organs.

Secretariat: On the establishment and functions of the Secretariat (Article 50(1) (1 Alt.1) (1. Alt. 2) (1. Alt.3) and 50(2)), there were differing views on whether UNDOALOS should be designated as the secretariat for the new instrument or whether the COP, at its first meeting, should designate the secretariat from among those existing competent international organizations that have signaled their willingness to carry out these functions. Several delegations expressed preference for the establishment of a stand-alone, dedicated secretariat to give full attention and support to the new instrument. Other delegations were of the view that UNDOALOS could competently perform secretariat functions given its experience supporting the BBNJ process and its expertise in the law of the sea, which could help to ensure overall coherence. Some groups expressed flexibility in this regard and noted that they would be open to suggestions to have robust institutional arrangements. Two delegations indicated that the institutional arrangements could not be determined until the substantive aspects of the instrument were clearly defined.

In considering the different secretariat options, delegations spoke about the financial and budgetary implications. Under one option the secretariat would be independent and not fall under the UN budget, while under the other option, the secretariat would need additional resources under the UN budget. All delegations agreed that UNDOALOS would require considerable restructuring and financial support if it was to operate as secretariat, even on an interim basis. In response to a question by a delegation about UNDOALOS’s capabilities to take-on secretariat functions for the new instrument, Miguel De Serpa Soares said that the Division had been considering the issue, including budgetary implications, and basing its assessment on the UNCLOS experience. In this regard, Vladimir Jares, Director of UNDOALOS, said the Division had estimated that a total of ten new staff would be needed, including one director in the category of D1, two professionals in the category of P5, one professional in the category of P3, one P2, and two general staff members. He clarified that this would need to be reassessed as the new instrument evolved.

Summarizing the discussion, Facilitator Joyini noted, *inter alia*, differing views on whether there was the need to establish a stand-alone and dedicated secretariat, or whether UNDOALOS could fulfill this role with additional funding and some restructuring of the text.

Clearinghouse mechanism modalities: Delegates briefly discussed the modalities for the clearinghouse mechanism (draft Article 51.2), with one delegation, supported by a regional group, calling for the deletion of text outlining that the clearinghouse mechanism shall consist of an “open-access web-based platform,” noting inevitable changes in future technological developments. There were differing views on whether the mechanism would include a network of experts and practitioners in relevant fields, although several delegations acknowledged that the clearinghouse mechanism required a “human component” not just a “digital one.”

Clearinghouse mechanism functions: Delegates discussed the functions of the clearinghouse mechanism (draft Article 51.3). One regional group called for the reformulation of this part to ensure the clearinghouse mechanism promotes transparency, including that the clearinghouse shall disseminate information on, *inter alia*, “pre- and post-cruise information and post-cruise notification,” and “the commercialization of the utilization of MGRs in ABNJ.” The group also called for information related to EIAs, including on negative screening decisions, EIA screening reports, decision-making documents on authorization of planned activities, reports on authorized activities, and review reports, among others. One delegation opposed the inclusion of policies, guidelines, and technical methods for EIAs.

On the role of the clearinghouse mechanism (draft Article 51.3 Alt.1), many delegations said that the mechanism should not “evaluate” or “collect” information, but rather disseminate it. On the types of activities that would be reflected under the clearinghouse mechanism, a group, supported by others, said that it should include “pre notification” and “prior informed consent” to take due account of traditional knowledge considerations. On other types of information and activities, the delegation also referred to the support for small island developing states on monitoring and surveillance of ABMTs. One group, supported by many and opposed by others, said that information on the monetary sharing of benefits should also be included, as well as a track-and-trace mechanism for MGRs of BBNJ. Some delegations were of the view that the functions of the clearinghouse mechanism should be elaborated by the COP instead of delineated in the instrument. While acknowledging the usefulness of the mechanism, one delegation noted that the modalities for its operations should only be decided as a package once other substantive aspects of the Agreement have been defined. One delegation noted that any decision on a clearinghouse mechanism should be aligned with “mutually supportive” UNCLOS provisions and not extend the role of the mechanism beyond that. Responding to this, a group of countries said that UNCLOS also referred to the realization of a just and equitable international economic order that takes into account the interests and needs of humankind.

On additional functions of the clearinghouse mechanism (draft Article 51.4), one delegation called for the deletion of text reflecting aspirational sentiments, like that the mechanism shall facilitate enhanced transparency, and international cooperation and coordination.

Another proposed that the clearinghouse mechanism match capacity-building needs with the support available and with providers for the transfer of marine technology, and facilitate access to related know-how and expertise on a voluntary basis and on mutually agreed terms. They also preferred that the clearinghouse mechanism link to “publicly available” private and non-governmental information exchange platforms and build on global as well as regional and subregional clearinghouse institutions.

One delegation recalled General Assembly resolution 72/249 on not undermining existing instruments, calling on delegations to respect and fully implement UNCLOS. A regional group suggested that the clearinghouse mechanism also address, support, and advise on capacity building, and play a role in relation to ABMTs, including MPAs.

Management of the clearinghouse mechanism: On whether the clearinghouse mechanism shall be managed by the secretariat or other organizations (draft Article 51.6), most delegations concurred that it would be appropriate for the secretariat to undertake this function. However, many indicated that in so doing, the secretariat should work in cooperation with other entities and organizations, including IOC-UNESCO. In this regard, one delegation, supported by others, said that the secretariat should have the flexibility to sub-contract or outsource some of its functions to other entities, so long as it retained responsibility for running the clearinghouse mechanism. Some delegations said DOALOS should serve as secretariat for the clearinghouse mechanism, but acknowledged the need to increase its resources and capacity. Responding to a question about the budgetary implications of taking on secretariat functions, Vladimir Jares, Director of DOALOS, clarified that this would require funding from extra-budgetary sources since funds under the UN were aggregated and, as such, could not be earmarked. A few delegations said that the BBNJ instrument should be managed by existing secretariats of other ocean-related organizations for the purposes of resource efficiency and substantive coherence. One delegation said that the COP should decide on the clearinghouse mechanism secretariat, instead of the instrument.

Confidentiality: Delegates discussed confidentiality related to the clearinghouse mechanism (draft Article 51.7), with regional groups and delegations proposing new text to address the issue. One delegation proposed that, *inter alia*, the sharing of information shall be without prejudice to confidential information, while another proposed requiring that “nothing in this agreement shall be interpreted to require disclosure of confidential information...” Another stressed the need to stipulate that this agreement does not apply to confidential information.

Summarizing discussions, Facilitator Joyini noted that there was general support for: the establishment of a clearinghouse mechanism, a secretariat, a scientific and technical/and technological body, and a COP, with more discussions needed on the precise functions and modalities.

Financial Resources and Mechanism

Delegates discussed funding for CB&TT (draft Article 52.1), with one group calling for the funding to be adequate, accessible, transparent, sustainable, predictable, and both mandatory and voluntary. Another also called for “transparent” funding. One regional group suggested monitoring, reporting and diversification related to funding. A regional group noted funding will be required to support both the institutional framework and the implementation of the new instrument. They noted that the former would be addressed under the financial rules and proposed that assessed contributions from states with the ability to do so support implementation activities. They also proposed a financial mechanism to support states that cannot contribute to the fund, mirroring provisions under the Minamata Convention on Mercury.

One delegation, supported by others, clarified that funding of two types was being discussed: for institutional support to the convention; and for support for CB&TT. With respect to funding to support institutional arrangements, there was general agreement

that this should be through assessed contributions from parties. One group underlined that funding was a prerequisite for implementation and should therefore be mandatory to ensure that developing country parties were able to fulfil their obligations under the agreement and guarantee their sovereign rights. One other regional group underscored the need for a benefit-sharing fund in line with the proposed ABS mechanism. Another called for a specific fund addressing the needs of small island developing states.

A group called for “concessional and preferential” financial resources, as well as funding from monetary ABS. One regional group drew attention to a proposal under the draft article on access related to a financial mechanism, further supporting: a voluntary trust fund for developing country participation (draft Article 52.4); a special fund for capacity building activities (draft Article 52.5 alt.1); and the sources of funding for the special fund, including mandatory sources (draft Article 52.5 bis). One delegation supported the COP establishing the various funds that may be required.

One delegation supported the COP supervising different funds under the financial mechanism, envisioning funds for developing country participation, supporting implementation, and institutional arrangements. One delegation, supported by others, said that they were open to the establishment of a special fund for CB&TT projects, as long as these fell under the scope of the new instrument, and added that transfer of marine technology would be on mutually agreed terms and through voluntary funding. A group of countries, opposed by others, proposed the establishment of several special funds, including one to support conservation programmes by holders of TK and one to support climate change adaptation with resources from ABS royalties.

Many delegations referred to the need to define the COP rules of procedure and financial rules before deciding on funding/financial arrangements or modalities. One delegation opposed discussions on finance at this stage, noting the COP’s responsibility to adopt the financial rules.

GEF: On funding for CB&TT, one delegation, supported by others, indicated that the Global Environment Facility (GEF) would be the best option. One group spoke about the need to look at the experience of other instruments, including the UNFCCC and Minamata Convention. Recalling the experience under the UN Forum on Forests on tapping into existing funding, another delegation said that assessing the funding landscape for oceans may be useful to make existing funding more accessible instead of creating new funds. One regional group proposed a funding mechanism, with three distinct pockets: a trust fund for developing country participation funded through voluntary contributions; an implementation fund to support developing countries; and funding to complement and support implementation, noting that this should be the GEF. They pointed to the International Waters Programme administered by the Facility, noting that it could provide the necessary support for implementation activities under the new instrument. They urged the Conference to set in motion talks between the future BBNJ agreement and the GEF, calling on the IGC President to include the required language on the GEF serving as financial mechanism in the revised draft of the agreement.

An observer from the GEF outlined the process for designating the GEF as the instrument’s financial mechanism, noting that to begin the process, the BBNJ will need to include a provision on the GEF in the text under negotiation, after which the GEF would provide a response on whether it can take on the assigned role. Several delegations said that reflecting a reference to the GEF in the

draft negotiating text would kick-start the process of engagement with the GEF Council to keep this option open. One group urged caution, calling on the GEF to provide more information in a white paper to be considered at IGC-5.

Summarizing the discussions, President Lee, as facilitator, said more discussions were needed. She noted support for assessed contributions to fund the institutional operations of the agreement, including the secretariat, with some funding for other aspects of the agreement to be provided on a voluntary basis. She noted proposals were made for different types of funding for participation of developing country parties, and for aspects such as capacity building. Differing views persisted on whether the GEF should be the instrument's financial mechanism or whether there should be a variety of funds/mechanisms. She also highlighted a request for information on the different streams of existing funding sources for oceans.

Implementation and Compliance

Delegates discussed provisions on implementation and compliance (draft Article 53), with President Lee, as facilitator, requesting comments on whether these provisions should also address monitoring and review. On the latter, there were divergent views, with some preferring one provision for monitoring and review, while others noted the need for monitoring and review to be included in all the areas where it is required.

Two regional groups elaborated on a proposal for an implementation and compliance committee, with the proponents explaining that the article would address: implementation; monitoring and reporting; and the creation of the implementation and compliance committee. Many delegations supported the proposal, so long as compliance measures would not be adversarial, punitive, or judicial in nature. Several delegations said that the implementation and compliance mechanism should be cooperative in nature, with one delegation saying that "assistance to parties" should be the emphasis as exemplified in the UN Economic Commission for Europe Convention on the Protection and Use of Transboundary Watercourses and International Lakes. On whether there should be a single general provision on implementation, a group of countries, supported by others, said reporting requirements for compliance and implementation should not be burdensome. A delegation referred to the need to avoid being too prescriptive to future-proof the agreement and to make room for COP decisions on these matters.

Summarizing the discussion, President Lee said that there was some support for a general provision on this issue, with some reservations on monitoring and doubts about whether states should have a reporting obligation. She also noted support for certain proposals on an implementation and compliance committee with non-adversarial and non-punitive measures, and on avoiding certain terms such as "non-compliance."

Dispute Settlement

Delegates discussed procedures for dispute settlement (draft Article 55), with President Lee, as facilitator, noting the provisions had been inspired by those under the UNFSA and requesting comments on whether these could be applied *mutatis mutandis* to the BBNJ instrument. Views diverged, with some noting that as the instrument will be under UNCLOS, these provisions can apply *mutatis mutandis*. Others preferred a more tailored approach to the dispute settlement provisions under the BBNJ instrument, noting the nature of disputes would be different than those under

the UNFSA, which they noted was more limited in scope than the BBNJ instrument. Others noted that the BBNJ agreement is likely to include more parties that are UNCLOS non-parties and thus separate dispute settlement provisions would be necessary.

One delegation proposed that the dispute settlement mechanism encompass provisions to ensure: prevention of disputes, recalling their proposal for an implementation and compliance committee; technical disputes are addressed; and that the focus on environmental considerations is addressed. They noted their proposal would also take into account both non-parties and parties to UNCLOS.

One delegation said that compliance and implementation provisions should be voluntary, while the interpretation and application of the agreement should be subject to binding dispute settlement mechanisms. Another delegation indicated that application of UNCLOS Article 287 was acceptable, if Article 298 (optional exceptions) was referenced as well.

One delegation, supported by others, proposed the application of the dispute settlement clause under the CBD as an alternative to the *mutatis mutandis* application of the UNCLOS dispute settlement option under Part XV, explaining that the BBNJ was more akin to a multilateral environmental agreement and that the CBD had nearly universal ratification.

One regional group, supported by several delegations, proposed expanding the role of the International Tribunal on the Law of the Sea (ITLOS) to include a special chamber addressing disputes under the BBNJ agreement. They noted this would help keep the costs of dispute settlement manageable for developing countries. Others called for more time to consider this proposal. A non-party to UNCLOS called for more general provisions for dispute settlement including negotiation and mediation as under the UN Charter.

Delegates considered a joint proposal by several countries for the inclusion of a new provision on the settlement of disputes of a technical nature that could be referred to an *ad hoc* expert panel referred to them, based on UNFSA Article 29 and intended to provide states with more options for the peaceful settlement of disputes. Other delegations said that an "opt-out" provision would help broaden consensus around other areas of the agreement including ABMTs. Delegations also considered a proposal on disputes between states parties concerning disputes on the interpretation or application of the agreement to be submitted to ITLOS, in accordance with UNCLOS Annex VI, Articles 15 and 17, regardless of whether they are also parties to UNCLOS. While some delegations supported this proposal, others said they would not accept advisory opinions from ITLOS, the COP, or any other body, even an *ad hoc* one. The facilitator called on delegations to consider the fact that the current draft article also provides for other options such as conciliators, arbitrators, and experts.

Summarizing the discussions, President Lee said that diverging views persisted on whether to apply UNCLOS provisions *mutatis mutandis* and on the relationship with the dispute settlements under other frameworks. She indicated proposals had been offered to have a list of options on dispute settlement, using provisions from other instruments, such as the CBD, as models, presenting technical disputes to an *ad hoc* committee, and consent-based dispute settlement. She concluded that her sense was that there was common ground to build an instrument with institutions that would be "fit for purpose."

Next Steps

During the final stocktaking plenary on Friday, 18 March 2022, IGC President Rena Lee proposed a way forward for the IGC. She proposed that delegations submit any additional proposals by the end of March 2022, noting they would feed into her work to revise the draft treaty text. She expressed hope that this revised draft would be circulated by early May 2022. Stating that a further meeting of the IGC was obviously required, she outlined the steps towards a UN General Assembly decision extending the mandate of the IGC.

On the draft report of the Conference, she drew attention to the need to include language on the need for an additional session of the Conference, and on the work to be undertaken in developing a revised draft treaty text. Specifically, she proposed that “the Conference, having considered that an additional session is required, decided, by consensus, to request the President of the Conference to take the necessary steps with a view to the General Assembly deciding that the fifth session of the Conference be convened for 10 working days in August 2022...”

In response, several delegations stressed the importance of having a revised draft ready as soon as possible. Several delegations expressed their desire for a more streamlined version of the draft text with options for the most outstanding issues, while one delegation noted that existing differences and opposing views should be accurately reflected in the text.

A group of countries, supported by many, spoke about the constraints for small delegations to attend parallel sessions but noted that increased support for developing country participation through the Trust Fund could help remedy this situation. Another regional group and several delegations welcomed parallel sessions and informal negotiations during IGC-5 to increase efficiency in the deliberations towards a successful outcome, including an article-by-article reading of the text. One delegation underlined constraints for developing country participation in parallel sessions and cautioned against “an artificial end” at the expense of a good agreement.

Many delegations supported the full participation of civil society organizations at IGC-5.

In response to several questions raised on the way forward, IGC President Lee said that the programme of work for IGC-5 would be largely determined by the resources available for this purpose and detailed her intention for the IGC-5 arrangements to provide for a fully-serviced conference with the capacity for parallel and evening sessions. She called on delegations to be fully prepared on the different workstreams and said that she would aim for a revised version of the text that would provide a better idea of the overall package. She also took note of earlier suggestions for a drafting committee, saying she would consult with the Bureau and Secretariat on these issues. She concluded by saying that great strides had been made and thanked all delegations for their constructive spirit and hard work throughout the Conference.

Adoption of the Report of the Conference

In plenary on Friday, 18 March, IGC President Lee introduced the report of the Conference (A/CONF.232/2022/L.3), noting that this meeting marked the end of the mandate, not the work, and calling on delegations to continue engaging constructively to make progress during the intersessional period.

The RUSSIAN FEDERATION requested an amendment to the report, noting that an additional session of the Conference would be required “to make progress,” and not “towards the conclusion of the work.” She explained that IGC-5 may not be the last session of the Conference. The EU, the CORE LATIN AMERICAN MEMBERS

(CLAM), the PACIFIC SMALL ISLAND DEVELOPING STATES (PSIDS), the US, NEW ZEALAND, AUSTRALIA, NORWAY and others supported the original text. CHINA cautioned against prejudging the work of the Conference. NICARAGUA cautioned against establishing artificial deadlines on the sensitive work of the Conference. IGC President Lee suspended the meeting briefly to consult.

When plenary resumed, IGC President Lee proposed, and delegates agreed, that the report would reflect: a next session of the conference was needed as soon as possible to make progress; the President would make arrangements to that end; and the revised draft text would take into account the work of IGC-4 as well as proposals and submissions thereafter with a view to facilitating the prompt finalization of the work of the Conference. Delegates then adopted the amended report.

General Statements

In plenary on Friday, 18 March, delegates engaged in a general exchange of views, prior to the closure of the Conference.

Delegations expressed gratitude to IGC President Lee for her leadership and stewardship of the process. Several delegations welcomed civil society participation during the second week of the meeting and called for their full participation at IGC-5.

The GROUP OF 77 AND CHINA (G-77/CHINA) underlined that the common heritage of humankind underpins the conservation and sustainable use of BBNJ and called for a commitment to fairness and equity.

Sierra Leone, for the AFRICAN GROUP, stressed that the treaty needed to be effective and implementable to promote the conservation and sustainable use of BBNJ underpinned by the principle of common heritage of humankind. He also underscored the importance of having real benefits for developing countries, including those benefits derived from the utilization of marine genetic resources in the high seas.

The EU noted that the remaining differences were not unsurmountable and expressed their commitment to capacity building, including through a mechanism under the agreement that would facilitate implementation; and emphasized the importance of concluding an ambitious international legally binding agreement on BBNJ in 2022 which marks the 40th anniversary of UNCLOS and an important year for oceans and biodiversity.

Mexico, for CLAM, noted their active participation, including through inter-regional consultations, and pointed to the numerous upcoming ocean-related events scheduled for 2022. PSIDS welcomed the revised draft text, supported cross-regional work, and acknowledged delegations for engaging on issues related adjacency, TK of IPLCs, and the special circumstances of small island developing states (SIDS).

COLOMBIA, EL SALVADOR, TURKEY, and VENEZUELA, as non-parties to UNCLOS, underlined the need for universality in the BBNJ instrument, calling for a balanced text respecting the legal status of UNCLOS non-parties.

Fiji, for the PACIFIC ISLAND FORUM, stated that these have been the most productive discussions of the entire process, and expressed hope for an agreement that includes the TK of IPLCs, takes into account cumulative impacts and climate change, and promotes transparency.

Botswana, for the LANDLOCKED DEVELOPING COUNTRIES, along with NEPAL, BOLIVIA and others, spoke about the rights that landlocked states have to the high seas under

UNCLOS and according to the principle of common heritage of humankind, and said that the fair and equitable sharing of benefits was underpinned by these rights.

Antigua and Barbuda, speaking for the ALLIANCE OF SMALL ISLAND STATES, supported by TONGA, DOMINICAN REPUBLIC, and others, said that IGC-4 had been a turning point for the process due to the increased level of engagement by all delegations even on the most intractable issues, and pointed to SIDS-led cross-regional proposals to this end.

Barbados, for the CARIBBEAN COMMUNITY, emphasized the need to conclude negotiations in 2022, highlighting the need for an ambitious agreement, including well-defined coherence on MGRs and an equitable ABS mechanism

SRI LANKA noted that the fair and equitable sharing of benefits was a *sine qua non* condition for the instrument as well as the necessary means and support for its implementation from the outset. INDONESIA, with the PHILIPPINES expressed their support for an agreement that would establish the rights and obligations of coastal states for the conservation and sustainable use of BBNJ and should consider the special circumstances and conditions of archipelagic states.

THAILAND highlighted the importance of CB&TT for developing countries and indicated the practicality of the process for the establishment of ABMTs, including MPAs, as well as the conduct of EIAs, should be guided by the legacy and lessons learned from the CBD.

Underlining the common heritage of humankind principle, OMAN said that EIAs should include potential impacts from pollution.

Noting the important intersessional work ahead, VIET NAM lauded delegates for the constructive session and highlighted the numerous bridge-building proposals to consider during the intersessional period.

NICARAGUA reminded delegates that the instrument should not undermine obligations under existing instruments, frameworks, and bodies, pointing specifically to obligations related to fisheries.

Stating that the Conference was in the final stretch, NEW ZEALAND called on delegates to send a common message on the strength of multilateralism by concluding negotiations on a new BBNJ instrument in 2022.

HAITI called for consensus on a benefit-sharing mechanism. TURKEY shared that her country would continue to promote the ideals of the BBNJ conference at CBD COP15 and drew attention to their proposal on geographical scope. REPUBLIC OF KOREA underscored the sense of urgency and flexibility demonstrated at this meeting and emphasized concession and engagement to reach the Conference's goal.

CANADA noted that an agreement is beginning to take shape, expressed confidence in the proposed way forward, and stressed that the "text is in our hands." ICELAND lauded the unprecedented progress and the flexibility of delegates at this session, expressing confidence that differences can be overcome.

The UK stated said that they had carefully listened to the discussion on CB&TT and continued to support the GEF as the financial mechanism, not least because it could provide support for implementation prior to the first COP. The US prioritized reaching agreement on a strong BBNJ agreement, including a robust and transparent EIA process. She said that she was optimistic for a successful conclusion. NORWAY acknowledged the collaborative

atmosphere of the discussions and expressed his faith that the IGC could conclude its work successfully in August 2022.

IRAN stated that the ILBI should include an ABS regime reflected in robust legally binding obligations, not merely expressions of good will. She underscored the importance of the universality and inclusiveness of the agreement and indicated the time was ripe for a new streamlined text.

EGYPT expressed its special interest in the BBNJ process given their hosting of the UNFCCC COP in 2022 in Sharm el-Sheikh and stated its interest to work constructively with delegations, including as part of the High Ambition Coalition on Oceans.

IUCN said that now was the time to be bold, visionary and pragmatic for the benefit of humankind, recognized the significant progress made, but said that the IGC-4 could not be complacent about the outcome of the meeting, highlighting the following needs:

- the urgency to finalize the agreement in 2022;
- enabling the COP to create effective MAPs;
- bringing transparency to the consultations to activities in the ABNJ;
- equity and coordination for unlocking ocean benefits for all;
- effective support as the linchpin for progress; and
- strengthening not undermining existing bodies.

She concluded by suggesting that the UN Decade of Ocean Science for Sustainable Development be appropriately resourced, including by the global BBNJ community, to serve as a framework to develop science programmes in all ocean basins to increase biodiversity knowledge and understanding of ABNJ.

The HIGH SEAS ALLIANCE acknowledged the leadership and foresight, constructive atmosphere, and the strong support for the presence of observers. She underscored the need to keep the impetus if we are to conclude an ambitious treaty in 2022 and said that MPAs should be strengthened to control human activity and to increase the fair and equitable sharing of benefits as these are requisite elements to move beyond the *status quo*. She pointed to the need to translate words into action for the transformative change and collective action needed in this landmark year for the ocean.

Other Matters and Closure of the Session

On Friday, 18 March, UNDOALOS Director Vladimir Jares updated delegates on the status of the Voluntary Trust Fund for the participation of developing countries. He announced that for IGC-4, the Fund assisted 14 developing country delegates, and informed delegations that the balance of the Fund was USD 230,000. Several developing countries expressed gratitude for contributions for their participation. The G-77/CHINA stressed more developing-country delegates would need support to participate at IGC-5, given the proposed modalities. Delegates took note of the oral report.

In closing, IGC President Lee expressed gratitude to delegates, the Secretariat, and her team for their work at this session, and gavelled the meeting to a close at 6:36 pm.

A Brief Analysis of IGC-4

A Tapestry of Marine Biodiversity

"I think we are almost there," said one negotiator, leaving UN Headquarters in New York at the end of the fourth meeting of the Intergovernmental Conference (IGC-4) on marine biological diversity of areas beyond national jurisdiction (BBNJ). The bittersweet import of her words was not lost on those delegates making their way through the gates, as many had expected that this meeting would mark the conclusion of their work on a BBNJ

treaty. Although they did not complete their work, they did still share celebratory drinks, to mark the “unprecedented progress” made at this meeting, which some saw as the most productive of the entire process. At the outset of IGC-4, it was clear that although the appetite for a BBNJ treaty has increased over the years, there was still a ways to go.

Coming into IGC-4, the necessary threads to piece together the patchwork of elements necessary to finalize the tapestry of a BBNJ convention were still not in place. Delegates had their work cut out for them to reach agreement on all elements of the 2011 package. Through the long, two-year COVID-19 induced intersessional period, and through the concerted efforts of well-meaning states and stakeholders offering middle-of-the-road solutions, delegates at IGC-4 dove straight into some of the complexities that have held back consensus for years.

This brief analysis will consider the progress made at this session, which had been expected to be the last, and assess the work that still needs to be done to finish the rich tapestry of a new BBNJ instrument.

Knots and Stitches, Preventing Loose Ends

IGC President Rena Lee opened the session with a call for a “giant leap to the middle,” imploring delegates to work together to craft creative solutions. The Federated States of Micronesia took up the challenge, both literally and figuratively, bringing in a few knitted toy marine critters distributed by the High Seas Alliance at earlier IGC meetings, as a bright but poignant reminder. Not only did these critters represent the importance of observer participation, which had been severely curtailed due to COVID-19 restrictions, but they also represented the purpose of the negotiations, namely, the conservation and sustainable use of marine biodiversity in the high seas.

During the two-week session, the collaborative and constructive spirit to propel the BBNJ process forward, and perhaps even conclude it by the end of 2022, was reignited. For the first time, there was a proliferation of textual proposals, necessitating a series of conference room papers just to keep track of them all. “At the last count, we are up to 400 pages of textual proposals,” gasped one delegate on the penultimate day of the meeting.

With at least one additional meeting in the offing, questions remain on multiple issues to determine whether negotiators will weave all the pieces of the tapestry seamlessly together, preventing potential gaps and errors that could easily lead to its future unraveling in terms of effectiveness, efficiency, and practicality. As one delegate put it “it’s better to go through the pain now, instead of pushing these difficult conversations into the implementation phase.”

Casting on, Turning Loose Yarn into Stitches

During the first week of the session, entrenched positions on all the usual issues surfaced: voluntary vs. mandatory capacity building and technology transfer, global and/or regional decision-making, conservation and/or sustainable use, monetary and/or non-monetary benefit sharing, fish as a commodity or as a genetic resource, the role of traditional knowledge, and overarching principles, including the precautionary principle and the common heritage of humankind. However, there was constructiveness and flexibility on the part of delegations as they tried to find solutions that avoided “binary” positions. Some proposed hybrid approaches to decision making, for instance, combining the global and regional spheres to establish/designate marine protected areas and other area-based management tools.

As IGC-4 progressed into its second week, it was evident that the work during the intersessional period, including workshops and dialogues on different topics, had paid off. Delegates demonstrated a better understanding of how the different options of the text could play out in the real world. As a result, delegations were open to considering how their interests and concerns could be addressed with alternative approaches, including, for example, on the internationalization of environmental impact assessments (EIAs). Pointing to the impracticality of some of the positions held by some delegations, a group of countries asked whether a sailing or canoeing trip onto an ecologically or biologically significant marine area (EBSA) would trigger an EIA. “We have to get the point across,” shared one delegate, bringing home the point that “the words in the treaty will matter for the conduct of activities in the high seas.”

Although heartfelt and concerted, these attempts were insufficient to bring delegations to the point of consensus, but they did move the needle. The multiplicity of drafting suggestions by several delegations, as well as informal consultations led by both developed and developing country parties, suggest that Member States are taking ownership of the process and proactively moving towards a common destination. A less divided, more practical, constructive, collaborative and, overall, gentler touch emerged from IGC-4, keeping the BBNJ dream alive and well.

The Pieces of the Tapestry: Creative Drafting and Hybrid Solutions

Delegations focused their discussions on the four elements of the 2011 package, namely: the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, in particular, together and as a whole, marine genetic resources, including questions on the sharing of benefits; measures such as area-based management tools (ABMTs), including marine protected areas; environmental impact assessments; and capacity building and the transfer of marine technology. Many of the suggestions aimed to bridge differences by entwining hybrid solutions with creative drafting.

On marine genetic resources (MGRs) of areas beyond national jurisdiction (ABNJ), participants heard familiar arguments regarding the free and open *in situ* collection of MGRs and facilitated *ex situ* access to MGRs. As the week progressed, some delegations wanted to drop the word “access” altogether, and focus on efforts to reach consensus on “collection.” With technological advances, one seasoned delegate opined that “there may soon not be a need to gain access to MGRs through ship cruises.” Others expressed more traditional views, akin to the often-stated principle of the freedom of the high seas. “Access to the high seas cannot be prohibited,” quipped one delegate during the informal-informal on MGRs. Even without having overtly opened discussions on the overarching principles of the agreement, these debates still seemed to rage on just below the surface.

Hybrid solutions and creative drafting were nowhere more evident than in the discussion on EIAs, through the skillful facilitation of René Lefeber, sometimes trapping delegates in their own contradictions. He noted for instance that sectoral and regional approaches in conducting EIAs would not cut it under an international treaty, which delegates were in the room to negotiate. “We have to recognize that that a certain degree of internationalization is required,” said one delegate, “since the BBNJ instrument, itself, is an international agreement.”

Along these same lines, delegates across the board demonstrated flexibility in moving away from strictly state-driven approaches in conducting EIAs, to a tiered approach that would incorporate bodies operationalized by the BBNJ agreement, such as the scientific and technical/technological body to be part of the process. A critical component to this tiered approach, as shared by the one of the developing country proponents, is the need for transparency, including through making all documents related to the EIA process publicly available and engaging in early and meaningful consultation with relevant stakeholders, including regional bodies and frameworks, adjacent coastal states, and Indigenous Peoples.

On the issue of ABMTs, including marine protected areas (MPAs), there were persistent differences on whether the conference of the parties (COP) or relevant global, regional, subregional, or sectoral bodies would have the power to establish/designate ABMTs, including MPAs, including by adopting conservation and management/sustainable use measures to complement those of other bodies, or only when such bodies and related measures do not exist. While some supported the COP as being the main decision-making body, others described the relationship as one of a sibling agreement rather than parental instruction. Some delegations offered text to avoid the “bifurcation” of such options by suggesting that the COP serve as a platform where global, regional, subregional, or sectoral bodies could come together to formulate coordinated and collaborative approaches in BBNJ. The question that remains is whether this tapestry of endeavors can be woven tightly enough to ensure a certain degree of coherence and non-duplication.

On the issue of capacity building and transfer of marine technology (CB&TT), there was something of a shift from previous sessions of the IGC as delegations seemed to now converge on the idea that an effective, well-resourced, and needs-based CB&TT mechanism would be important to enable all states to implement the BBNJ instrument, although the modalities for such a mechanism were still debated, including whether different types of CB&TT should be listed to encompass information sharing, research and development, infrastructure, provision of technology, sampling and methodology equipment, and a host of other things. This discussion is closely tied to the consideration of the non-monetary benefits of MGRs in ABNJ. The question that remains is whether CB&TT will be robust enough to enable meaningful participation of developing countries in pursuit of the objectives of the convention since without it, ABNJ would be the “exclusive domain of rich countries.”

On the issue of access and benefit-sharing (ABS), diverging views persisted on how the fair and equitable sharing of benefits would translate into practical terms, such as monetary and non-monetary benefits. Delegates took significant steps towards consensus, including through a proposal for the establishment of an ABS mechanism, combined with a clearinghouse mechanism, which would increase transparency, including through a notification process through an open self-declaratory system within the architecture of both mechanisms, combined appropriately. “Concessions will have to be made but the ball is now in their court to carefully consider this proposal,” said one developing country delegate.

A Tapestry Fit for Purpose

In a stocktaking session during the second week, President Lee acknowledged that some progress had been made towards bringing the agreement together, including for the definitions and their relation to other substantive aspects of the agreement, but noted this would require an iterative process going forward. As she remarked,

“We need to think practically about what we need to do.” The facilitators and several delegations and groups reported on some proposals gathering consensus on different topics, including on the establishment of a non-adversarial, dispute-prevention committee for implementation and compliance and a committee for the resolution of technical disputes, which were welcomed by many as a means of bridging divides on crucial aspects of the instrument.

On funding, there was general support for assessed contributions to fund the institutional arrangements of the agreement, with some funding for other aspects of the agreement to be provided on a voluntary basis. Although there was some hesitation, delegates showed flexibility in hearing how the Global Environment Facility (GEF) could best serve the future instrument as a financial mechanism, with a request from developing countries for a multiplicity of funds and funding sources.

Last, there was consensus on the establishment of a capable and well-resourced secretariat, but differing views persisted on whether it should be a stand-alone and dedicated secretariat, or for the UN Division of Ocean Affairs and the Law of the Sea to take on this role in addition to its regular functions, with some restructuring and increased funding. There was some pushback at a suggestion by some developed countries that they would fund a stand-alone secretariat. “It is curious that when it comes to some of these institutional arrangements, magic money appears,” observed one delegate.

Stitching it Together: Conversation, Compromise, Consensus

In their concluding statements, many expressed satisfaction with the progress made at IGC-4 in terms of the depth with which certain elements had been considered and worked through. However, several noted that some areas had not been discussed at all and would require considerable work moving forward.

With the progress made at this session, expectations are high for the revised draft text, set to come out in May 2022. Delegates noted that they were keen to see their proposals represented in the text, reflecting multi-group and cross-regional drafting on critical aspects, including: a streamlined version of the ABMTs and MPA section; an access and benefit-sharing mechanism; a capacity-building mechanism; a streamlined version of the EIA section; a committee for the technical settlement of disputes; and an implementation and compliance committee. Success will also be contingent on how productive the intersessional period will be, perhaps with the assistance of facilitators, and on adequate funding for the IGC-5 programme of work to enable parallel and after-hour sessions and full developing country and observer participation. What remains to be seen is whether this text will bring the consensus they need to agree on a new instrument to conserve and sustainably use the high seas.

Finishing the Weave

The continued decline in biodiversity in the oceans impacts hundreds of millions of people, but has a particularly detrimental effect on coastal populations, including Indigenous Peoples and local communities. Protecting marine biological diversity translates into protecting the millions of people worldwide who depend on the oceans. Indeed, one of the strategic goals of the post-2020 global biodiversity framework that is currently being negotiated aims to ensure that the interlinkages between nature and people and that the services ocean ecosystems provide are well-functioning. The issues discussed at IGC-4 are at the very heart of this. Each

issue represents one part of the tapestry: MGRs, ABMTs, EIAs, CB&TT, and cross-cutting issues. At this meeting, delegates engaged constructively to pull at the threads running through each of these issues, stitching them together. There are still many sections that need to be ironed out to fit into place, but at this meeting, delegations began to understand how to address them.

The future BBNJ instrument is, itself, a critical piece of the bigger tapestry to meet global biodiversity targets, while ensuring the fair and equitable sharing of benefits and protecting a vast area of the ocean that has been largely ungoverned. Delegations at IGC-4 rose the occasion by engaging proactively with a collaborative and cooperative spirit. Success at IGC-5 is not certain, but, as IUCN urged during the closing plenary, “The time to be bold, visionary and pragmatic is now.”

Upcoming Meetings

Fifteenth round of informal consultations of States Parties to the Fish Stocks Agreement: This meeting will focus on the topic “Implementation of an ecosystem approach to fisheries management.” **dates:** 17-19 May 2022 **location:** UN Headquarters, New York **www:** un.org/Depts/los/convention_agreements/fish_stocks_agreement_states_parties.htm

Stockholm+50: Sweden will host an international event marking the 50th anniversary of the 1972 UN Conference on the Human Environment and the creation of UNEP. **dates:** 2-3 June 2022 **location:** Stockholm, Sweden **www:** stockholm50.global/

UN Open-ended Informal Consultative Process on Oceans and the Law of the Sea: The twenty-second meeting of the informal consultative process will address the topic of ocean observing. **dates:** 6-10 June 2022 **location:** UN Headquarters, New York **www:** un.org/depts/los/consultative_process/consultative_process.htm

Second UN Ocean Conference: This meeting will see the coming together of participants under the formal title “2022 UN Conference to Support the Implementation of Sustainable Development Goal 14: Conserve and sustainably use the oceans, seas and marine resources for sustainable development.” **dates:** 27 June - 1 July 2022 **location:** Lisbon, Portugal **www:** un.org/en/conferences/ocean2022

IPBES 9: The ninth session of the Plenary of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services will consider, *inter alia*, the thematic assessment of the sustainable use of wild species, methodological assessment regarding the diverse conceptualization of multiple values of nature and its benefits, including biodiversity and ecosystem functions and services, engagement with the Intergovernmental Panel on Climate Change. **dates:** 3-9 July 2022 **location:** Bonn, Germany **www:** ipbes.net/ipbes9

High-level Political Forum on Sustainable Development (HLPF) 2022: The 2022 meeting of the HLPF, under the auspices of the Economic and Social Council, will convene under the theme, “Building back better from the coronavirus disease (COVID-19) while advancing the full implementation of the 2030 Agenda for Sustainable Development.” **dates:** 5-7 and 11-15 July 2022 **location:** UN Headquarters, New York **www:** sustainabledevelopment.un.org/hlpf

27th Session of the International Seabed Authority: The second part of the 27th session includes meetings of the Legal and Technical Commission (4-15 July), the Finance Committee (13-15

July), the Council (18-29 July), and the Assembly (1-5 August).

dates: 4 July – 5 August 2022. **location:** Kingston, Jamaica **www:** isa.org.jm/sessions/27th-session-2022

UN Biodiversity Conference (CBD COP 15): This meeting includes the 15th meeting of the Conference of the Parties (COP) to the CBD, the 10th meeting of the COP serving as the Meeting of the Parties to the Cartagena Protocol on Biosafety, and the 4th meeting of the COP serving as the Meeting of the Parties to the Nagoya Protocol on Access and Benefit-sharing are scheduled to take place to review the achievement and delivery of the CBD’s Strategic Plan for Biodiversity 2011-2020. It is also expected to take a final decision on the Post-2020 Global Biodiversity Framework, as well as decisions on related topics, including capacity building and resource mobilization. **dates:** third quarter of 2022 (TBC) **location:** Kunming, China **www:** www.cbd.int/meetings/

BBNJ IGC-5: This session will continue to negotiate, and possibly agree on, an international legally binding instrument under the UN Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. **dates:** August 2022 (TBC) **location:** UN Headquarters, New York **www:** un.org/bbnj/

For additional upcoming events, see sdg.iisd.org/

Glossary

ABMTs	Area-based management tools
ABNJ	Areas beyond national jurisdiction
ABS	Access and benefit-sharing
BBNJ	Biodiversity in areas beyond national jurisdiction
CB&TT	Capacity building and transfer of marine technology
CBD	Convention on Biological Diversity
CLAM	Core Latin American Members
COP	Conference of the Parties
DSI	Digital sequence information
EBSAs	Ecologically or biologically significant marine areas
EIA	Environmental impact assessment
GEF	Global Environment Facility
IGC	Intergovernmental Conference
ILBI	International legally binding instrument
IOC	Intergovernmental Oceanographic Commission of UNESCO
IPLCs	Indigenous Peoples and Local Communities
IPRs	Intellectual property rights
ITLOS	International Tribunal on the Law of the Sea
IUCN	International Union for Conservation of Nature
MGRs	Marine genetic resources
MPAs	Marine protected areas
SEAs	Strategic environmental assessments
TK	Traditional knowledge
UNCLOS	UN Convention on the Law of the Sea
UNDOALOS	UN Division for Ocean Affairs and the Law of the Sea
UNEP	UN Environment Programme
UNESCO	UN Educational, Scientific and Cultural Organization
UNFCCC	UN Framework Convention on Climate Change
UNFSA	UN Fish Stocks Agreement