Thank you for giving me the floor. I have the honour to deliver this statement on behalf of the 12 Pacific Small Island Developing States (PSIDS) represented at the United Nations. For those who are members, we align ourselves with the remarks of Ecuador on behalf of the G77 and China. We also align ourselves with the statement made by Maldives on behalf of the Alliance of Small Island States.

We agree that this is a very important session; in many ways, this is where our interests are best expressed, and so they hold the key to reaching agreement and build a strong instrument. We are confident, Mr. Chair, that you will skillfully facilitate our discussion on these issues and enable us to continue making progress.

1. OBJECTIVES

There were many proposals in terms of objective, but there seems to be consensus on the conservation and sustainable use of BBNJ. There was an interesting proposal from Monaco to add “long-term” to C and SU.

There is an option to add “through the effective implementation of UNCLOS”, to follow the model of the Fishstock agreement. This is relevant to consider, in particular since this future agreement will be under UNCLOS. We can also consider adding “operationalization” of relevant provisions of UNCLOS, but this can be captured by “effective implementation”.

As regards to the list of other objectives that were provided for us to consider, we believe that these elements could be considered as sub-objectives. They are relevant, although we would like to caution on “addressing imminent dangers”: We need to address these dangers of course, but we should have a more holistic approach and also address creeping stresses and threats. We should not just focus on “imminent dangers”.

We are flexible on where to list these sub-objectives. They could help define the objective of our agreement in the relevant section or article. They could also be inserted in the preamble, so as to provide a good rationale and guidance for the IA.

a. PRINCIPLES AND APPROACHES
We see the principles and approaches as cross-cutting. We think that all areas of the package are inter-related, and they should all be guided by common sets of principles.

We think principles should have a dedicated section in the new agreement similarly to article 5 of the Fish Stocks agreement; and, for those that need extensive explanation, we would be open to have dedicated articles, such as articles 6 and 7 of the Fish Stocks agreement.

On the list of principles and approaches to include, which ones are recognized as such under international law, what approaches are sufficiently well established for inclusion in an international instrument, we feel that there are many good ones. I would kindly refer you to our submissions that list the principles that our group support. Allow me to highlight only a few of the ones we support. The following principles and approaches we feel need more explanation and I hope that this will help delegations better understand where the PSIDS are coming from.

**Incorporation of traditional and local knowledge**

Traditional and local knowledge are established enough as legitimate sources of knowledge in international legal instruments and related international processes to warrant inclusion in the BBNJ instrument. Traditional and local knowledge has typically been associated with indigenous peoples and local communities ("IPLCs"), particularly in terms of how to incorporate the experiences of IPLCs and safeguard their interests in various international legal instruments and related international processes. This is especially so with instruments and processes dealing with environmental management/conservation/protection, as well as in intellectual property regimes where there is currently a raging debate on how to honor and protect the traditional and local knowledge of IPLCs in patenting regimes.

Select references in international law\(^1\) (including major soft law instruments) and processes to traditional and local knowledge: CBD, Nagoya Protocol, FAO Plant treaty, Convention to combat desertification, Paris Agreement, UNESCO convention of cultural heritage, UNESCO convention on promotion of diversity of cultural expressions, Rio declaration on environment and development.

There is also ongoing work on traditional knowledge in the World Intellectual Property Organization ("WIPO"), specifically its Intergovernmental Committee on Intellectual

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\(^1\) -- Convention on Biological Diversity
-- Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization
-- FAO International Treaty on Plant Genetic Resources for Food and Agriculture
-- United Nations Convention to Combat Desertification
-- Paris Agreement
-- UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage
-- UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions
-- Principles and Guidelines for the Protection of the Heritage of Indigenous Peoples
-- Rio Declaration on Environment and Development
-- UN Declaration on the Rights of Indigenous Peoples
Property and Genetic Resources, Traditional Knowledge and Folklore ("IGC"). The WIPO IGC is negotiating a new legal instrument aimed at the protection of traditional knowledge, although it is not clear when (or even if) the instrument will be completed (let alone adopted).

For the PSIDS, the inclusion of traditional and local knowledge in the new instrument is highly relevant. As we have argued, PSIDS have a strong customary and traditional connection to the Ocean that is manifest in tangible and intangible cultural heritage. The cultural heritage values of the Pacific Ocean are protected and transmitted through the traditional knowledge systems and customary practices of our communities. Our communities have developed a deep ecological knowledge of the Oceanic environment, including of the ocean, its currents, the weather, seasons and living world. They sustain our shared transnational values of the ocean.

Customary or culturally understandings of the ocean also inform use of marine resources in the open-ocean and high seas. It is this body of knowledge that enables successful long-distance voyages. The resurgence in traditional navigation, such as the Polynesian Voyaging Society through the Hokule’a, which sailed to New York last June, apply this traditional knowledge in their navigations.

**Adjacency and the requirement to consult adjacent States**

The concept of adjacency is linked to key principles of international law, in particular transboundary harm and compatibility.

For transboundary harm, international law dictates that no State has the right to use or permit the use of its territory, or engage in an activity or authorize the commission of an activity under its jurisdiction or control, in such a manner as to cause injury in or to the territory of another State. This so-called "no harm" rule was first articulated in the famed Trail Smelter arbitral award in 1941. Principle 21 of the 1972 Stockholm Declaration expanded the rule so as to obligate States to ensure that activities within their jurisdiction or control do not cause damage to areas beyond the limits of national jurisdiction. The Espoo Convention codified the no-harm rule in the context of transboundary EIAs, including in terms of obligating neighboring/adjacent State Parties to consult with each other when conducting EIAs involving potential transboundary harms. To the extent that the adjacency principle being discussed in the BBNJ PrepCom process invokes the interest of an adjacent coastal State in being consulted about activities in adjacent ABNJs that might impact the marine environment and other interests of that State, the principle has some relevance to the no-harm/transboundary harm rule/principle.

Compatibility is a concept from fisheries management. Article 7(2) of the Fish Stocks says that conservation and management measures established for the high seas and for maritime areas under national jurisdiction "shall be compatible in order to ensure conservation and management of the straddling fish stocks and highly migratory fish stocks in their entirety." To ensure compatibility, the measures for high seas stocks
should not "undermine the effectiveness" of similar measures in national waters for the same stocks. Article 8 of the Western and Central Pacific Fisheries Convention has similar language to those provisions from the UNFSA.

Various provisions of UNCLOS underscore the obligation of States Parties to conserve and protect the marine environments in their EEZs and in ABNJs: Part XII provisions on protecting and preserving the marine environment (including in ABNJs), Part V provisions on conservation and management of fish stocks that migrate between national jurisdictions and ABNJs, and Part XI provisions on environmental protection obligations in connection with activities of the Area. Provisions from other international agreements as well as regional agreements also highlight the obligation of their State Parties to conserve living resources of ABNJs: Article 5 of the CBD, the UN Fish Stocks Agreement, the so-called Being Sea Donut Hole Agreement (for regulating Pollock in the Central Bering Sea, including through compatible measures between EEZs and the high seas), and the Sea of Okhotsk Agreement between Russia and the US.

Based on those legal provisions, as well as based on the foregoing discussions of transboundary harm and compatibility, coastal States have substantial obligations under international law to conserve and manage marine biodiversity not just within their EEZs but also in ABNJs to which they are adjacent. Those States are encouraged (if not required) to discharge those obligations by coordinating with and consulting existing entities and/or other States to undertake those conservation and management measures, including in ABNJs (e.g., through RFMOs). At the same time, coastal States have legitimate interests under international law to be involved in/consulted about activities in ABNJs adjacent to their national waters that might impact those national waters. Thus, there is arguably substantial support in international law for adjacency, at least as a concept.

Avoiding placing disproportionate burden on small island developing States

This approach has its roots in fisheries conservation and management (Article 25 of UNFSA). UNFSA does not define "disproportionate burden." Nevertheless, the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean ("WCP-Convention") replicates the UNFSA provisions, but with several modifications to reflect the SIDS/Pacific context, in particular in its article 30.

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2. In giving effect to the duty to cooperate in the establishment of conservation and management measures for straddling fish stocks and highly migratory fish stocks, States shall take into account the special requirements of developing States, in particular:
   (c) the need to ensure that such measures do not result in transferring, directly or indirectly, a disproportionate burden of conservation action onto developing States.

3. In giving effect to the duty to cooperate in the establishment of conservation and management measures for highly migratory fish stocks, the Commission shall take into account the special requirements of developing States Parties, in particular small island developing States, and of territories and possessions, in
The WCP-Convention does not define "disproportionate burden." Nevertheless, the Western and Central Pacific Fisheries Commission ("WCFPC") has acted to operationalize Article 30(2)(c) of the WCP-Convention through a number of conservation and management measures ("CMMs"). Members of the WCPFC adopted CMM2013-06, which interprets Article 30(2)(c) as imposing a positive obligation on the WCPFC to ensure that any CMM it adopts does not result in a disproportionate burden on developing States Parties. The WCPFC makes this determination by using a checklist, against which proposed CMMs are assessed to determine whether they impose disproportionate burdens on developing States Parties. If such a determination is made, then Parties to the WCP-Convention are obligated to work together to reduce/eliminate the burden for the developing States Parties, including by delaying the implementation of the CMM, exempting developing States Parties from certain obligations, or compensating developing States Parties.

Although the approach of avoiding disproportionate burden has not been explicitly defined by an international instrument or related international process, it is explicitly mentioned in two major international instruments (i.e., UNFSA and the WCP-Convention), and it has been discussed extensively in various multilateral fora (including

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4 The specific relevant language from CMM2013-06 is as follows: In considering any new proposal the Commission shall apply the following questions to determine the nature and extent of the impact of the proposal on SIDS and territories in the Convention Area:

a. Who is required to implement the proposal?
b. Which CCMs would this proposal impact and in what way(s) and what proportion?
c. Are there linkages with other proposals or instruments in other regional fisheries management organizations or international organizations that reduce the burden of implementation?
d. Does the proposal affect development opportunities for SIDS?
e. Does the proposal affect SIDS domestic access to resources and development aspirations?
f. What resources, including financial and human capacity, are needed by SIDS to implement the proposal?
g. What mitigation measures are included in the proposal?
h. What assistance mechanisms and associated timeframe, including training and financial support, are included in the proposal to avoid a disproportionate burden on SIDS?

4. In cases where the transfer of a disproportionate burden of conservation action has been demonstrated by a SIDS or territory, CCMs shall cooperate, to mitigate the burden for the implementation by the relevant SIDS and territories of specific obligations including through:

a. Phased or delayed implementation of specific obligations;
b. Exemption of specific obligations;
c. Proportional or rotational implementation;
d. Establishment of a compensatory funding mechanism in accordance with the financial regulations of the Commission.
the Resumed Review Conference for UNFSA). The approach is sufficiently established to warrant inclusion in the BBNJ instrument.

The approach applies more broadly than in just the fisheries context, to all conservation and management measures in ABNJ for all marine life therein. That will mean, among other things, adapting the WCPFC checklist to reflect that broader ambit.

b. DEFINITIONS

The PSIDS share the view that we need to have a common understanding of what we mean and what we are talking about in this future agreement. Therefore, providing this common understanding through definitions is a proposition that we would favorably consider. We see the value in providing these definitions or explanation of concepts in a dedicated section or, when relevant, in the relevant sections. Whether the dedicated section be called “definitions” or “use of terms” or “use of concepts” is something we are flexible on at this stage.

On which definitions to include: from our discussions up to today, we believe that we need common understanding on a few terms and concepts, which I will go into in a minute. I will not, however, provide any proposed definition, but I will highlight the proposals that we could build on and work with. What I would like to stress is that, for now, we see these are some of the concepts and terms that would benefit our conversations. I also want to echo what the distinguish delegate of Norway has mentioned about how definitions should have a purpose, and we should not just define terms for the sake of having a definition. We feel this is a sensible comment, and this is with this in mind that I am making this contribution.

- ABNJ: This is related to the scope, and our position seems closely related to the EU’s, CARICOM and others.

- Marine Biological diversity (Costa Rica and Monaco)

- BBNJ: we have not defined this, but do we need to define this?

- marine biological resources: support CARICOM’s

- marine genetic resources: I think here one of the key element will be also how to deal with derivatives

- in situ, ex-situ or in-silico access: we are not yes clear as whether we need to include specific definition, but when we will be speaking of “access”, we will need to understand where this access is done.

- Marine scientific research and bioprospecting: We see the difference between the two. But we are still considering the relevance of including a definition in our agreement, and if so, what it would be like.
- ABMTs: There is no universal agreed value on what an ABMT is, or what ABMTs are. However, from our discussions, it seems that we all have an understanding that these are tools and measures to conserve and sustainable use marine biological diversity in some defined geographical area, and they would include existing measures and tools used by international, regional, and sectoral mechanisms or bodies. We have an understanding that ABMTs have different objectives and priorities. We could work with proposals from with G77’s, EU, Monaco or WWF.

- MPAs: I think on this, there is some common understanding that MPAs are a subset of ABMTs, and that they are conservation-focused. They should have different objectives, depending on what threats they are meant to address or what values they are meant to protect, and they have therefore different levels of protection. So, the definition will make us all understand that all MPAs are ABMTs, but not all ABMTs are MPAs. We can work with G77’s, Monaco’s, Costa Rica’s or EU’s proposals.

- Marine reserves: We see that these are a subset of MPAs, and they have the strongest protection measures. So all reserves are MPAs. All reserves are ABMTs. But all MPAs are not reserves. And all ABMTs are not reserves. Whether there needs to be a definition of a reserve, we are flexible as long as we understand that they are only a type of MPAs.

- Marine Spatial Planning: We have discussed it much, but it would be a concept that should have a role in our instrument; and for clarity sake, we should look into clarifying its meaning. We are still considering the definition of MSP, and will be happy to discuss it at a later stage. We note that WWF has suggested a definition.

- EIA: We are not certain that this needs a definition, as long as we have a clear process in our instrument and we understand what it implies. It is possible that the EIA section of the new agreement provides this understanding of what we mean by an EIA.

- Transboundary EIA: the PSIDS could also consider not having a specific transboundary EIA but include a mandatory transboundary assessment in the EIA. Whether we need to have a definition in a specific section, we have a similar position as for EIAs, at least for the time being.

- Strategic environmental assessment: we still have to better understand what we mean by SEA. Last week, quite a few delegations, including the EU, Canada, Australia, and New Zealand, supported the inclusion of SEAs in the new agreement, and we are one of them. This is an important tool to address cumulative impacts, for instance. So it will need to be included, and of course we will need to have a good understanding of what an SEA is, when it takes place, at what level, how. But whether this needs a specific definition in our instrument, we have not made up our mind yet.

- technology and marine technology: This is important to understand what would be subject to transfer of marine technology, so there should a definition. It should be too
restrictive and fluid, so as to incorporate innovations. We could work with existing definitions, such as provided in the IOC criteria and guidelines.

- biotechnology: a definition would be useful. At this stage, we do not have a proposal, but are willing to consider this instance more.

2. RELATIONSHIP TO OTHER INSTRUMENTS AND FRAMEWORKS

I think it is safe to say that there is consensus that a key role of the future implementing agreement is to improve or enhance cooperation and coordination among States and relevant and competent organizations. The new instrument should, therefore, complement the existing patchwork of instruments and frameworks and aim to facilitate coordination and cooperation among the many different actors that operate through specific and sectoral objectives.

We are yet to agree on what exactly what we mean regarding how to conduct that coordination and cooperation, or what we mean by improving coordination and cooperation.

I think we will have a more in-depth discussion when we reach the issue of institutional arrangements, which would provide the mechanics for such a role.

But allow me to use one example we see on how the instrument can work with existing sectors. Fisheries may be one of the main sectors that has been discussed in our forum. For PSIDS, we see that the future agreement could provide complementary arrangements to focus on gaps in the current regime, such as general biodiversity protection. For instance, this new instrument could provide general biodiversity protection guidelines or methodology to take into account the impact on stocks of emerging issues such as the adverse impacts of climate change, pollution, or ocean acidification. This could help improve the implementation of the precautionary approach under which RFMOs are to operate.

Furthermore, there have been significant advances gained in some RFMOs, which have benefited countries like my own, and therefore, as provided for in 69/292, these gains shouldn’t be undermined.

This extends also to not undermining national efforts. So, standards applied in ABNJ should not be lower than those from EEZs. This is true for fisheries management related standards, as well as more conservation ones.

I think we all agree on these points.

On the role of existing regional, sub-regional and sectoral bodies in this body; We are part of these delegations who believe that yes, they should have a role. Now we have to determine how. For us PSIDS, we are relying extensively on our sub-regional organizations already, and this is to not only bring more coherence in our regional policy, but for efficiency-sake and to address our capacity constraints. So the sub-regional organizations have developed a very strong understanding of our sub-regional
characteristics as relate to our ecology, our social, economic, or cultural characteristics. Also, our organizations know what works, what doesn’t, and what we need… or what we do not need. This is why we, as a sub-region, believe that such organizations should have a role in the implementation of the agreement.

At this stage, we still have a lot of work to do on defining exactly who would do what and how.

Where there is no existing body, we would suggest Create one (on encourage creation of one); in the meantime, all decisions and implementation to be done by the global body

On Whether the instrument should regulate activities with an impact on biodiversity of areas beyond national jurisdiction, Consistent with our stated objective, our position on the relationship to other instruments, as well as the principles and approaches that would guide the implementation of this new IA (in particular the ecosystem-based approach), the PSIDS’ view is that the future implementing agreement applies to any activity or development that has the potential to impact on BBNJ, including on ocean processes (e.g., physical, chemical, biological) relating to the health and viability of BBNJ, with due regard to not undermining existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies. Adequate conservation and sustainable use of marine biodiversity requires an integrated and inclusive approach; therefore, it seems important and necessary that all relevant parties be consulted, engaged with and take part in the decision-making process regarding the management of ABNJ. (FROM MATERdddddIAL SCOPE PART OF THE FIRST SUBMISSION)
3. INSTITUTIONAL ARRANGEMENT

This is the key issue. We have heard all last week the proposals and concerns from other delegations. I think it is safe to say that the future agreement will be looking at an international level and regional level. We differ of course on how much decision making and implementation will be allocated for the international and the regional levels.

So first, we agree with delegations that we want to improve coordination, cooperation and coherence. So we should not create additional layers of instruments. Rather, we should aim to “tidy up” ocean governance for the sake of creating new things. We agree that we have to have a more thoughtful engagement. We should make use of the tools we have when we are able to do so, and consider new ones when it makes sense.

This does not preclude us from first formulating what would be the ideal structure. Then, we look at what should be done to reach such a framework, using existing bodies whenever relevant and possible, and identifying what are the necessary measures to take to build our structure.

The PSIDS envision a global level that would hold decision-making power to set common standards and guidelines, as well as make certain decisions that would ensure that decisions are coherent. However, recognizing the particularities and specific characteristics of regions and sub-regions, as well as recognizing that there are already certain regional and sub-regional arrangements, the implementing agreement would provide for a regional or sub-regional level, which could be a regional/sub-regional forum or an existing organization. This sub-regional/regional level would make some decisions and implement relevant provisions, decisions and measures. It would also implement monitoring to be reviewed at the international level. This regional/sub-regional level would also be open to existing regional, sub-regional and sectoral bodies.

Now, what should be the role of the ISA in the instrument? As a sectoral organization that has its activities in ABNJ, the ISA has a role to play in the future IA. The extent of the role has still to be further discussed, in particular with regards to its mandate and capacity to play a more or less significant role. However, the PSIDS stress that the ISA provides a good model for the Access and Benefit sharing regime, as well as for capacity development and technology transfer provisions.

On the decision-making forum: The PSIDS are of the view that there is a strong need for a global level decision-making forum to not only set common standards and guidelines, but also hold the international community accountable for the conservation and sustainable use of BBNJ.

While we are still discussing among ourselves, and still considering other proposals, we have suggested in our second submission a framework that is a sort of hybrid approach from what is already in place in some sectoral and global governance mechanisms.

This could take the form of a bicameral global body, with a political forum that has universal participation. It would take decisions on more general. There would then be an executive body, which would focus on ensuring effective implementation of the provisions of the agreement.
This global level decision making entity would receive advice from subsidiary bodies (we have suggested some, for the sake of discussion). It would also be working with regional and sub-regional level organizations or fora.

Again chair, we have submitted a detailed proposal in December. Happy to read through it, but for sake of time, I invite other delegations to take a look at it.

On the scientific forum, we have a strong momentum towards having a global scientific forum, and of course, the PSIDS are among those delegations who are strongly supporting such a body. In our second submission, we have suggested that there be at least one scientific or expert committee at the international level.

The reason why there should be a scientific or expert committee is to ensure that decision-making and implementation of the provisions of the implementing agreement are done based on the best available scientific information.

The IA’s scientific or expert committee can draw on existing ones; either it can be merged with an existing one, or it can consult and cooperate with an existing one. One particularities of the PSIDS’s proposal is to take into consideration traditional knowledge, including through including as member holders or experts on some traditional knowledge.

We also see the value in keeping on the table regional/sub-regional expert committees, when relevant decisions should receive guidance.

The PSIDS support the inclusion of a compliance mechanism. We suggest that this mechanism should be at the global level. We could consider a specific compliance committee that would report and make recommendation to the decision-making body.

The reason for a compliance mechanism is to implement accountability and make sure that the IA is effectively implemented. There shouldn't be just voluntary reports with no further action taken should provisions of the implementing agreement be not implemented.

The PSIDS are of the view that there needs to be a dedicated secretariat with adequate staffing and resources. However, we are still considering who would play this role. What is certain is that this Secretariat will need to be adequately staffed and resourced, so as to be able to meet its mandate efficiently. DOALOS will certainly play a role in the future implementing agreement, but we have yet to discuss what this would entail. We are open to discuss this further with colleagues.

a. REVIEW OF IMPLEMENTATION AND COMPLIANCE

We feel that review of implementation and compliance are linked to liability and dispute resolution also.

In the PSIDS’ proposal, the PSIDS have looked into what could be the best mechanism to ensure adequate and effective compliance. We could, therefore, consider a compliance committee at the international level that reviews and monitor the
implementation of the agreement, and report by to the decision-making authority for it to make decisions when relevant.

This committee would be complemented by regional/sub-regional enforcement committees who, through their respective regional or sub-regional forum, would raise any issues relating to implementation.

We note the proposals that a36 of UNFSA could be a model. However, we believe that the implementing agreement should go beyond reviewing the implementation of the provisions of the future instrument. It will need to review the implementation and take measures in case implementation is not effective.
4. FINANCIAL RESOURCES, RESPONSIBILITY AND LIABILITY
   a. RESPONSIBILITY AND LIABILITY

The PSIDS are of the view that there should be clear provisions on responsibility and liability so as to bring forth accountability. In addition to funds, there should be clear provisions on non-compliance, which would include not respecting for instance ABMTs measures, and therefore creating damages, or not respecting the measures of the EIA management plan. So where the activity in question has more impacts than what the management plan had planned for, there should be provisions to dealing with this.

In our proposal, we see the provision also of a liability fund, that would have some mandatory elements.

The PSIDS have suggested two funds, a rehabilitation fund and a liability fund\(^5\). There could be discussions to merge the two. However, it is important to understand that the two objectives they respectively have are important to maintain.

5. DISPUTE RESOLUTION

PSIDS suggest that there should be a dispute resolution mechanism. We believe it would be useful that issuance of advisory opinions would be a useful provision to include.

6. FINAL CLAUSES

While we are looking forward to the day when we are at a stage to discuss final clauses, do not have any concrete proposal or position on what final clauses to include.

SHAPE OF THE AGREEMENT – to talk at the last session

This is not an issue that was identified as needing further discussion, but we felt that we would like to discuss it. We feel that the format of the non-paper could be the format of the future agreement. The discussions this week have made

\(^5\) Rehabilitation Fund

In line with the polluters-pay-principle (PPP), a rehabilitation fund should be established. Private entities wishing to engage in the exploration and exploitation of BBNJ would be required to contribute to the fund, in accordance with a scale tied to the degree of potential environmental harm stemming from the BBNJ activities of those entities.

The fund would be used to finance the rehabilitation of BBNJ, including their natural environments, in the event of pollution or other damaging impacts on BBNJ and/or the ABNJ[s] in which they reside.

Liability Fund

The BBNJ instrument can allow its States Parties to establish liability and seek compensation in connection with pollution and other environmentally harmful activities of private entities and other States Parties regarding BBNJ, perhaps by fashioning a dispute resolution mechanism that provides for such recourse.