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Cautious steps towards a new high seas agreement

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Seeking to fill the gaps in the international legal framework for ocean governance, States gathered at the UN headquarters in New York (26 August-9 September) to discuss elements of an [agreement on the conservation and sustainable use of biodiversity in areas beyond national jurisdiction](#) (ABNJ). Even if the discussions were generally productive, some contentious issues still remain, many of which are fundamental to progress and strength of any future agreement. Delegations have much work to do in the intersessional period, and the future of the negotiations will likely depend on delegations listening carefully and patiently to the views of all other States and stakeholders. The international community is at a critical juncture, with the Preparatory Committee (PrepCom) holding the future governance of the global ocean in its hands.

This meeting of the [PrepCom](#) followed the frank yet collaborative tone set by the [first PrepCom in March](#). Chair Eden Charles (Trinidad & Tobago) again received near-unanimous praise for his skilful leadership and good-humoured guidance, while some delegations began offering more concrete proposals. Nonetheless, many delegations appeared taken aback by the pace of the deliberations and were hesitant to discuss specifics, despite the Chair's reassurances that the PrepCom is not negotiating "treaty language". Meanwhile, the "parking" exercise embarked on by the Chair, intended to identify areas of convergence, resulted in a long list of issues for further discussion.

Marine Genetic Resources (MGRs)

MGRs once again proved to be a complex area. Delegations appear to agree on the utility of drawing on existing definitions and on the need for non-monetary benefit-sharing, however there is little clarity on most critical issues. Delegations exchanged differing views on the need and possible modalities for an access and benefit-sharing (ABS) regime, whether derivatives should be included in the scope of a new agreement, and the legal status of MGRs.

Area-based Management Tools (ABMTs)

There appears to be a broad understanding that ABMTs should collectively contribute to the conservation and sustainable of biodiversity in ABNJ, and agreement on some key principles for Marine Protected Areas (MPAs). Costa Rica and Monaco made an earnest attempt to advance the discussions, developing a written submission describing one vision for new system of MPAs in ABNJ that would include provision for a new global scientific body and stakeholder consultation. However, there is still little agreement on definitions, the potential structure of a new mechanism or process for the creation of MPAs, and how stakeholder consultation might work in the ABNJ context. Possible temporal limits on MPAs have also surfaced as a key issue: some delegations argue for clear time restrictions on MPAs, while others argue that this is antithetical to conservation objectives and the precautionary nature of MPAs.

Environmental Impact Assessment (EIA)

While almost all States have domestic EIA processes and experiences, agreement on how it can be implemented at the global level has proved difficult. Delegations agree that EIA processes should be transparent and their results made publicly available, but have found less common ground on many of the possible procedural aspects of a future process. For example, there is an array of views regarding the trigger for an EIA (i.e. whether this should be a threshold, a tiered system with graduated assessment following an initial screening process, a defined list of activities requiring EIA, or some combination of these options). Discussion of Strategic Environmental Assessments (SEAs)—i.e. a broader process to ensure that sustainability concerns are factored into environmental policy, plan and programme making—was much more muted at this meeting, with some delegations even questioning whether they are ripe for inclusion in the discussions.

Capacity Building and Technology Transfer (CB&TT)

The PrepCom process has firmly placed CB&TT issues on an equal footing with the other elements of the so-called "Package Deal", and delegations expressed a range of views on the way forward. Delegations agree on the importance for CB&TT and that the [guidelines produced by the International Oceanographic Commission](#) (IOC) are a useful guide for the discussions. There is also some convergence on the need for a clearinghouse mechanism. However, there is still no working definition of "marine technology", nor a clear picture of precisely what will be

covered by CB&TT (e.g. whether CB&TT is strictly limited to activities directly involving ABNJ). The issue of financing is particularly contentious. While developing countries have argued for a new fund with mandatory contributions, many developed country delegations argue that any CCB&TT efforts should be voluntary.

Other key debates

States once again clashed over whether the high seas, and particularly MGRs, are the “common heritage of mankind” or are instead governed by the principle of freedom of the high seas. The EU continued to call for a pragmatic approach to overcome this impasse, but was pushed by the Chair to provide further detail as to what this would mean in practice. The International Union for the Conservation of Nature (IUCN) suggested that the principle of “common concern of humanity” may provide a middle path. In terms of institutional arrangement, there now appears to be tentative agreement on the need for a Conference of the Parties (COP) and a scientific body or process, but there remains a tension between the need to “not undermine” existing instruments and the need to fill gaps and strengthen the overall management framework. Delegations agree on the need for increased coordination and cooperation, but while some argue for much stronger horizontal coordination mechanisms and/or a degree of vertical intervention or oversight, others eschew the idea of creating new organisations or processes altogether. In this regard, Regional Fisheries Management Organisations (RFMOs) were more vocal at this meeting, intervening to assure delegations that their mandates are equipped for conservation and that practice is steadily evolving in this area. However some NGOs and experts argue that RFMOs focus on fisheries exploitation and that they have been slow to act in relation to broader biodiversity concerns. **Next steps**

- The PrepCom will meet for two more sessions next year.
- The Chair has invited further written submissions to be made by early December and will produce a non-paper before the next meeting.
- The PrepCom will make its recommendations on the elements of a draft text to the UN General Assembly (UNGA) by the end of its 72nd session (September 2017).
- The UNGA will then decide on the convening of a formal intergovernmental conference to negotiate a new instrument.