- **ISA-BBNJ WORKSHOP**
- **November 5, 2025**

Talking Points for Ambassador Milan Meetarbhan

The title of the BBNJ agreement clearly provides that this is “An Agreement made under UNCLOS -referred to in the Agreement as the Convention”.

The term “Convention” appears 45 times in the BBNJ agreement.

Art 3 of the Agreement provides that “This Agreement applies to areas beyond national jurisdiction.” And Art 1.2 defines “Areas beyond national jurisdiction” to mean the high seas and the **Area**.

The BBNJ Agreement is not the first one to apply to areas beyond national jurisdiction.

Art 1.1. of UNCLOS defines “the Area” under the control of the ISA as “the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction.

The spatial application of Part X1 of UNCLOS and of the BBNJ Agreement is therefore the same.

Art 145 of UNCLOS already provided that necessary measures shall be taken with respect to activities in the Area to ensure effective protection for the marine environment from harmful effects which may arise from such activities.

To the extent that BBNJ is an implementing agreement of UNCLOS and is specifically made as an agreemnent under UNCLOS and that it is not a Protocol to UNCLOS but a separate stand-alone agreement, there are possible overlaping, conflict or duplication that may arise in the concurrent application of two regulatory regimes operating in the same space, albeit for what is prima facie with respect to different resources.

- The BBNJ Agreement explicitly operates *"in the context of and consistent with UNCLOS"* but extends it through "further international cooperation and coordination." It does not create new zones. Most importantly, it does *not undermine existing bodies* (Art. 5), meaning institutions like the ISA retain their mandates but must coordinate substantively with BBNJ mechanisms.

As such, the legal mandates for both the ISA and the BBNJ Agreement both derive their legitimacy from the United Nations Convention on the Law of the Sea (UNCLOS), and both pursue the shared principles of **common heritage of humankind**, **ecosystem-based management**, and **precautionary protection, although** their **institutional cultures, functional logics, and interpretations of "benefit of humankind"** may differ.

They are complementary in law but overlapping in geography.

Institutional framework

The overall institutional framework to be put in place for both UNCLOS and BBNJ Agreement SHOULD ENSURE COMPLEMENTARY AND NOT COMPETEING JURISDICTIONS.

A. The ISA's Mandate Under Part XI

Under Article 157, of UNCLOS, the ISA is the organization through which States Parties shall organize and control activities in the Area, with a view to administering the resources of the Area.

- Given the fact that the BBNJ agreement is an implementaing agreement under UNCLOS and given the overarching principle of COMMON HERITAGE OF MANKIND which governs the area beyond national jurisdiction to which the BBNJ agreement also applies; and
- Given environmental protection obligations and expertise of the ISA with respect to resources in the Area;and
- Given the need for cost efficiency at a time when the focus is on UN 80,

Should consideration be given to a common institutional framework for administering both the relevant provisions of UNCLOS and provisions of the BBNJ Agreement ?

The **interface between the BBNJ Agreement and the ISA** starts in their **shared geography and conceptual underpinings.**

An integrated administrative machinery could ensure a holistic approach to all issues pertaining to resources in the area beyond national jurisdiction.

The ecosystem approach enhances qualitative compliance with UNCLOS environmental obligations and promotes **governance integration with other regimes**, crucial for coherent implementation and enforcement of international law in areas beyond national jurisdiction.

In the event that ISA is the apex body for ALL activities in the Area there would be an integrated approach to decisions and resources in the same space and avoid conflicts or competing claims.

Of course, the additional technical expertise required in relation to BBNJ would have to be available in separate divisions or even agencies of the ISA but there would be ultimately an integrated decision making process which could best serve the overall interests of the much acclaimed Common Heritage of Mankind concept for which UNCLOS was hailed as a milestone of the 20th century.

The CHM concept and its operationalisation in Part XI of UNCLOS was a cause for hope- hope for a better future, hope that it would be a harbinger for a new order based on principles of equity and hope that the new agreement would prevent another wave of colonisation.

The BBNJ Agrement can be seen as an integral part of the movement that started some five decades ago and which seeks to protect and regulate the common goods in the common interest.

Should the ISA be tasked with overseeing the secretariat under the BBNJ Agreement, other organisations like UNEP will also have to be brought in as part of an integrated coordination mechanism.

THE SUPPORT OF countries which have expressed an interest in hosting the BBNJ secretariat SHOULD ALSO BE ENLISTED AS HOSTS FOR SPECIALISED DIVISIONS or regional centres which are established as part of the global mechanism administered by ISA .

These centres can play important roles for instance in connection with research, training, hosting workshops

Designating the ISA as the apex body for administering the BBNJ Agreement would be rather innovative as an existing organisation would be appointed as the secretariat under a separate treaty – a treaty other than the constitutive treaty under which that organisation has been esablished. (THOUGH **it must be pointed out that in this case the separate treaty is an implementing treaty of the main treat**y)

The end result could be A coherent ocean governance for the oceans beyond national jurisdiction.

It would provide synergy, harmonised implementaion of what has been called the third UNCLOS implementing agreement . A key institutional priority is to design a durable harmonization framework to guide cooperation across spatial planning, environmental assessment, and monitoring once both regimes are fully operational.

- Operational convergence and genuine coordination would also enhance :
  - alignment of environmental standards and baselines ,
    - Connecing data systems
    - Adopting shared ecological criteria (representativity, connectivity, cumulative-impact, noting that some bioregionalisation exercises are already taking place/ have taken place).
    - Expand participation to broader stakeholders beyond ISA members.
    - Scientific excellence
    - Efficiency gains
    - Enhanced credibility
    - **Equitable outcomes**
    - **Legal Clarity.**