

BBNJ: Developments since Yogyakarta

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Preview

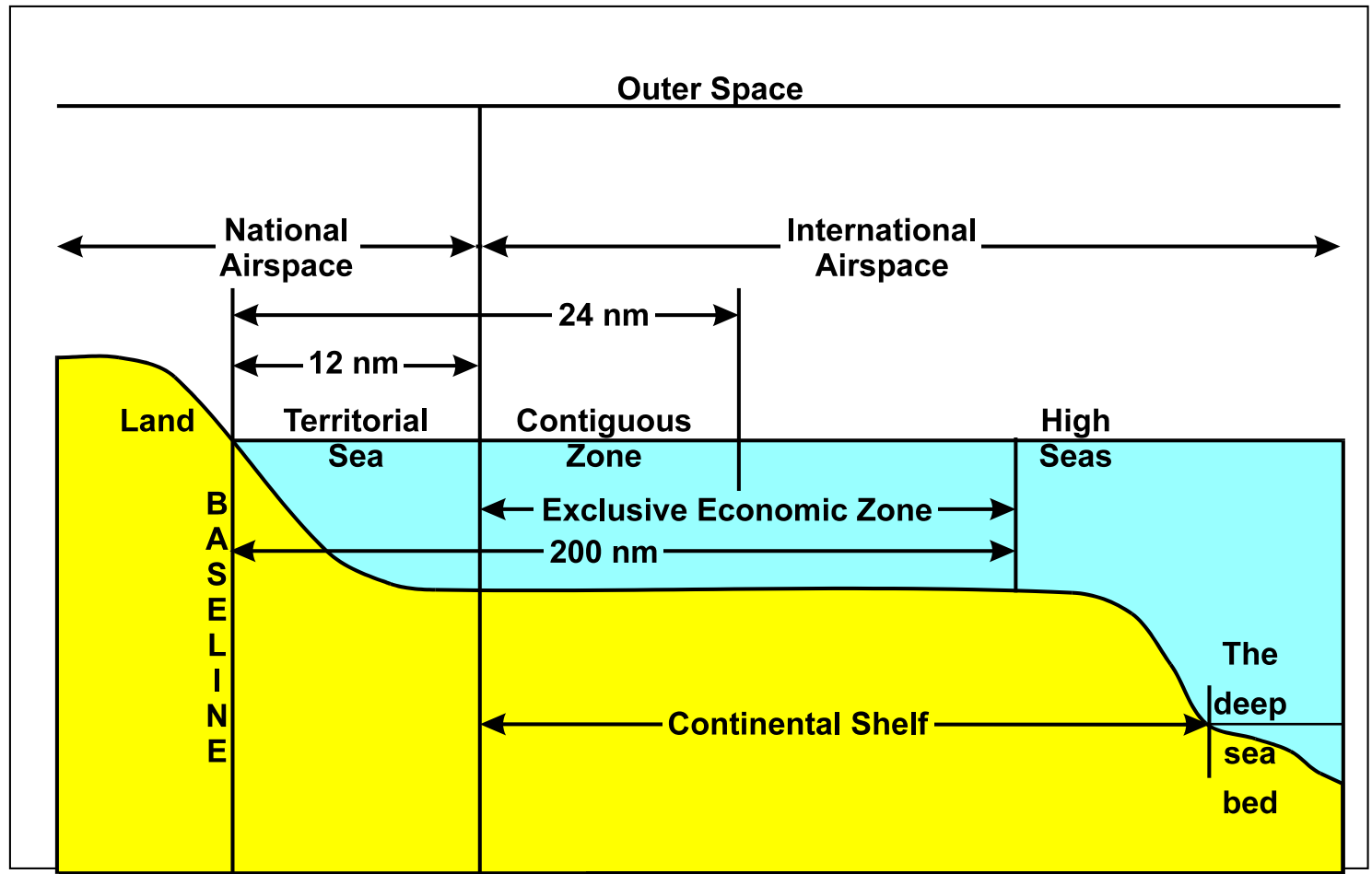
- Unpacking BBNJ
- Legal and Policy Framework
- CIL Workshop 2016
- Preparatory Committee
- Decision to convene DipCon, UNGA Resolution A/RES/72/249
- DipCon Organizational Meeting
- Consensus
- Forecast
- Format of ILBI

Unpacking Scope of BBNJ

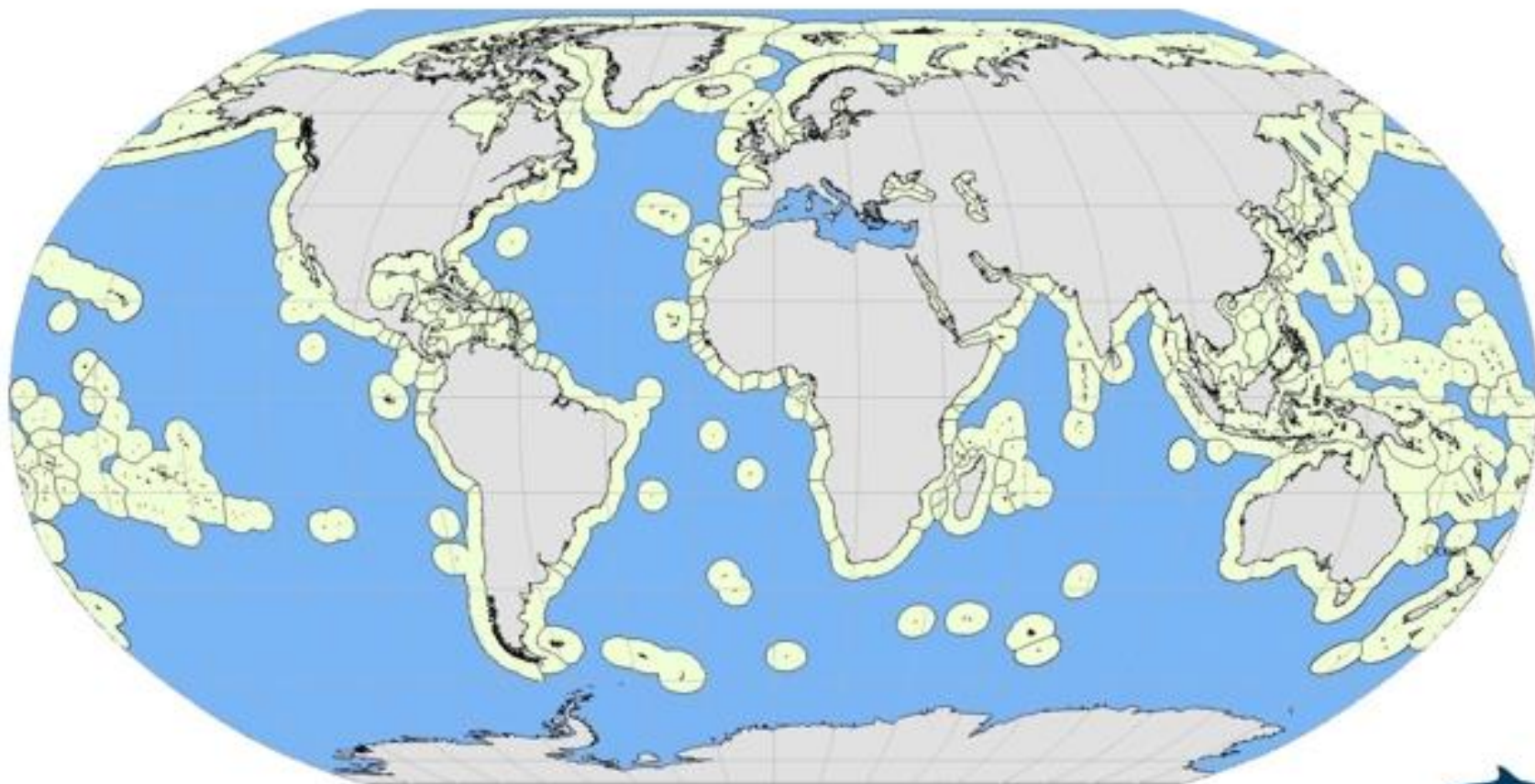
- Conservation and sustainable use
- Marine biological diversity
- Areas beyond national jurisdiction (ABNJ)

What do these phrases mean and entail? Not fully addressed yet.

Legal Boundaries of the Oceans and Airspace



96-CD603

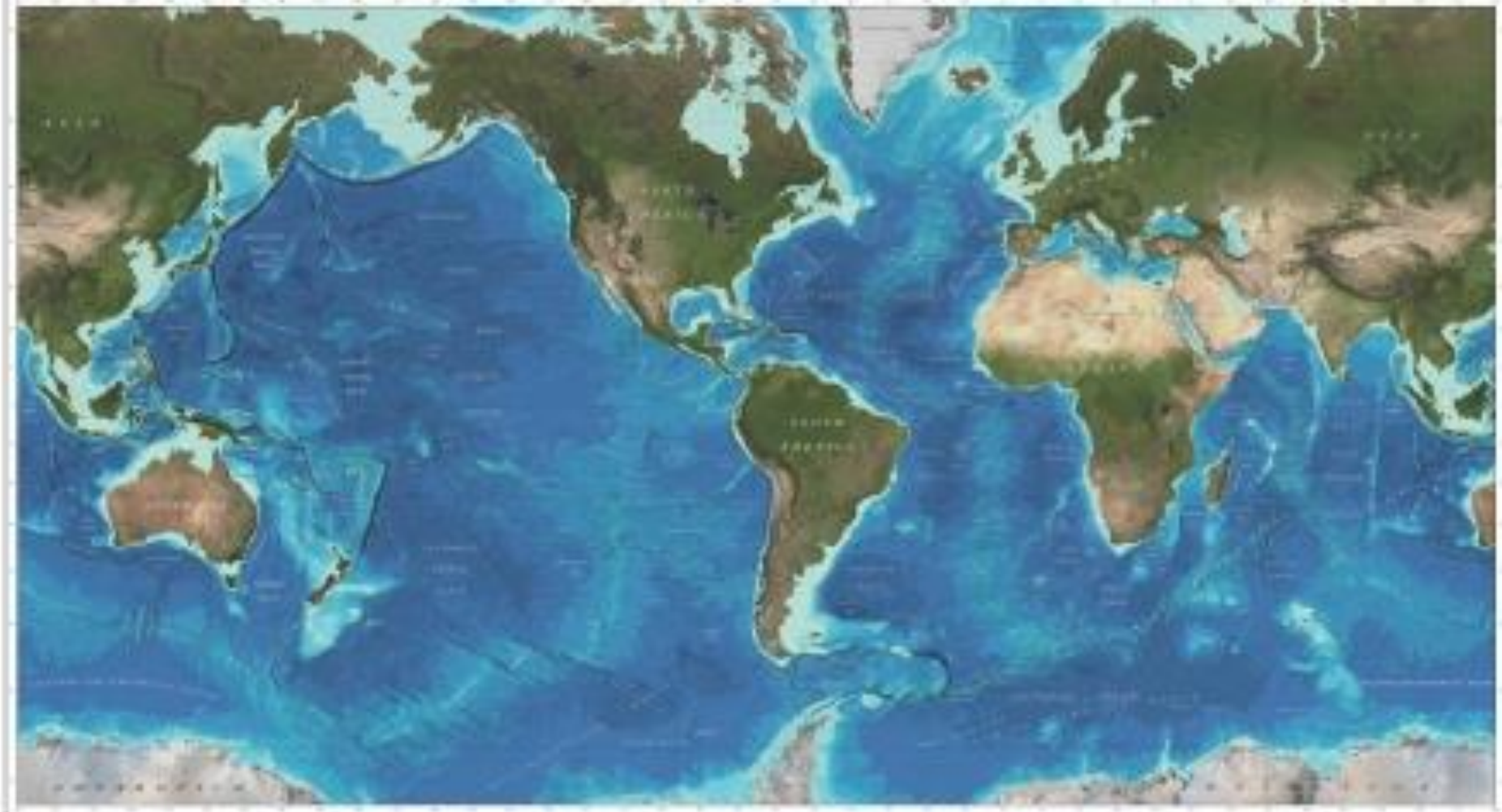


- High Seas
- Exclusive Economic Zones

Global High Seas



EEZ Data: VLIZ (2014). Maritime Boundaries Database, version 8.
<http://www.marinegions.org>. Consulted on 2014-03-28.
Coordinate System: World Robinson. Central Meridian: 0°00'



GENERAL BATHYMETRIC CHART OF THE OCEANS (GBCO)
 WORLD OCEAN BATHYMETRY



Color	Depth (m)
Lightest Blue	0 - 100
Light Blue	100 - 200
Medium Light Blue	200 - 500
Medium Blue	500 - 1000
Dark Blue	1000 - 2000
Very Dark Blue	2000 - 3000
Black	3000 - 6000
Dark Grey	6000 - 10000
Light Grey	10000 - 20000
White	20000 - 30000



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Conservation

- Actions to ensure the sustainability of the resources being exploited
 - FAO

Sustainable Use

- The use of components of marine biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations
 - CBD article 2

Marine Biological Diversity

- The variability among living organisms from marine ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems
 - Adapted from CBD Article 2

Legal and Policy Framework

- In the last 15 years, questions have been raised whether the current framework sufficiently addresses the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction
- In 2004, the General Assembly established the Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction (the Working Group)
- The Working Group met 9 times between 2006 and 2015

Preparatory Committee

- Established by UNGA resolution 69/292, 19 June 2015
- PrepCom met four times, twice in 2016 and twice in 2017
- Report is document A/AC.287/2017/PC.4/2 on DOALOS website
- An ASIL observer's reports at <https://www.asil.org/community/law-sea>

CIL Workshop 2016

- CIL sponsored a workshop on Preparing for the BBNJ PrepCom 3-4 February 2016
- All views expressed in informal setting with Chatham House rules
- Excellent source for information on the issues
- Report at <https://cil.nus.edu.sg/event/conservation-and-sustainable-use-of-marine-biological-diversity-of-areas-beyond-national-jurisdiction-preparing-for-the-prepcom/>

Report of PrepCom to GA 71

- Summarized results of four preparatory committee meetings in 2016 and 2017
- Adopted on 21 July 2017 with two recommendations
- ❑ Elements in sections A and B be considered with a view to the development of ILBI neither of which reflect consensus
 - ❑ Section A reflects non-exclusive elements that generated convergence among most delegations
 - ❑ Section B highlights some main issues with a divergence of views
 - ❑ Both sections w/o prejudice to positions of States
- ❑ Decide ASAP on convening of DipCon

Decision to Convene DipCon

- A/RES/72/249, 24 December 2017
- Decided to develop an internationally legally binding instrument (ILBI) **under the LOS Convention**
- -- on the conservation and sustainable use of
- -- marine biological diversity of
- -- areas beyond national jurisdiction, i.e. high seas and the Area
- What does ILBI entail? Not yet decided.

Dates for DipCon

- First session of conference scheduled for 4-17 September 2018 at UN Headquarters in New York
- Preceded by an organizational meeting 16-18 April 2018 to discuss organizational matters, including the process for preparation of the zero draft of the instrument
- The second and third sessions will be held in 2019 and the fourth session in the first half of 2020
- Additional sessions not precluded but require new UNGA decision
- Likely be needed to reach consensus on whole text

DipCon Limitations

- Work and results of DipCon to be fully consistent with LOS Convention
- Not undermine existing relevant legal instruments and frameworks,
 - E.g. Part XI, 1994 and 1995 Agreementsrelevant global, regional and sectoral bodies
 - E.g. RFMOs
- Exhaust every effort in good faith to reach agreement on substantive matters by consensus
- Otherwise by 2/3rds majority
- Other rules of procedure of UNGA apply

Other Provisions

- Non-parties to LOS Convention may participate
- DOALOS to be DipCon secretariat
- All same provisions in A/RES/69/292 convening PrepCom
- New: UNGA President to nominate President-designate of the DipCon
- Singapore's Ms. Rena Lee, AGC, chosen 14 February 2018

DipCon Organizational Meeting

- First meeting of DipCon was an organizational meeting 16-18 April 2018
- Agenda at <https://www.un.org/bbnj/node/313>
- Results of organizational meeting
 - Ambassador Rena Lee, Ambassador for Oceans and Law of the Sea and Special Envoy of Singapore MFA elected by acclamation 16 April at organizational session
 - 15 Vice Presidents to serve as members of Bureau in their national capacities whose role is to assist President in procedural matters
 - Credentials committee to be composed of delegates from same 9 Member States as for UNGA 72
 - President's report of meeting on BBNJ website as A/CONF.232/2018/2, 19 April 2018

1st Substantive Session

- Election of Bureau
- Credentials Committee
- Most time to be spent on substantive matters
- No parallel sessions
- Work in Plenary except when committees or informal working groups needed under guidance of President
- Discuss elements of package
- No treaty text drafting
- Preparation of zero draft in subsequent sessions

DipCon Process

- President to prepare Aid to Discussion to facilitate delegations preparations for first session
- Work at substantive sessions will be incremental to maximize consensus
- President to be open, transparent and inclusive, as at Organizational Session
- Process will be flexible as to time and format
- Challenge is to articulate text to fill and implement the gaps that enjoys consensus

Consensus

- Will be hard to achieve, but essential
 - Absence of formal objection to specific articles
 - Absence of formal objection to package deal – to adoption of whole text
 - Widespread consensus to ratify package deal
- Not achieved at PrepCom
- Russia and USA expressed their concerns on adoption of the DipCon resolution at failure at PrepCom to achieve consensus; however at organizational meeting were constructive
- UNCLOS III Gentleman's Agreement vs. Fish Stocks
- Need multiple sessions to reach consensus vs cabined time for sessions

Issues for DipCon

- Conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ)
- In particular, together and as a whole [i.e. the 2011 package deal]
- -- Marine genetic resources (MGR), including sharing of benefits (i.e. asset and benefit sharing)
- -- Area-based management tools, including marine protected areas (MPAs)
- -- Environmental impact assessments (EIAs)
- -- Capacity-building and transfer of marine technology
- Same as at PrepCom

Marine Biological Diversity

- Not defined in convening resolutions
- Possible definition adapted from CBD article 2:
The variability among living organisms from marine ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems.
- This would include, in addition to marine genetic resources, living marine resources such as fish and marine mammals
- Not yet discussed

Marine Genetic Resources

- Genetic material containing functional units of heredity (CBD article 2) collected from living marine resources to which this Agreement applies
- UK Royal Society: units of heredity (eg genes), their products (eg proteins) and substances synthesised by biological processes such as antibiotics and biomaterials. MGRs include substances directly isolated from marine organisms and their derivatives (*in/ex situ* and *in vitro*).
 - The Royal Society, Future Ocean Resources: Metal-rich Minerals and Genetics – Evidence Pack, p. 34 (May 2017), online: royalsociety.org/future-oceans-resources
- Much attention given to this topic, including asset and benefit sharing, during PrepCom, but no consensus

Area Based Management Tools

- Includes sectoral and cross-sectoral tools:
- Sectoral area-based management tools include ecological or biological significant areas (EBSAs), vulnerable marine ecosystems (VMEs), fisheries closures, particularly sensitive sea areas (PSSAs), MARPOL special areas, areas of particular environmental interest (APEIs), and preservation reference zones (PRZs)
- Cross-sectoral area-based management tools include marine protected areas, marine spatial planning and strategic environmental assessments

Sectoral Tools

- CBD: ecological or biological significant areas (EBSAs)
- FAO: vulnerable marine ecosystems (VMEs)
 - CCAMLR VMEs
- RFMOs: fisheries closures
- IMO: particularly sensitive sea areas (PSSAs), MARPOL special areas
- ISA: areas of particular environmental interest (APEIs) / preservation reference zones (PRZ) / impact reference zones (IRZ)

Criteria vary. Need to be resolved for ILBI

Locations of MPAs

- EBSAs: <https://www.cbd.int/ebsa/>
- FAO VMEs: <http://www.fao.org/in-action/vulnerable-marine-ecosystems/vme-database/en/vme.html>
- CCAMLR VMEs:
<https://www.ccamlr.org/en/document/data/ccamlr-vme-registry>
- PSSAs:
<http://www.imo.org/en/OurWork/Environment/PSSAs/Pages/Default.aspx>
- MARPOL Special Areas:
<http://www.imo.org/en/OurWork/Environment/SpecialAreasUnderMARPOL/Pages/Default.aspx>
- APEIs:
https://www.isa.org.jm/sites/default/files/styles/large/public/maps/web_map_ccfz_res_0.jpg?itok=iq5zwk6h

Environmental Impact Assessments

- As with MPAs, much work remains to be done, from definition to implementation
- Possible definitions of EIAs in next slide

Definitions of EIAs

- CBD: Environmental Impact Assessment (EIA) is a process of evaluating the likely environmental impacts of a proposed project or development, taking into account inter-related socio-economic, cultural and human-health impacts, both beneficial and adverse
- UNEP: a tool used to identify the environmental, social and economic impacts of a project prior to decision-making. It aims to predict environmental impacts at an early stage in project planning and design, find ways and means to reduce adverse impacts, shape projects to suit the local environment and present the predictions and options to decision-makers
- FAO: EIA is a tool for decision-makers to identify potential environmental impacts of proposed projects, to evaluate alternative approaches, and to design and incorporate appropriate prevention, mitigation, management and monitoring measures

Capacity Building

- Many calls at PrepCom for one-stop clearing house
- Many portals exist dealing separately with programs and databases
- Programs developed by DOALOS, IOC, ISA, IMO, WMU, IMLI, Nansen Institute
- Databases developed by IOC, ISA, GEF, FAO, Governments
- New project to collect all this data by Oxford University into a single open source global ocean data portal OCTOPUS

Capacity Building Programs

- International Oceanographic Data and Information Exchange, www.iode.org
- IOC Capacity Development Program 2015-2021, www.ioc-cd.org
- IOC Ocean Teacher Global Academy, <https://classroom.oceanteacher.org/>
- International Seabed Authority three Training Programmes, <https://www.isa.org.jm/training-programme>
- DOALOS, Train-Sea-Coast Programme, http://www.un.org/Depts/los/tsc_new/TSCindex.htm
- DOALOS, Technical and Assistance Programmes, <http://www.un.org/Depts/los/TechAsst.htm>

Capacity Building Programs - 2

- The EAF-Nansen Project Strengthening the Knowledge Base for and Implementing an Ecosystem Approach to Marine Fisheries in Developing Countries, <http://www.fao.org/in-action/eaf-nansen/en>
- CBD Sustainable Ocean Initiative, <https://www.cbd.int/soi/>
- World Maritime University (WMU), <http://www.wmu.se/>
- International Maritime Law Institute (IMLI), <http://www.imli.org/>
- IMO Technical Cooperation Programme (TCP), <http://www.imo.org/en/OurWork/TechnicalCooperation>

Capacity Building Programs - 3

- UNEP, Regional Seas Programmes and other UNEP Activities Relevant to Marine Biodiversity in Areas beyond National Jurisdiction (26 August 2016), www.un.org/depts/los/biodiversity/prepcom_files/UNEP_and_BBNJ_PrepCom2.pdf
- FAO's Work Relating to the Elements of a Draft Text of an International Legally-Binding Instrument under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction (2016), http://www.un.org/Depts/los/biodiversity/prepcom_files/Prep_Com_w_ebpage_views_submitted_by_delegations.pdf

Data Centres and Systems

- IOC Ocean Data Portal, <http://www.oceandataportal.org/>
- Ocean Bibliographic Information System, www.iobis.org
- ISA Central Data Repository, <https://www.isa.org.jm/central-data-repository>
- Global Environment Facility Project Database, <http://www.thegef.org/projects>
- Global Resource Information Database (GRID) network, <http://www.grid.unep.ch/>
- FAO VME Portal and Data Base, <http://www.fao.org/in-action/vulnerable-marine-ecosystems/vme-database/en/>

National Data Centres and Systems

- International Nucleotide Sequence Database Collaboration, <https://www.ncbi.nlm.nih.gov/genbank/collab/>
- European Molecular Biology Laboratory EBI Metagenomics Service, <https://www.ei.ac.uk/metagenomics> (metagenomics sequence data and associated metadata at European Nucleotide Archive (ENA) and analysed by EBI Metagenomics)

Transfer of Marine Technology

- No definition accepted at PrepCom
- IOC definition mentioned favorably:

Transfer of instruments, equipment, vessels, processes and methodologies required to produce and use knowledge to improve the study and understanding of the nature and resources of the ocean and coastal area

- IOC-UNESCO, Criteria and Guidelines for Transfer of Marine Technology (CGTMT), section A.2
- Mechanisms need to be developed

My forecast – hardest issues

- Marine genetic resources
 - Scope
 - Asset and benefit sharing, CHM vs freedom of the high seas
- Area based management tools
 - Governance process and institutions, impact on RFMO/As
- Environmental impact assessments
 - EIA scope, triggers, review
 - Strategic environmental assessments (SEAs)
- Capacity building and technology transfer
 - What more to say in the ILBI
- Cross cutting issues
 - Common but differentiated responsibilities
 - Institutional arrangements; Financing; EIF

Possible ILBI Format

Based on 1995 Fish Stocks Implementing Agreement:

- Preamble
- Part I General Provisions
 - Use of terms/Definitions
 - Scope of Application (geographic and subject matter, sovereign immunity)
 - Objectives
 - Relationships with other agreements and instruments
 - General principles and approaches/application
 - Cooperation globally or regionally

Possible ILBI Format - 2

- Part II Substantive Requirements
 - Conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (ABNJ)
 - Marine genetic resources
 - Area-based management tools
 - Environmental impact assessments
 - Capacity building and transfer of marine technology
 - Intellectual property
 - Institutional arrangements
 - Financial matters

Possible ILBI Format - 3

- Part III Peaceful Settlement of Disputes
 - Obligation to settle disputes by peaceful means
 - Disputes of a technical nature
 - Procedures for settlement of disputes
 - Provisional measures
- Part IV Good Faith and Abuse of Rights
 - Good faith and abuse of rights
- Part V Responsibility and Liability
 - Responsibility and liability

Possible ILBI Format - 4

- Part VI Conference/Meetings of Parties for Review of Agreement
 - Review meetings
- Part VII Final Provisions
 - Signature
 - Ratification
 - Accession
 - Entry into force
 - Provisional application
 - Reservations and exceptions
 - Declarations and statements

Possible ILBI Format - 5

- Part VII (continued)
 - Relation to other agreements
 - Amendment
 - Denunciation
 - Participation by international organizations
 - Depositary
 - Authentic texts
- Jurat
 - IN WITNESS WHEREOF, ...
 - OPENED FOR SIGNATURE at [location] [date] in a single original in the Arabic, English, French, Russian and Spanish languages.

For Further Information

- <https://www.un.org/bbnj/>
- <http://www.un.org/Depts/los/biodiversity/prepcom.htm>
- <http://papersmart.unmeetings.org/>
- <http://enb.iisd.org/oceans/bbnj/>
- Cymie Payne, Biodiversity in High Seas Areas: An Integrated Legal Approach, ASIL Insight 01 September 2017, <https://www.asil.org/insights/volume/21/issue/9/biodiversity-high-seas-areas-integrated-legal-approach>



Thank you for your attention

Any questions?

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