



Collation of Building Blocks and Different Options for an UNCLOS Implementing Agreement

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Review Workshop

28th and 29th July 2015

At the IUCN Environmental Law Centre, Bonn, Germany

REPORT

1. Background

At the 2012 United Nations Conference on Sustainable Development (Rio+20), States committed themselves *‘to address, on an urgent basis, building on the work of the Ad Hoc Open-ended Informal Working Group and before the end of the sixty-ninth session of the General Assembly, the issue of the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, including by taking a decision on the development of an international instrument under the United Nations Convention on the Law of the Sea.’*

The commitment has since been recalled and reaffirmed by the United Nations General Assembly (UNGA), and the Working Group asked to also study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction and to make recommendations to the UNGA to help prepare for the decision to be taken at the 69th session of the UNGA in 2015. With the adoption of the UNGA Resolution 69/292 on 19th June 2015, it was decided to develop an international legally-binding instrument under the Convention (UNCLOS) on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction and to that end:

- To establish, prior to holding an intergovernmental conference, a preparatory committee, open to all States Members of the United Nations;
- That the preparatory committee shall meet for no less than two sessions of 10 working days duration each in 2016 as well as in 2017. Committee sessions in 2016 will be from 28 March to 8 April and from 29 August to 12 September;
- Before the end of its 72th session, it will decide on the convening and on the starting date of an intergovernmental conference, under the auspices of the United Nations, to consider the recommendations of the preparatory committee on the elements and to elaborate the text of an international legally-binding instrument under the Convention;

It was indicated in the UNGA Resolution that negotiations shall address the topics identified in the package agreed in 2011 and addressed by this project.

The International Union for Conservation of Nature (IUCN) in collaboration with different partners is currently implementing the project *‘Developing an International Agreement on Conservation and Sustainable Use of Marine Biodiversity in Areas Beyond National Jurisdiction’*, which is supported by the German Federal Agency for Nature Conservation (BfN) with funds from the German Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety (BMUB). The overall aim of the project is to provide technical expertise to support the UN Working Group process and upcoming negotiations to be launched in 2016.

After the development of a series of policy briefs on different issues around scope, parameters and feasibility of an international instrument under UNCLOS in 2013 and early 2014, the IUCN project now envisages to develop a draft UNCLOS Implementing Agreement on the Conservation and Sustainable Use of Marine Biodiversity in Areas Beyond National Jurisdiction. The document is meant to provide different options, ideas and approaches for the necessary building blocks of an Implementing Agreement presented in a matrix form. It is envisaged to provide a basis for the facilitation of future international dialogues amongst Governments on the UNCLOS Implementing

Agreement.

On 28th and 29th July 2015, a review workshop was held at the IUCN Environmental Law Centre (ELC), bringing together the international team of experts in the field of the law of the sea and international marine environmental law working on the draft UNCLOS Implementing Agreement.

2. Workshop Proceedings

The objectives of the two-day workshop were the following:

- To review the draft outcome document which has been developed by an international team of experts
- To add any missing elements;
- To decide upon the necessary matters including presentation and content of the final document and its dissemination and also activities to further support and carry on the work done.

During the first day, the participants had a general discussion on the style and approach of the document to see how the document could be made user friendly and useful to support the negotiations and adoption of an UNCLOS Implementing Agreement. The participants reviewed the work produced in one session on objective, scope and general principles and one session on the institutional and compliance aspects. During the second day, the participants were divided during the morning session in three working groups focusing respectively on three parts of the draft matrix: 1) MPAs and other area based management tools and spatial planning, 2) Environmental impact assessments (EIAs) and strategic environmental assessments (SEA) and 3) Access and benefit sharing of marine genetic resources (ABS), technology transfer and capacity building. After the presentation by each group lead of their conclusions followed by a group discussion, participants were invited to discuss the way forward and what should be the next steps to be undertaken to accompany the launch of the negotiations.

Similar to the workshop which took place in December 2014, the main part of this workshop was devoted to a review of the draft sections of the matrix developed covering different building blocks for an implementing agreement including:

- Objective, scope and governance principles;
- Area-based management tools, including marine protected areas
- Environmental impact assessment and strategic environmental assessment;
- Access and benefit sharing of marine genetic resources;
- Capacity building and transfer of technology; and
- Institutional structure and compliance.

But unlike the previous workshop, the focus was on the formulation of the options taking into account the necessity to formulate feasible options that advanced beyond the current status quo. The participants worked together to propose a wording for the options similar to what the articles and provisions of the implementing agreement might look like as well as a plain language summary.

The workshop opened with welcoming words from the ELC Director, Dr. Alejandro Iza who underlined the importance of this topic for IUCN and the Environmental Law Programme and thanked BMUB for its particular support and the participants for attending the workshop.

The workshop agenda and list of participants can be found in Annex I and II of this report.

3. Presentation of the current matrix sections and repackaging of the document

During the first morning session, the legal officer in charge of the project, Charline Gaudin made a presentation on the current status of the negotiations and project to introduce the general discussion on the style and approach of the document. A discussion on the document itself and possible simplification and presentation of the final output took place among the participants. The proposal made by Charline Gaudin of the traffic light to guide the negotiators through their choice of options was dropped as considered not appropriate by the participants. It was recognized that classifying the options was a very difficult exercise as having the most comprehensive obligation is not systematically the most preferable option. In the same way, options might also be cumulative and not alternative (i.e. option 2: option 1 + additional element(s)). The cumulative aspect of the options will be made very clear in the new combined document so that negotiators can clearly understand which options are offered to them.

The following simplified matrix was agreed by the participants, as indicated in this example on MSP:

Concept (general option) (synthesis in old matrix)	Detailed proposed option (element in old matrix)	Legal basis or precedent of already existing international instruments or references to existing practices (example in old matrix)
<u>Option 1</u> : Address spatial planning in the IA as a general obligation for State Parties	<u>Option 1</u> : State parties should take all necessary measures to ensure that ABNJ are properly managed from a spatial point of view. They should cooperate to better plan human activities in ABNJ and limit competing activities which could lead to the degradation of the marine environment.	<u>EU Directive 2014/89/EU establishing a framework for maritime spatial planning</u> See article 4 and 5 for example.
<u>Option 2</u> : Have more detailed obligations on spatial planning (e.g. need to adopt a spatial plan for certain areas of specific interest, for example after proposal of the scientific committee)	<u>Option 2</u> : Objectives and minimum requirements for maritime spatial planning are provided such as possibility on setting up maritime spatial plans.	
<u>Option 3</u> : no provision on spatial planning obligations	—	—

Most of the participants considered that it was better in general to avoid giving the option of not addressing the issue at all (e.g. option 3 in the example above).

It was agreed by the participants that the current size of the document was not acceptable (more than 120 pages) and that the document should be reduced and better structured. The use and targeted audience was also recalled by the participants. To that end, it was proposed that a system of hyperlinks or annexes should be developed to allow the reader/negotiator to have access to all relevant information including the full text of existing international instruments (i.e. entire articles) and from the rationale already developed in the different sections of the matrix. Other more innovative and visual options were discussed such as the use of organigrams and google developer <https://console.developers.google.com/start>. Andrew Friedman from Pew and Glen Wright from IDDRI made some presentations on this possible visual tools. All participants agreed on this approach. However, it was decided that the first step and priority should be to restructure the developed ideas and have properly defined options. The next step would be to think about the final presentation of all relevant and collected information in a user friendly way to allow the reader to navigate easily in the document and get directly access to the information he is interested in.

It was decided that first of all a simplified and combined document should be developed following this basic structure similar to other MEAs:

1. Preamble
2. Objective
3. Use of terms (definitions which are spread in different parts of the matrix sections)
4. Scope (function and geographical, including on ABS aspects)
5. **General principles**
6. **General obligations**
7. **Parts XX Global and regional cooperation**
8. Part XX on area based management tools and MPAs
9. Part XX on EIA and SEAs
10. Part XX on ABS
11. Part XX on capacity building and the transfer of marine technology
12. Part XX on institutional aspects
13. **Part XX on financial mechanisms**
14. Part XX on monitoring and reporting such as procedure for compliance review
15. Other important matters to be addressed: Dispute resolution (advisory opinion, stakeholder participation (general provision or within EIA))

* Parts in bold did not exist prior to the workshop but new options have been developed during the first day.

It was agreed that all important definitions spread in the different sections of the matrix should be compiled in a section on definitions (i.e. use of terms) at the beginning of the final document.

Every part will have several sections with small individual tables/matrix for each aspect to be addressed in the implementing agreement. For example, the part on EIA and SEAs would be

structured as follows:

- Section 1) EIAs
 - Thresholds for EIA
TABLE (short matrix)
 - Activities covered by EIA/coverage
TABLE (short matrix)
 - Content for EIA documentation
TABLE (short matrix)
 - Notification and consultation of stakeholders
TABLE (short matrix)
 - Final decision on proposed activity
TABLE (short matrix)

A table of contents at the beginning of the combined document will allow navigating in the document and access directly information and options proposed which would interest in particular the reader/negotiator (e.g. access regime for ABS). This document will be prepared for the workshop organised in New York by ELC at the Tarrytown House which will take place from 6 to 8 November 2015. The idea was proposed to put this document on a USB stick and give it to the negotiators/participants during the workshop. It was also proposed to put this document on the IUCN website to be easily accessible.

Project extension will have to be discussed with BMUB and BfN to see possible further funding to continue the work done until now and finalise the development of this negotiation tool. With the launching of the negotiations in 2016 and establishment of the preparatory committee, it seems necessary to continue the work done until now and to finalise the negotiation tool to provide support to the negotiators and ensure that a comprehensive implementing agreement addressing the current governance and regulatory gaps is adopted.

3. Building Blocks

The review of the different building blocks took place during the first and second day. As indicated previously, focus was on the formulation of the options but also on addressing missing important elements.

Objective, Scope and Governance Principles

Dr. Nilufer Oral, member of the WCEL and co-chair of the IUCN Specialist Group on Oceans, Coasts and Coral Reefs of the Commission on Environmental Law led the session on objective, scope and governance principles and made a presentation of the different options regarding the following points:

- Preamble
- Objective of the implementing agreement
- Means for achieving objectives
- Scope (geographical and functional)
- Governances principles (placement, formulation)

Her presentation was based on the section of the matrix developed by Dr. Dire Tladi who could not

attend the workshop.

The participants reviewed the options proposed in the matrix prepared by Dire Tladi and agreed on the options that were proposed while revising slightly the wording when necessary. They agreed that general principles should be preferably mentioned in the preamble, in a general article like it is the case in other instruments (e.g. UNFSA) but also in separate articles as some principles deserve to be further detailed in the implementing agreement (e.g. ecosystem approach and precautionary principle).

It was agreed that the scope of the agreement should duly reflect and incorporate the ABS aspects. Elements from the ABS sections on the scope should be integrated in the general scope of the implementing agreement.

In addition, the participants discussed options on **general obligations** which were currently missing in the document. The following options were agreed:

- Option 1: Extended version of UNCLOS article 192: States have the obligation to protect and preserve the marine environment and conserve marine biodiversity in ABNJ and sustainably use its components and adopt necessary measures. States also have the obligation to share fairly and equitably the benefits arising from utilization of MGR derived from ABNJ.
- Option 2: Option 1 + in giving effect to the objective of the Agreement, Parties shall apply the following principles inter alia (SPRFMO Convention art. 3) and governance principles listed in the previous section.
- Option 3: Option 2 + other general obligation such as the general duty to cooperate in order to ensure the effective implementation of the IA (UNCLOS art 197, UNFSA).

Finally, it was agreed as well that a part should be included in the final document on **global and regional cooperation** in order to reflect the content of the section 2 of Part XII of UNCLOS (global and regional cooperation). The overarching role of this implementing agreement is also to bring a common framework to the other sectoral and regional instruments in order to harmonize the current level of conservation. It was agreed that the options should be proposed for the following aspects:

- Basic principles (based on article 197 UNCLOS marine environment + marine biodiversity)
- Cooperation within/between relevant organisations (IMO, FAO, RFMO, SEA, etc.):
 - Option 1: Similar article based on article 10 UNFSA: In fulfilling their obligations to cooperate through competent global, regional, sub regional organisations, States shall (...)
 - Option 2: Option 1+ States shall cooperate to enhance the effectiveness of organisations and extend their mandate or competences when necessary to achieve the purpose of the Agreement. States shall as well when appropriate establish new organisations serving the purpose of the Agreement (article 13 of UNFSA)
 - Option 3: Option 2 + specifications on how effectiveness can be achieved
- Specific areas of cooperation
 - Option 1: Address current gaps of section 2 of Part XII of UNCLOS (ex: marine scientific research, article 200 extended version) + repeat relevant articles (ex: article 201 on scientific criteria for regulations) and adapt them to IA scope + and integrate Section 2 of Part XIII especially article 244 (especially section 2)
 - Option 2: Only repeat relevant articles (ex: article 201 on scientific criteria for regulations) and adapt them to IA scope
- Transparency requirements (Article 12 UNFSA and extend the scope to the IA).

Institutional Structure and Compliance

Regarding the **institutional structure**, Mariamalia Rodriguez, High Seas Programme Coordinator and responsible for the development of the section of the matrix on governance framework and compliance, made a presentation of the different available options for the implementing agreement. The presentation was followed by a group discussion.

The participants agreed that the part on the institutional aspects would be structured as follows:

1) Basic institutional structure

- Option 1: COP + subsidiary bodies + Secretariat (traditional setting)
- Option 2: Option 2 + regional advisory bodies/council
- Option 3: An existing international organisation take over the role of Secretariat and decision-making (ISA or another)
- Option 4: A new international organisation with a new mandate is created
- Option 5: Antarctic Treaty model (Consultative meeting and Committee for Environmental Protection) and a Secretariat (e.g. DOALOS or new/other secretariat)

2) Involvement of civil society

- Option 1: Traditional observer status for NGOs
- Option 2: More extensive observer status for NGOs (issue based/*ad hoc* stakeholder participation)
- Option 3: Innovative involvement of NGOs (ex: involvement in scientific committee, vote for NGOs, Stakeholders opinions when required under this Agreement should be taken into account by the CoP when adopting decisions (Aarhus))

3) Subsidiary bodies

- Option 1: Scientific committee only
- Option 2: Scientific committee + Compliance committee
- Option 3: Option 2 + Other relevant committees

4) Secretariat

- Option 1: Use existing Secretariat (DOALOS or ISA)
- Option 2: Create a new Secretariat

5) Other relevant bodies

- Option 1: A clearing house is established with defined functions
- Option 2: A platform on ABNJ is established (like IPPC)

Regarding the basic institutional structure, the participants agreed that the traditional structure existing in other MEAs (option 1) should be preferred and also that it was preferable to avoid creating a new organization which might overlap with the mandate of already existing organizations. Regarding the idea of extending the mandate of the ISA (option 3), several participants indicated that this would require an amendment to UNCLOS in accordance with article 312 as article 313 for the simplified procedure would not apply. An amendment to UNCLOS does not seem possible at this stage and therefore the option 1 would seem the most feasible.

Regarding compliance, participants emphasized the importance of including compliance obligations for State Parties to ensure the effective implementation of the implementing agreement. They agreed on the following structure:

1) General compliance mechanism

- Option 1: Mandate for the adoption of a compliance mechanism, without specifying its scope or function.
- Option 2: Implementing Agreement defines certain compliance mechanisms: and provides parameters to guide the creation of future compliance mechanism such as the nature and purpose of the mechanism; the establishment of a Compliance Committee and finally establish triggers and voting rules.
- Option 3: Implement Agreement provides specific details on the scope, functions and structure of a compliance committee.

2) Compliance procedures/measures

- Option 1: Implementation and supervision
- Option 2: Substantive compliance measures
- Option 3: Measures and procedures to address compliance

3) Reporting requirements

- Option 1: Reporting requirements left to COP decisions. COP should decide on reporting requirements.
- Option 2: Option 1+ the COP should invite global, regional, sub regional organisations to consult and report.

It was underlined that specific compliance measures could be also indicated under particular sections (e.g. EIA/SEA, ABS or MPAs).

No time remained to address the question of enforcement but the participants agreed that some options should be provided on enforcement in line with the provisions of UNCLOS (section 6 of Part XII on enforcement (article 213 to 222)).

It was recognised by the participants that **Flag State duties and Port State duties** were not addressed in the current sections of the matrix. As activities on the high seas are difficult to control due to their remote nature, , obligations should be imposed to Flag States as well as Port States. . Therefore the participants worked on formulating options on these aspects. The following options were retained:

- Option 1: Adapt article 18 UNFSA and article 94 UNCLOS to the scope of the Agreement:
- Option 2: Addition of regulation of nationals.
- Option 3: Option 1+ detail measures necessary to ensure compliance with the Convention and the Agreement (e.g. use of VMS and S-AIS).

Participants agreed to add an option on the responsibility to ensure compliance in conformity with UNCLOS provisions:

- Option 1: Based on Article 139 UNCLOS, States Parties have the responsibility to ensure that activities covered by the scope the Agreement, whether carried out by States Parties or States enterprises or natural or juridical persons (...) shall be carried out in conformity with the provisions of this Agreement. The same responsibilities apply to international organisations for activities carried out by such organisations (...). Par. 3 needs to be added. States Parties that are members (...).

It was agreed that Mrs Mariamalia Rodriguez will provide a revised matrix based on the new format and workshop discussions.

Group sessions

During the morning of the second day of the workshop, the participants were split into three working groups in order to review the content of the matrix developed and the options identified to fill in the current gaps. In the afternoon, each group lead made a presentation of the results of its discussions. All participants provided feedback in order to improve the content and formulation of the options when it was necessary. Good progress was made to improve the structure and formulation of the options for the different key aspects of the “package deal”.

Area-based Management Tools, including Marine Protected Areas

The group included the following participants (see Annex II for full details on the participants):

- Kristina Gjerde (leading the group)
- Glen Wright
- Nilufer Oral
- Andrew Friedman
- Charline Gaudin

Kristina Gjerde, IUCN Senior High Seas Advisor and responsible for the section of the matrix on ABMTs and MPAs presented the results of her group discussions and the options for the following aspects were discussed:

1. ABMTs:

- a. Definitions
- b. General obligations
- c. Specific obligations (new options introduced):
- d. Cooperation /Functions of competent international organizations
- e. Marine spatial planning (new options introduced):
 - Option 1. State parties shall cooperate to spatially plan and manage human activities in ABNJ and limit competing activities which could lead to the degradation of the marine environment or marine biodiversity.
 - Option 1+2. Objectives, scientific criteria and minimum requirements for maritime spatial planning and plans shall be developed by the Conference of Parties or subsidiary body
- f. Reporting
- g. Review mechanisms (new options introduced):
 - Option 1: The Conference of Parties shall regularly review and assess actions taken by competent international organizations and other bodies with respect to area-based management and conservation measures and make recommendations for improving their effectiveness/ coherence/sufficiency.
 - Option 2: A scientific and technical body may be tasked to perform the above mentioned task and report to the COP.
 - Option 3: 1 or 2 + Conference of Parties to invite the competent international organizations to respond to the recommendations within 2 years and to report on their progress annually.
 - Option 4. 1 or 2 + Conference of Parties to invite the competent international organizations to respond to the recommendations and report on their progress annually.

ABMT aspects have been greatly improved as in the section of the matrix developed this element

was not sufficiently addressed and too much emphasis was put on MPAs.

2. MPAs

- a. Definition
- b. Criteria for designation
- c. Objectives
- d. Process for proposing
 - i. Power to initiate proposal: Option 1. Proposals for establishment of new MPAs may be submitted in accordance with the agreement by:
 - 1. States parties to the agreement
 - 2. Relevant competent international organizations
 - 3. A competent body (e.g. scientific committee) established under this agreement
 - 4. Accredited NGOs/organizations
 - ii. Option 2. Proposals for establishment of new MPAs may be submitted in accordance with the agreement by:
 - 1. States parties to the agreement
 - 2. Relevant competent international organizations
 - 3. A competent body (e.g. scientific committee) established under agreement
- e. Review and adoption of MPA proposals
- f. Recognition of existing MPAs:

Option 1: Proposals for recognition/endorsement of MPAs established outside the framework of this agreement may be submitted in accordance with the agreement by:

 - 1. States parties to this agreement
 - 2. Relevant competent international organizations

or

Option 2+Option 1: At the time of the entry into force of agreement, contracting states shall recognize all existing MPAs listed in Annex xxx

or

Option 3 + Option 1: At the time of the agreement, the COP and/or subsidiary body will promptly review existing MPAs with a view to endorsement, in cooperation with regional and sectoral organizations and bodies

Option 4. **Regardless of the option chosen**, Parties shall not authorize or permit new activities or extend existing activities harmful to MPAs established outside of the agreement.
- g. MPA management plans
 - i. *Who is responsible for the content:* Option 1. The Proponent of MPA shall provide a draft management plan
 - Option 2: Scientific and technical committee to propose management plan/measures
 - Option 3: States shall cooperate directly and within competent international organizations to develop and adopt management plans within 2 years

Option 4: Management plan will suggest management measures to be taken by the competent international organizations to meet the objectives of the MPA

- ii. *Type and content*: Option 1. No management plan, rely on adoption of measures to achieve objectives of MPA

Option 2: Two step:

- Draft submitted with the MPA proposal
- States and IGOs required to adopt measures within 2 years to meet objectives

Option 3: Submission of a draft management plan with the proposal that contains minimum contents spelled out in the IA

Option 4: Submission of a detailed management plan with the MPA. All the details of the management plan could be spelled out in an annex of the IA, a decision of the governing body or in some guidelines taken by the Scientific Committee

- h. Adoption of management measures: Option 1: States shall within two years cooperate directly and through competent international organizations, to adopt measures to achieve the objectives for which the MPA is established.

Option 2: Management measures shall include inter alia: (see Mediterranean SPB Protocol) Regulation, prohibition or permitting of activities with a potential to adversely affect the (...)

- Fisheries, marine scientific research, discharge, ships routeing, dumping, exploration and modification of the seabed,
- See OSPAR criteria for identifying human activities Annex V Biodiversity Annex

Option 3: Option 1 or 2 + other relevant measures (Special requirements for EIAs and SEAs, Spatial planning measures for MPA and surrounding region, any other measures required to fulfil management plan or to achieve objectives).

- i. Interim measures

- j. MPA management (regional cooperation obligation, Designated management authority and oversight)

The section on MPAs has also been greatly improved by insisting on the notion of network MPAs and by distinguishing clearly the different elements of the necessary obligations to be included in the implementing agreement.

Due to the limited available time and late session the group had, it was agreed that Kristina Gjerde will finalise after the workshop the power point presentation presenting the options and structure of the section on ABMTs and MPAs. The power point will be sent to Charline Gaudin, the ELC legal officer, who will be in charge of combining and editing all the sections and text developed in one combined document.

Environmental Impact Assessment and Strategic Environmental Assessment

The group included the following participants (see Annex II for full details on the participants):

- Robin Warner (leading the group)
- Duncan Currie
- Mariamalia Rodríguez Chaves

The work of the group on EAI and SEA was very efficient. Gaps in this section were addressed by the group (e.g. SEA more fully addressed, responsibility for EIS review was defined, cumulative or alternative options were clearly identified, aspects of the Aarhus convention concerning public participation were incorporated). The distinction was also made between the targeted stakeholders (who will be involved in the consultation process) and the degree of stakeholders' involvement.

Options are now proposed for the following elements:

1. EIA process
 - Threshold for EIA (5 options)
 - Minimum Content for Environmental Impact Statement (EIS) (2 options)
 - Notification and Consultation of Stakeholders:
 - Targeted Stakeholders (2 options)
 - Degree of Involvement of Stakeholders (2 options)
 - Final Decision on Proposed Activities (2 options)
 - Access to justice (one option)
 - Monitoring obligations (2 options)
 - Reporting obligation (one option)
 - Recognition of Existing EIA Processes (one option)
2. Strategic Environmental Assessment (based on provisions of Kiev SEA Protocol)
 - Screening of Plans and Programmes Requiring SEA (5 options) (e.g. Option 1: State Parties shall conduct SEA of plans and programmes under their jurisdiction or control where they may have significant adverse effects on the marine environment or marine biodiversity of ABNJ)
 - Minimum Content for SEA Report
 - Notification and Consultation of Stakeholders
 - Targeted Stakeholders (2 options)
 - Degree of Involvement of Stakeholders (2 options)
 - Final Decision on Proposed Plans and Programmes (2 options)
 - Access to justice (one option)
 - Monitoring obligations (2 options)
 - Reporting obligation (one option)
 - Recognition of Existing EIA Processes (one option)

It was decided that Dr. Robin Warner will adapt the power point based on the comments and feedback provided by the group and send the revised and simplified section of the matrix to Charline Gaudin for final review and editing.

Access and Benefit-sharing, Technology Transfer and Capacity Building

The group included the following participants (see Annex II for full details on the participants):

- Arianna Broggiato
- Thomas Greiber
- Marcel Jaspar (skype)
- Charline Gaudin

After dealing with ABS issues, Robin Warner, Duncan Currie and Mariamalia Rodríguez Chaves of the EIA and SEA group joined to exchange ideas on capacity building and technology transfer. It was agreed that for technology transfer and capacity building only one option was available and that a general obligation should be defined for both elements (i.e. one option on technology transfer and one option on capacity building). The following options were retained by the group:

- **Technology transfer:** Option 1: Clearing house facilitating the implementation of existing provision of UNCLOS on tech transfer: articles 202 - 244.2 “strengthening of the autonomous marine scientific research capabilities”.
- **Capacity building:** Option 1: Develop obligation of all Contracting Parties to cooperate:
 - In capacity-building, capacity development, and training
 - In key areas related to the conservation and sustainable use of marine biodiversity in ABNJ
 - At global, regional and national level
 - Through international/national institutions and organisations
 - With private sector involvement
 - Based on needs assessments by developing states

Regarding **ABS issues**, the participants agreed on the need to avoid the approach of developing “a treaty within the treaty” and to thoroughly incorporate the provisions on ABS in the implementing agreement and options proposed. As it is not always possible to provide a legal basis or precedent from existing treaties due to the novelty of the ABS issues, it was agreed that options proposed will be supported by references made to practices, code of conduct or guidelines (3rd column of the new simplified matrix). Participants decided that provisions on ABS should be feasible and should not inhibit marine scientific research. Some participants recalled the principle of freedom of high seas which should be respected and balanced with the need for establishing some benefit sharing obligations for States conducting bioprospecting/biodiscovery in ABNJ and utilizing MGR originating from ABNJ. Other mentioned the need to avoid unnecessary administrative burden and paper work or to establish a system which will not work in practice or serve the purpose of the agreement.

The question of definition was examined by the group and it was decided to add the definition of change of intent to the additional definitions proposed in option 2.

It was agreed that the part on ABS will be structured as follows:

1. Access Regime

- a. Access process: 2 options, Option 1: Simple access procedure + EIA requirements, Option 2: Restrictive access procedure + EIA requirements
- b. Institutional aspects related to access, 2 options, Option 1: Decision taken at national level + exchange of information, Option 2: Involvement of a Clearing House

2. Benefit Sharing

- a. General benefit sharing mechanisms: 2 options, Option 1: Comprehensive multilateral Benefit Sharing system – fully fledged system, Option 2: Basic Benefit Sharing provision (CBD like – general obligations to share the benefits)
- b. Types of benefits monetary/non-monetary
- c. Monetary benefit and question of payment:
 - Non commercial
 - Option 1: No upfront payment at all
 - Option 2: Possible voluntary contribution feeding into a global fund (see below)
 - Commercial
 - Option 1: Symbolic up-front payment and payment of royalties for milestones
 - Option 2: No upfront payment and possible voluntary contribution feeding into a global fund. Payment of royalties for milestones.

3. Monitoring and Compliance

- a. Option 1: Comprehensive compliance mechanism obligations
- b. Option 2: States have more freedom on defining compliance measures to be adopted

4. Clearing house

- a. Option 1: Involve the clearing house mechanism established under the Nagoya and combine the 2 platforms.
- b. Option 2: Create a new centralized clearing-house and/or international network of clearing-houses
- c. Sub-option: Other pre-existing institutions involved in information-sharing with respect to MSR in ABNJ (e.g. Intergovernmental Oceanographic Commission of UNESCO) could play a role in creating, hosting and/or implementing the clearing-house.

Way Forward

It was concluded that now one person will be in charge of final editing and that the project manager, Charline Gaudin as ELC legal officer will do this exercise in close cooperation with the section leads. She will put all different sections together in one combined document and she will include the new elements that were missing from the different sections and developed during this workshop (e.g. global and regional cooperation, flag State aspects, etc.). She will use the revised powerpoint presentations from the workshop and the sections of the matrix developed prior to this workshop. Once this combined document will be ready it will be circulated to the group of experts for their interest and will be presented during the workshop which will take place in New York at the Tarrytown House from 6 to 8 November 2015.

It is normally intended that the section leads will be invited to the workshop in New York to present to the negotiators the options retained, illustrated by examples and based on the rationale

developed in the previous section of the matrix. The final document produced will be presented to the negotiators and circulated to them during this event. Based on their feedback and comments, the negotiation tool will be improved. Further information and details on the workshop venue (i.e. agenda and invitation) will be communicated to the group of experts at a later stage.

This project normally ends on 31th December 2015 but possibilities for a project extension will be explored in September between ELC and BMUB/BfN in order to revise the draft matrix to respond to the discussions of the November Tarrytown workshop with government representatives from capitals and UN Missions and to enable easier navigation between the different elements of the “package deal” and for gaining quick access to reference material. To develop such tool, allocation of specific funds is necessary. Now that the preparatory process has been launched, other activities might include capacity building for developing countries to familiarize them with the negotiation tool and updating the tool to respond to issues raised during the two-year preparatory process.

The participants underscored their hopes that the project will continue in order to support the negotiations for the next 2 years, noting the important role that this project had played in providing substantive support to countries leading to the launch of the negotiations.

The participants finally agreed on the **following timeline**:

- **15th August 2015** revised power point presentations and/or sections of matrix according to new format sent to ELC/Charline Gaudin
- **Beginning of September 2015** draft agenda and invitation for the workshop in New York at Tarrytown is sent to the relevant persons
- **15th October 2015** the combined document is ready to be disseminated and presented to the negotiators in New York
- **February 2016** (in case of project and fund extension) first version of the negotiation tool is developed

Annex I: Agenda

AGENDA

Day 1: 28 July, 2015		
09:30 – 09:50	Welcome – Introduction to the meeting <ul style="list-style-type: none"> ➤ Objective of the meeting ➤ Adoption of the agenda ➤ Tour de table 	Legal Officer IUCN Environmental Law Centre , Charline Gaudin Representative of the Federal Ministry for the Environment, Nature Conservation, Nuclear Safety and Building
09:50 – 10:50	General discussion on the style and approach of the document <ul style="list-style-type: none"> ➤ Discussion on the document itself and possible simplification and presentation of the final output 	Legal Officer IUCN Environmental Law Centre, Charline Gaudin
11:00-11:15	COFFEE BREAK	
11:15– 13:00	Session I: Objective, Scope, Definitions and Governance Principles <ul style="list-style-type: none"> ➤ Exchange of views ➤ Missing elements ➤ Further rationale 	Lead: Nilufer Oral, Istanbul Bilgi University, WCEL
13:00 – 14:00	LUNCH BREAK	
14:00-15:00	Session I: Continued	Lead: Nilufer Oral, Istanbul Bilgi University, WCEL

15:00 – 18:00	Session II: Institutional Structure and Compliance <ul style="list-style-type: none"> ➤ Exchange of views ➤ Missing elements ➤ Further rationale 	Lead: Mariamalia Rodriguez Chavez, High Seas Programme Coordinator at MarViva Foundation, Office Costa Rica
19:00	JOINT DINNER	
Day 2: 29 July, 2015		
09:00 – 12:30 Coffee Break between 10:30 and 10:45	Session III: MPAs, Other Area-based Management Tools and Spatial Planning (group session) <ul style="list-style-type: none"> ➤ Exchange of views ➤ Missing elements ➤ Further rationale Session IV: EIA, SEA (group session) <ul style="list-style-type: none"> ➤ Exchange of views ➤ Missing elements ➤ Further rationale Session V: ABS, Technology Transfer, Capacity Building (group session) <ul style="list-style-type: none"> ➤ Exchange of views ➤ Missing elements ➤ Further rationale 	Lead: Kristina Gjerde, IUCN Global Marine and Polar Programme Lead: Robin Warner, Australian National Centre for Ocean Resources and Security (ANCORS), IUCN World Commission on Environmental Law Lead: Thomas Greiber, Research Associate Institute for Advance Sustainable Studies, Potsdam
12:30 – 13:30	LUNCH BREAK	
13:30 – 14:30	Session III, IV and V: Conclusions on group discussions (15 min per group) with emphasis on main unsolved issues identified	Legal Officer IUCN Environmental Law Centre , Charline Gaudin And leads of group sessions
14:30 – 16:00	Way forward and necessary next steps to be undertaken	Legal Officer IUCN Environmental Law Centre , Charline Gaudin

16:00 – 16:15	COFFEE BREAK	
16:15-17:30	Wrapping up and conclusions	Legal Officer IUCN Environmental Law Centre , Charline Gaudin

Annex II: List of Participants

Name and position	Email
Prof. Robin Warner, University of Wollongong Australia, WCEL	rwarn@uow.edu.au
Nicola Breier , Head of Unit, Ministry for the Environment, Nature Conservation, Building and Nuclear Safety	Nicola.Breier@bmub.bund.de
Dr.Nilufer Oral, Istanbul Bilgi University, WCEL	niluferoral@hotmail.com
Thomas Greiber, Institute for Advanced Sustainability Studies Potsdam	Thomas.Greiber@iass-potsdam.de
Kristina Gjerde, IUCN Global Marine and Polar Programme	kristina.gjerde@eip.com.pl
Glen Wright, Institute for Sustainable Development and International Relations , WCEL	glen.wright@sciencespo.fr
Andrew Friedman, Pew Charitable Trusts	afriedman@pewtrusts.org
Mariamalia Rodriguez, Mariva	mariamalia.rodriguez@marviva.net
Duncan Currie, Pew Environment Group	duncanc@globelaw.com
Dr. Arianna Broggiato, University of Louvain la Neuve, Micro B3 IP management for marine bioprospecting package	arianna@broggiato.it
Prof. Marcel Jaspar, University of Aberdeen, PharmaSEA project manager (skype)	m.jaspars@abdn.ac.uk
Dr. Alejandro Iza, Director of ELC	Alejandro.Iza@iucn.org
Charline Gaudin, legal officer at ELC	Charline.gaudin@iucn.org
Lydia Slobodian, legal officer at ELC	Lydia.slobodian@iucn.org
Thibault Renoux, legal assistant	Thibault.RENOUX@iucn.org
Lor��lie Escot, legal intern	Lorelie.Escot@iucn.org

