



**The Advisory Body of Experts on  
the Law of the Sea  
(ABE-LOS)**

**First Session**

Paris, 11 - 13 June 2001

**Intergovernmental Oceanographic Commission**  
*Reports of Meetings of Experts and Equivalent Bodies*

**The Advisory Body of Experts on  
the Law of the Sea  
(ABE-LOS)**

**First Session**  
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## **1. OPENING OF THE SESSION**

The first meeting of the Advisory Body of Experts on the Law of the Sea (ABE-LOS I) was opened at 10.15 hours on 11 June 2001 at UNESCO Headquarters by Dr. Patricio Bernal, Executive Secretary of IOC. He welcomed the participants to the meeting. He recalled that the ABE-LOS was established by Resolution XIX-19 of the 19<sup>th</sup> Session of the IOC Assembly (Paris, 2-18 July 1997) with the appropriate terms of reference. The ABE-LOS was created to provide advice upon request to the IOC Assembly, Executive Council and/or the Executive Secretary on matters related to the United Nations Convention on the Law of the Sea (UNCLOS). Earlier, before the entry into force of UNCLOS, IOC had initiated a process of identifying ways and means of implementing the relevant provisions of UNCLOS. He recalled that IOC set up many groups of experts to deal with the implementation of UNCLOS and to assist the Secretariat in establishing mechanisms for an adequate implementation of UNCLOS. It is on the bases of the results of these groups of experts that the Assembly decided to set up ABE-LOS, with its specific terms of reference.

Resolution XIX-19 stated that each interested Member States may designate two experts, taking into account the need for an adequate balance in the membership of the ABE-LOS between experts with training in the law of the sea and experts with training in marine sciences, to take part in the work of the ABE-LOS.

He pointed out that the goal of the Meeting was to chart the way forward for the implementation of UNCLOS, identifying the specific areas in which IOC should be involved in future actions and to provide guidance to the 21<sup>st</sup> IOC Assembly, to be held in July 2001.

A list of participants is given in Annex III.

The delegate of the United Kingdom, proposed Mr. Elie Jarmache from France for the Chairmanship of the session. The proposal was seconded by Canada, Greece and Spain. The meeting agreed with the proposal.

## **2. ADMINISTRATIVE ARRANGEMENTS**

### **2.1 DESIGNATION OF THE RAPPORTEUR**

In the absence of any nomination for the post, the meeting decided to work without a Rapporteur. The Technical Secretary of the meeting assumed the responsibility for the preparation of the Draft Summary Report.

### **2.2 ADOPTION OF THE AGENDA**

The IOC Executive Secretary introduced the provisional agenda. He said that the provisional agenda was prepared after consultation with Member States through two questionnaires circulated by the Secretariat. It is based on a combination of (i) the replies from these questionnaires, (ii) and on the previous works of IOC in the context of UNCLOS such as those mentioned in Resolution XIX-19 namely the document IOC/INF-1035, as well as (iii) the Summary Report of an Informal Advisory Consultation on the Implementation of IOC Assembly Resolution XIX-19 (IOC/INF-1114).

The Executive Secretary of IOC also explained that most of the items of the provisional agenda, with the exception of “the Argo Project”, were related to the Development and Transfer of Marine Technology (TMT) (Part XIV of UNCLOS) and the Marine Scientific Research regime (Part XIII of UNCLOS).

The delegates discussed the need for restructuring of the provisional agenda in the light of priorities identified in document IOC/INF-1114 and at the recent UNICPO II meeting held in New York in May 2001. Some delegates suggested that since MSR could not be implemented so long as the

basic conditions are not provided, the matters related to the capacity building and transfer of technology deserved to be given priority in the discussion. In view of the limited number of participants per delegation, as well as the large number of agenda items to be discussed, the meeting agreed to work in the plenary, instead of breaking into working groups. The meeting adopted the Agenda (See Annex I).

## 2.3 DOCUMENTATION

The Executive Secretary of IOC informed the meeting that the final version of the UNICPO II Co-Chairpersons report is not available yet and that the draft summary of discussions (Part B) would be available for the ABE-LOS I as document IOC/ABE-LOS/Inf.10.

Ms Beye, Technical Secretary for the meeting, invited the participants to take note of the list of documents produced (Annex IV). She informed the meeting that due to the late communications of experts contributions to the Secretariat, some of the working documents could only be made available on the opening day.

One delegate recalled that the documents IOC/INF-1054 and IOC/INF-1055 are four years old. He pointed out that during the 19<sup>th</sup> Session of the IOC Assembly, some delegates considered these documents, in particular IOC/INF-1055, could not serve as a sufficient basis for discussion. He requested the Secretariat to provide the participants with the copies of the report of that Session to clarify this issue.

## 2.4 CONDUCT OF THE SESSION

The meeting supported the suggestion of the Chairman to have the presentations of papers in the plenary session. It was agreed that the sessions would work from 10.00 to 13.00 and 15.00 to 18.00 without coffee break in order to fully utilize the translation services.

# 3. MATTERS PERTAINING TO PART XIV OF THE UNCLOS: TRANSFER OF MARINE TECHNOLOGY INCLUDING CAPACITY BUILDING RELATED TO MSR

Dr. Scott Parsons from Canada introduced this item of the Agenda (doc. IOC/ABE-LOSI/8). He drew attention of the meeting to the UNCLOS, which provides a comprehensive legal framework of the rights and obligations of the coastal States related to the conduct of marine scientific research (MSR), the promotion of marine science and the development and transfer of marine technology reflected in various Parts of the Convention. In passing, he referred to the main provisions of Part XII, which deals with Protection and Preservation of the Marine Environment, and Part XIII specifically concerned with the conduct and promotion of MSR to be discussed later under separate item.

Focusing mainly on the Part XIV of UNCLOS, which exclusively deals with the development and transfer of marine technology, Dr. Parsons in his presentation referred in detail to the relevant provisions on transfer of marine technology and other matters.

As part of the international co-operation for the development and promotion of transfer of technology, he placed great importance on bilateral, regional and multilateral programmes and required international funding. He also pointed out that the serious setbacks in implementation of many of the UNCLOS provisions by the developing coastal States were due mainly to the inadequate and insufficient marine technological capacity of those States to address complex issues. In this context, he stressed the significant role of the IOC as a competent international organization.

Highlighting the importance of MSR beyond the jurisdictional limits of coastal and island States, Dr. Parsons drew attention to yet another UNCLOS provision under Article 143 which provides for the States Parties to promote international co-operation for the development of MSR and

transfer of marine technology in the Area through the Authority and other international organizations. He also referred to Part XII that pertains to scientific and technical assistance to developing States for the Protection and Preservation of the Marine Environment referred to in Article 203.

On the role of IOC, he first drew the attention of the meeting to the Revised Statutes (Article 2 and 3 of the Statutes) of the IOC, which clearly identified its growing responsibility with respect to the capacity building and technology transfer within the framework of UNCLOS. He stressed that the primary IOC competence was, therefore, through the programmes and capacity of its Member States and that IOC could act as a conduit for the transfer of technology but had no technology of its own.

With specific reference to the IOC activities in relation to the UNCLOS provisions in respect of transfer of marine technology, including capacity building, and MSR, Dr. Parsons pointed out that IOC as a competent international organization would be required to share greater responsibilities. To that end he referred to the IOC Revised Statutes Article 2 (Purpose) which places greater responsibilities on IOC for international cooperation and for the coordination of programmes in research, services and capacity building, and to the Article 3 (Functions) which, *inter alia*, highlights the IOC role as a competent international organization in response to the requirements deriving from the UNCLOS, the United Nations Conference on Environment and Development (UNCED), and other international instruments in respect of education, training and assistance in marine science, ocean and coastal observations and in the context of transfer of related technology.

He then drew attention of the meeting on the Draft IOC Principles on Transfer of Marine Technology referred to in the document IOC/INF-1054 prepared by the Secretariat. Although the principles, mechanisms and procedures described therein were found to be consistent with the provisions of UNCLOS, he considered that there was a need for redrafting of those Principles to make them more consistent with the IOC Revised Statutes. He commented on the development of a catalogue or catalogues mentioned in the document IOC/INF-1054. In this connection, he mentioned the Washington Agreement on the Prevention of Pollution of the Marine Environment from Land Based Activities, where there is a provision for a "Clearing-house" to assist in the transfer of relevant information for the establishment of National Programmes of Action under the Global Programme of Action. He recalled IOC Resolution EC-XXXIII.16 by which the IOC Executive Council instructed the Executive Secretary to initiate the development of a clearing-house mechanism for ocean sciences with the purpose of facilitating Member States' access to: (i) relevant information derived from recent and ongoing research; (ii) a list of ocean science global research programmes and projects; (iii) opportunities for capacity building in Ocean Science; (iv) a list of sources of information on Ocean Science.

The document also referred to the need for the establishment of national as well as regional marine scientific and technological centres in accordance with the provisions of UNCLOS, under Articles 276 and 277. These centres were envisaged by UNCLOS to stimulate and advance the conduct of MSR as well as to foster marine technology, in particular by the developing States. While considerable progress had in fact been made over the years to foster development of centres at the national level, the same was not true with regard to the regional centres, which deserved to be improved in the future. Instead of building "bricks and mortars", one approach he thought worthy of consideration was to foster the use of regional marine science and ocean related organizations to perform some of those functions.

On the capacity building and transfer of marine technology, Dr. Parsons referred to the growing role of IOC in these fields which are reflected in many of the IOC regional and global programmes serving as the venues for strengthening those needs of developing States. In this context, he drew particular attention to the IOC initiatives through its Training, Education and Mutual Assistance (TEMA) Programme. He also referred to the recent TEMA initiatives undertaken in the context of GOOS and IOC/WMO JCOMM programmes and to the support these programme received recently from the IOC Governing Bodies. With regard to the conditions for successful capacity building, there are the need for commitment of governments, building for long term programmes to

specific countries/regions needs, cooperation among government, international organizations, private sector and donors, and sustaining capacity when developed.

Dr. Parsons concluded by addressing two points:

- (i) With respect to Part XIV of UNCLOS: IOC has a role to play in the implementation of the provisions of this Part, and in particular on the development of guidelines, criteria and standards (Article 271 of UNCLOS).
- (ii) With respect to the role of IOC in capacity building, as defined in its Revised Statutes, the document on the Draft IOC Principles on Transfer of Marine Technology provides a good basis for discussion by ABE-LOS. However, he suggested that some redrafting of the Principles contained in this document would be required in order to make them more consistent with the Revised Statutes of the IOC. In this context, he suggested that ABE-LOS could take the opportunity of the coming IOC Executive Council and Assembly to propose some initiatives for the strengthening of capacity building programmes within IOC.

The delegates expressed appreciation to Dr. Parsons for his excellent presentation. The discussion followed, which, *inter alia*, was mainly focused on the concept of transfer of marine technology, capacity building, regional centres and Draft Principles on Transfer of Marine Technology.

### 3.1 DRAFT IOC PRINCIPLES ON TRANSFER OF MARINE TECHNOLOGY (DOCUMENT IOC/INF-1054)

Some delegates considered that the different elements mentioned under B. Implementation-Catalogue should be completed and submitted to the IOC Assembly for adoption. In this regard, it was suggested that some revised wording such as “general definition of knowledge”, “information on processes”, “information about software”, about ways and means of ensuring effective transfer of technology, should be used to replace the term Catalogue proposed in the document IOC/INF-1054 (Annex V of this report).

A delegate stated that he would not use the term “Catalogue”, which implies study concept, which he supposed is more dynamic, depending on where we live. He recalled that there were some pieces of database in various places, but there was no comprehensive overall integrated database. In this regard, he pointed out linkages to the Resolution EC-XXXIII.16 (UNICPOLOS). This Resolution instructed the IOC Executive Secretary to initiate the development of a clearing-house mechanism for ocean sciences with the purpose of facilitating Member States access to: (i) relevant information derived from on-going research; (ii) a list of ocean science global science programmes and projects; (iii) opportunities on capacity building in Ocean Science; (iv) a list of sources and information on Ocean Science.

The IOC Executive Secretary informed participants that IOC is actively following the guidance mentioned on the proposed Catalogue, in particular two of those items: (i) the offers of studies at the global, regional and sub-regional levels; for this, there is a website based in the University of Delaware with the financial support of IOC together with others. It is serving the purposes of IOC but also the global observing system in general, (ii) the GLODIR database (Global Directory of Scientist and Technicians) with over 10,000 experts. IOC identified regional centres that could enter information from the region and help the Secretariat to qualify the information for the region; that has increased the amount of information in the GLODIR database. He stated that this database produced highly qualified data.

The delegates made a number of suggestions to improve the document IOC/INF-1054:



With regard to the Scope of Application, as mentioned in the document IOC/INF-1054, one delegate recalled that “transferring technology” means to pass on information that would be useful for the understanding of marine environment, excluding information used for the exploitation and exploration of marine resources.

Another delegate stated that when defining the Scope of Application of the transfer of marine technology, we should refer to UNCLOS. So the issue of intellectual property could be an issue to be linked with UNCLOS Article 267 (Protection of legitimate interests). He suggested the meeting might take into account the so-called legitimate interests of the suppliers and recipients of marine technology. Also he felt the need to make a distinction between the knowledge that is used for actual exploration/exploitation, and knowledge that is not used for that purpose. He noted that the list of elements mentioned under the Scope of Application perhaps needs to be augmented and revised.

A suggestion was also made that transfer of marine technology and MSR should include legal assistance and access to the legal database. That would enable on one hand the coastal States, especially the developing countries, to adopt their own appropriate legislation and, on the other, to make all countries aware of the procedures applicable to the transfer of marine technology and marine scientific research. To that end, the delegate suggested the following amendment to the Draft IOC Principles on transfer of marine technology:

- (i) On the Scope of Application: to include at the end of the list: “legal assistance with respect to the transfer of marine technology and marine scientific research”.
- (ii) On the Catalogue: to include in the list: “national legislation (laws, regulations, etc.) and case law governing the transfer of marine technology and marine scientific research”.

There was also a suggestion from a delegate to add at the end of Conditions the following sentence: “having due regard for all legitimate interest including, *inter alia*, the right and duties of holders, suppliers and recipients of marine technology”.

The terms used in the document IOC/INF-1054 under Conditions and Implementation being very general, there was a need to draft an action plan on the implementation of Part XIV of UNCLOS with due regard to the role of IOC in this matter.

There was another proposal to add a paragraph f) at the end of the principles, which could be read as follows: technology transfer should be, whenever possible, in a form and at a level which could fit into national and regional needs and priorities, and should be encouraged as a continuing interaction between the parties involved.

In the document IOC/INF-1054, there are three things on which ABE-LOS could consider:

- need to define the concept of the transfer of marine technology taking into account many elements that constitute the transfer of marine technology such as equipment, knowledge, process, free flow of data.
- in considering ways and means for transfer of marine technology: clear distinction should be made between the transfer of marine science and marine technology on fair and reasonable terms, and transfer of marine science and marine technology for the benefits of all parties on an equitable basis.
- the need for ABE-LOS Group to suggest practical propositions as to how IOC could serve as a clearing-house mechanism.

The delegates agreed that the Document IOC/INF-1054 is a good starting point for the discussion on Part XIV of UNCLOS. However, they recommended that ABE-LOS develop it further taking into consideration other provisions such as Article 271 of UNCLOS. To that end, they proposed to establish a Sub-Group on this issue. The delegates also recommended that the Secretariat should be

strengthened and adequate funds should be provided in order to deal with the huge work to be developed under the transfer of marine technology and capacity building.

### 3.2§ REGIONAL CENTRES

On Regional Centres, a delegate informed the Meeting about WESTPAC activities, as a good example of fostering transfer of marine technology as mentioned in UNCLOS. These activities include the organization of a regional scientific symposium in Seoul in August 2001 and the establishment of an RNODC in Japan, hosted by the Japan Coast Guard. There are also many capacity building activities, such as training courses, e.g. WESTPAC data training workshops. He suggested that the existing regional facilities and financial mechanisms be used for the transfer of marine technology. He gave the example of the WESTPAC NEAR-GOOS training workshops on data management, which are operated under the Japanese Trust Fund to IOC.

Another delegate stressed that the regional centre concept needs to be defined. A regional centre should be a facility created to cater in all essential aspects of marine science and technological transfer to all interested regional institutions and it should be designed not only to serve the host country's own needs but also cater to the needs of all institutions in a given region. He gave the example of ICLARM, based in Penang, Malaysia, which was created from contributions of several donor countries. The Centre provides excellent training and educational facilities to all countries in Southeast Asia for a number of years. For a regional centre to be successful it should have the acceptance of all interested institution with agreed institutional arrangements. He further added that since a regional programme represents the needs of the countries of the region, sharing in common the environment and resources, regional cooperation would be a prerequisite before a regional facility such as regional centre is established and to be successful. Until regional cooperation is strengthened, he suggested that IOC Secretariat should continue to play the coordinating role in implementing capacity building and fostering marine science and technology.

A delegate proposed that the essential component of a decentralized structure is that IOC subsidiary bodies have an officer dealing with this issue of capacity building and transfer of marine technology.

A delegate recalled that the issue of regional centres has been discussed during the UNICPO II meeting. He suggested that IOC review its regional bodies functioning in light of the concept of regional centres. He said that it might be a very helpful document if the meeting could have an update of some general re-appraisals of what might be not only desirable but also possibly implemented in the context of the regional centre.

A delegate suggested that Articles 276 and 277 of UNCLOS should be implemented through regional organizations or various sorts of subsidiary organizations, but also within the existing IOC subsidiary bodies. In a preliminary way, he invited the meeting to ponder on what should be the objective of the regional centre.

To that request, one delegate recalled that when dealing with Art. 276 and 277 of UNCLOS, the ABE-LOS should base its work on the results of the intersessional meeting which took place in May 1996, and which is reflected in the Summary report of the First Session of the open ended Intersessional Working Group on IOC's Possible Role in Relation to the UNCLOS (Doc. IOC/INF-1035).

A delegate pointed out that the major problem is that regional activities and capacities have to be solved individually for various countries. He stated that some countries face limited facilities and difficulties to develop them while other are going ahead. He underlined that IOC is the main body, which has the mechanism available for regional bodies and can co-ordinate the transfer of technology from its headquarters.

The countries participating in the transfer of technology have a greater confidence in the role of IOC as a neutral intergovernmental forum. Therefore, he suggested that IOC should play a key role in promoting the transfer of technology until countries succeed and cooperate to have facilities developed.

The Chairman of ABLOS suggested that the experience of the regional hydrographical commissions, which are very successful in transferring data, charting activities, developing general co-operation and navigation issues should be considered rather than the concept of regional centres. This could be a better way for the IOC in terms of sharing of data.

The Executive Secretary intervened to elaborate the Secretariat position in its effort to have its presence in the regions. He reported IOC has two Sub-Commissions: one the IOC Sub-Commission for the Caribbean and Adjacent Regions, based in Cartagena, Colombia, and the other IOC Sub-Commission for the Western Pacific, based in Bangkok, Thailand, with their own permanent secretariats. In addition, IOC also has seven Regional Committees, which are groups of Member States representing their regions: these bodies are mandated to identify and implement their own programmes including the implementation of other IOC global programmes.

A delegate linked the information which should be mentioned in the Catalogue and the functions of the regional centres, as set out in UNCLOS Article 277, pointing out that: (i) most of the items of information under the catalogue are in fact the functions of the regional centres, as set out in UNCLOS Article 277; (ii) it is not clear whether or not the objectives set forth in UNCLOS Articles 276 and 277 are being met through the present system, in any particular buildings or regions.

With regard to the regional centres, the meeting noted from the discussions that the regional centres in general were not functioning in accordance with UNCLOS provisions, and that this aspect needed further consideration. The meeting, however, reiterated that regional bodies and regional co-operation should be strengthened using the existing IOC regional mechanism. It was agreed that IOC should continue its role in strengthening regional co-operation through its regional subsidiary bodies, which can serve as platforms for identifying needs, implementing marine science and technological transfer, establishing regional centres and networks of national centres.

### 3.3 TRANSFER OF MARINE TECHNOLOGY AND CAPACITY BUILDING

Some delegates agreed, as it was also recognised during UNICPO II, that infrastructure is one of the most important components of marine science technology, which needs to be transferred.

A delegate commented on the separation of the issues related to the transfer of marine technology from those related to capacity building. The main concern of the IOC should be the transfer of technology as recognized by the UNICPO II meeting. IOC has been working a lot on capacity building through TEMA. Recalling that there was already an agreement within IOC about the value of capacity building, he commented that the issue now within IOC is: (i) whether capacity building should be functionally decentralized, and in this context whether each activity of IOC has a separate TEMA component or should have a centralised TEMA component, and (ii) whether or not capacity building should be geographically decentralised with the IOC Subsidiary Bodies serving as possible centres for capacity building. According to him IOC has not yet effectively addressed the issue of the transfer of marine technology, and ABE-LOS could help a lot on this issue to give a starting point for discussion.

Referring to the clearing-house mechanism, the same delegate identified the *1995 Washington Agreement on the Prevention of Pollution from Land Based Activities* as a good model. He drew attention to his own proposal, which he made in 1994, that IOC should be a forum in which supply and demands as regards marine technology could be handled. IOC could act as a clearing-house mechanism by making such information available for the current and future recipients of marine

technology. In doing so, IOC could contribute with its technical expertise in assisting the recipient countries to receive offers of marine technology.

The Executive Secretary responded that IOC, as approved by its governing bodies, spreads across its three Sections of programmes the responsibility of implementing the training, education and mutual assistance programmes, and accordingly handles cross sectional activities that are related to capacity building and training. He mentioned GOOS a good example of IOC effort toward on capacity building.

With regard to the conception and definition of capacity building, another delegate commented that the concept is narrowly applied in IOC dealings. He said that according to recent studies carried out at the International Institute of Educational Planning of UNESCO, capacity building is defined to consist of three main components: human resources development, infrastructure development and policy development. Without a national policy, for instance on marine science and technology, human resources development and infrastructure development often proved to have a limited value in the achievement of national goals for sustainable use of coastal and marine resources. He said that in a changing world, where traditional monodisciplinary approaches are no longer considered valid, the multidisciplinary and interdisciplinary approaches to address economic, social and environmental goals are becoming an overriding necessity and therefore deserve consideration in development in future capacity development programme.

The Executive Secretary proposed that countries should have these institutional arrangements needed before receiving technology. Technology could not be transferred unless a focal point of action in the recipient countries is identified where the technology offered can be effectively used.

In response it was argued that IOC be a forum in which both demands and suppliers can meet at the same time without preconditions. With regard to capacity building in the context of GOOS, it was suggested that it should ensure not only free flow of data, but also provision of opportunities to all States to make their own observations.

Referring to the capacity building practice in Japan, reflected in the document distributed by the Delegate of Japan during the ABE-LOS I, one delegate proposed that the Japanese experience could be of interest to other countries and asked that it be made available on request.

Commenting on technology transfer, the IOC Executive Secretary informed participants that there were many ongoing programmes in this field all over the world, and raised the question on how to find out about all the different mechanisms that exist on this subject. He underlined that no such integrated database exist. He concluded that this kind of database would be a useful tool for the transfer of marine technology in the context of UNCLOS.

Delegates suggested that IOC should act as the focal point for a new integrated database on the transfer of marine technology as a part of a clearing-house mechanism.

### 3.4 RELATION BETWEEN PART XIV AND PART XIII

Based on the results of the IOC questionnaire on the priority issues to be discussed by the ABE-LOS meeting, a delegate stated that one of the conclusions which appears to emerge from such questionnaire is that for many Member States, the issue of access to data results and conclusions of MSR projects should be a question of priority. In this light, he wondered if this issue should be examined under Part XIII or XIV of UNCLOS.

To that end, the delegate added that under Part XIII of UNCLOS, a coastal State has some right under Article 249 (Duty to comply with certain conditions). It was suggested that ABE-LOS should examine this particular obligation. It was pointed out that during UNICPO II, a number of delegates had expressed concerns that even if the data was made available, there would be problems in

further processing and using them, in the absence of required equipment. In other words, processing data is one issue, and utilising it is another, which should be examined under Part XIV of UNCLOS.

The IOC Executive Secretary responded that the question raised was crucial. During UNICPO II, Member States, in particular the developing States, made much of their difficulties in accessing the results of research that had been conducted in waters under their jurisdiction by foreign scientists. He informed the meeting that there was no official records of scientific publications resulted from a given research activity in the exclusive economic zone of a given country. This was noted in many replies to the IOC questionnaire on the practices of States in the field of MSR.

A delegate pointed out that the proposal to set up a website containing data collected from areas under the jurisdiction of a coastal State by a researching State as part of the requirement under UNCLOS Article 249 was clearly not enough. He suggested that IOC could play a very important role in assisting researchers to ensure that they adequately fulfilled their obligation under UNCLOS Article 249 by providing complete information. This, he thought, could otherwise affect the whole consent regime.

There was another suggestion that the problem of data collected on the continental shelf and the subsequent transfer of the results should be examined both under Part XIV and Part XIII of UNCLOS. ABE-LOS, therefore, should examine the question on how a balance could be established between the rights and obligations of coastal States and States, which intend to carry out a MSR project.

#### **4. MATTERS PERTAINING TO PART XIII OF UNCLOS**

Four papers were presented under this section:

##### **4.1 CRITERIA AND GUIDELINES FOR ASCERTAINING THE NATURE AND IMPLICATIONS OF MSR**

Dr. David Pugh from the United Kingdom introduced a discussion paper (IOC/ABE-LOSI/7) on this item in his personal capacity. He noted a link between the Articles 251 and 246, in particular the sub-paragraph 5 (a) of UNCLOS. He considered that since the entry into force of UNCLOS, the MSR context has changed due to (i) decrease of the importance of research vessels, (ii) development of global programmes involving scientists from a large number of countries including those from developing countries, (iii) change in the market for exploited ocean resources, and (iv) improved communication among scientists in developing and developed countries. Dr. Pugh noticed that the UNCLOS did not define the significance of the terms of MSR. He identified some basic definitions and conventions from the 1993 edition of the *Frascati Manual*. He presented examples of applications for consent to undertake MSR in the context of possible implementation of Article 246 paragraph 5 (a) of UNCLOS.

Some delegates stressed the needs for clear definition of the terms ‘basic research’ and ‘research applied to development’.

One delegate pointed out the difficulties involved in the definition of the term of exploration in the Article 246 paragraph 5 (a) of UNCLOS, which could be applied to marine living or non-living resources. He stated that the basic definition and conventions of the research as given in the *Frascati Manual* are clearly defined and can be easily used.

It was argued by another delegate that there are many other criteria that are not spelt out in the Article 246 paragraph 5 (a), (b), (c), (d), which might lead to the denial of the coastal States consent. This could be the case when the foreign States intend to undertake research activities already conducted by the national institutions and experts. However, in the framework of the

intergovernmental programmes, States might require the expertise of foreign scientists for research carried out by foreigners in the water under national jurisdictions. Such initiative could enhance scientific cooperation and facilitate the exchange of experiences.

With regard to the implementation of Article 251, there was a suggestion for a more focused role of IOC as reflected in document IOC/INF-1035. This document requested IOC to play its role in assisting Member States to establish general criteria and guidelines as provided for in Article 251 in ascertaining the nature and implications of marine scientific research. For this purpose, he thought that it would be essential to obtain information on States practices regarding those criteria. He further stated that there is not a link between Article 251 and Article 246 paragraph 5 (a). He pointed out that Article 246 is only dealing with the discretionary power of the coastal State to accord the authorisation to conduct a MSR project. The coastal State should have the same discretionary power under UNCLOS Article 253 on the suspension or cessation of MSR activities. He stressed that Article 251 should be linked to UNCLOS articles 248 and 249.

Other delegations emphasised that there was link between Articles 246 and 251. This is referred to in paragraph 59 of the 1989 UN Guide to the Implementation of the MSR relevant to provisions of the UNCLOS, which states that it was especially with the provisions of Article 246, paragraph 5 (a) that the drafters of UNCLOS included Article 251.

One delegate addressed the question on how to relate the research activities in the exclusive economic zone (EEZ) or on the continental shelf to the regime of consent. In this connection, he referred to the Article 56 paragraph 1 concerning the coastal States sovereign rights on natural resources.

Reference was made to one important conclusion emerging from the questionnaire regarding authorization to conduct a project on MSR, which tended to indicate that coastal States are keener to authorize MSR projects to be executed under the auspices of an international organization, than through bilaterally arrangement. So, he suggested making a link between Articles 248 and 251 concerning the establishment of general criteria and guidelines for ascertaining the nature and implications of MSR.

The meeting considered Article 251 with great interest. Two different positions emerge from the discussions under Article 251: (i) one is linkage of Article 251 to Article 246 paragraph 5 (a) on the consent regime; (ii) the other is the linkage between Article 251, and 248 and 249. The delegates proposed that the IOC Secretariat should continue to collect and analyse scientific information on the practices of States in the field of marine scientific research and the transfer of marine technology in order to establish general criteria and guidelines to assist States in ascertaining the nature and implications of MSR, in conformity with the provisions of Article 251. This work should be done in close cooperation with DOALOS, which already has some activities on this issue.

#### 4.2 ACCESS TO CLEARANCE FOR MSR IN THE EXCLUSIVE ECONOMIC ZONE AND ON THE CONTINENTAL SHELF

Dr. Ashley Roach from the United States of America reported with IOC/ABE-LOSI/11 (Access to clearance for MSR in the EEZ and on the continental shelf). Governmental institutions involved in his country are the National Oceans and Atmospheric Administration (NOAA), the Department of the Navy and the National Science Foundation. The United States has encountered a number of problems caused by coastal States acting in a manner not authorised by the UNCLOS. They could be summarised as follows:

- (i) Significant delays in responding to requests for ship clearances,
- (ii) a number of last minute denial of permission to conduct the research,
- (iii) a number of States require that all data, regardless of format, be provided immediately prior to departure from last port of call,

- (iv) requirements from some States to provide the data within a fixed time after leaving the coastal State's waters, rather than after completion of the cruise,
- (v) requirements from some States to provide copies of data collected in international waters, or in waters under another country's jurisdiction,
- (vi) requirements from some States to hold data in confidence and not place them into the public domain,
- (vii) requirements for cruise reports in other language than English,
- (viii) requirements from some States to send more than one observer on board,
- (ix) requirements from some States to send the observer on board during non-research legs of a voyage, or to pick up scientists at ports not part of the vessel's itinerary,
- (x) requirements from some States for submission of research and port call requests other than through the Foreign Ministry,
- (xi) a number of Foreign ships fail to forward cruise reports to the cognizant domestic organization,
- (xii) a slow or incomplete staffing and coordination among interested coastal State bureaucracies,
- (xiii) requirements from a State to send the research vessel to purchase what is tantamount to a permit,
- (xiv) application of fisheries regulations to MSR requests for plankton sampling, requiring not only the original of the fishing agency's certificate to be held on board the research vessel, but also to fly a unique flag that has to be made by the research vessel.

In his conclusion, Dr. Roach welcomed the IOC's effort to promote greater compliance by researching and coastal States with the provisions of Part XIII of the Law of the Sea Convention.

Some delegates questioned both the tone and certain contents of the presentation. One delegate further stated that such presentation was based on what, in his opinion, was a false assumption about the legal nature of operational oceanography and hydrographic surveys.

According to this delegate, such areas of activities constituted marine scientific research, and thus were subjected to the consent regime which is the heart of Part XIII of UNCLOS.

Many delegates stated the experiences of their respective countries regarding the implementation of the consent regime (Article 246), the duty to provide information to the coastal State (Article 248) as well as the need for researching States to comply with certain conditions (Article 249), particularly, the question of the observers on board of scientific vessels.

Some delegates stated that there is a need to clarify the difference between MSR and survey, while others pointed out the difficulties in identifying differences between hydrographic and military survey as both are often conducted by militaries. To this end, one delegate responded that military survey is a hydrographic survey made by a military vessel; and therefore should be governed by Part XIII of UNCLOS. Other argued that in some countries, MSR includes the hydrographic study, while in others the hydrographic survey is not treated as part of MSR and therefore should not be governed by Part XIII of UNCLOS. Some delegates had difficulty in understanding the suggested exclusion of military survey from the coastal State consent regime of Part XIII of UNCLOS in the EEZ and on the continental shelf.

Attention was drawn by one delegate to the procedures used to implement the regime of consent in the Baltic Sea, which are generally well accepted by the countries involved. He expressed the wish that coastal States give detailed information for the conduct of MSR in their areas of jurisdiction in order to avoid difficulties in the completion of the MSR projects.

One delegate proposed that the main objectives of the MSR projects should be clarified and that making equipment available to a coastal State could facilitate authorisation to conduct research.

Another delegate stated that the consent regime is an important provision of UNCLOS, which could considerably benefit coastal States in transfer of marine science and related technology, in accordance with Article 249 paragraph 1 (a).

A delegate stated that there are many scientific activities that could be developed in the exclusive economic zone. The problem would be how would it be possible to determine which should be governed by the MSR regime as stated by UNCLOS.

It was suggested that ABE-LOS consider the establishment of a working group to update the UN Guide to the Implementation of the Relevant Provisions of UNCLOS. Some delegates supported this.

Delegates agreed that the consent regime is generally well implemented. They proposed that governments should be encouraged to designate an authority at the national level to deal specifically with matters concerning the consent regime.

#### 4.3 THE MSR SITUATION IN THE KINGDOM OF MOROCCO

Professor Mohammed Moncef from the Kingdom of Morocco introduced this item. He stated that the maritime and agricultural activities are the most important sectors of the Moroccan economy with 3,500 kilometers of coast from the Atlantic and Mediterranean sides. The budget allocated to research amounts to US\$ 109 million. He informed the meeting that more than 280 Moroccan researchers have been working through a network, namely Réseau National des Sciences et Techniques Marines (REMER), since 1996. This network is made up of ten Moroccan and some French institutions (Centre d'océanologie de Marseille, IFREMER, etc.). Portuguese and Spanish institutions will join the REMER later on. He also informed the meeting that the socio-economic sectors, including the private sector, contribute indirectly to the financing of the research. This contribution is facilitated by the many marketing actions developed by the scientific community in order to make the socio-economic sector aware of the huge benefits provided by the research. For this purpose, Professor Moncef stated that a workshop on the benefit of research would be launched soon (November 2001).

He pointed out that the Moroccan legislation has been elaborated in accordance with the UNCLOS provisions, but differs from them in its practical implementation. He suggested that ABE-LOS should make concrete proposals in order to simplify the consent regime procedure. He offered that his country would host the second meeting of ABE-LOS. Professor Moncef raised the issue of financing the participation of members from developing countries in the work of ABE-LOS. He suggested that the Assembly establish a voluntary trust fund for the purpose of defraying the cost of participation of the experts from developing countries in the meeting of ABE-LOS.

One delegate recalled that during UNICPO II, many questions concerning the implementation of Article 249 were raised. Should the number of observers to be on board of vessel research be fixed? Should the cost of the observers be defined? Should the participation in or the representation of the coastal State on board of research vessels be considered as a means to transfer marine technology?

Responding to the precedent intervention, one delegate pointed out that his country supported the cost of the embarkation and disembarkation of the observers and did not have pre-conditions for the number of observers to be on board of the research vessel.

Delegates requested a written paper of the Morocco communication, which was considered as a good example of making a successful link between the scientific community and the socio-economic sector.



#### 4.4 PROCEDURES TO BE FOLLOWED WITHIN INTERNATIONAL ORGANIZATIONS TO CONDUCT MARINE SCIENTIFIC RESEARCH

Professor Alfred Soons from the Netherlands introduced this item. He started by presenting the drafting background of Article 247 as well as relevant paragraphs of the UN Guide to the Implementation of the MSR provisions of UNCLOS dealing with this Article.

Professor Soons summarized previous discussions within IOC on implementation of Article 247 starting with the Summary Report of the First Session of the Open-ended Intersessional Working Group on IOC's Possible Role in Relation to the United Nations Convention on the Law of the Sea (Paris, May 1996). The Working Group recognized that the general procedure for obtaining consent for conducting marine scientific projects undertaken by or under the auspices of international organizations for States Parties to UNCLOS is already in place in Article 247 of the Convention. However, if IOC and its regional bodies are to properly put it into practice, IOC should define specific rules and procedures to be followed.

As a follow-up to the discussion of this report by the 29th session of the IOC Executive Council, the Secretariat of IOC prepared Draft IOC Guidelines for the Application of Article 247 of the UN Convention on the Law of the Sea for consideration by the 19th IOC Assembly in 1997. The Assembly decided that this document needed to be redrafted. It was then briefly discussed at the Informal Advisory Consultation on Implementation of IOC Assembly Resolution XIX-19, held in Paris on 2-3 November 1998 (document IOC/INF-1114), which also recognized that the document IOC/INF-1055 should be completely redrafted.

Professor Soons identified the potential benefits of implementation of Article 247. It provides a simplified procedure for an international organisation, which intends to carry out a MSR which would involve access to the exclusive economic zones or continental shelves of a considerable number of coastal States.

Professor Soons stated that the following issues should be clarified for the implementation of Article 247.

1) Which research projects would qualify? :

Article 247 refers to research to be carried out directly by or under the auspices of the organization. Since the IOC does not itself have the capacity to carry out MSR, the projects would involve those that can be regarded as being "under the auspices of" IOC. He submitted that any project that the competent IOC organ designates for this purpose as being under its auspices would qualify.

2) Which organ would be competent to decide?

- (a) In the case of IOC the first question to be addressed is whether regional IOC subsidiary bodies would (exclusively) be competent to implement Article 247 for research projects to be conducted wholly within the geographical region covered by that body. If the answer to this question is positive it will be necessary for each regional IOC subsidiary body to identify the competent organ for this purpose.
- (b) The next question concerns the determination of the competent IOC organ in case of global or inter-regional programmes. Which IOC governing bodies should perform this task? In principle, the Assembly would seem the appropriate organ for this purpose. Another problem, the frequency of the (regular) meetings of the Assembly (every two years) may affect the efficient implementation of Article 247. This problem may be overcome by organizing if necessary a special session for this purpose.

3) Which information should be available when the decision is made?

This is perhaps the most important issue to be addressed, since it will probably determine to a large extent the effectiveness of the procedure to be established.

- (a) Information on the *detailed project* when the decision is made by the organization to undertake the project. To that end, does this mean that exactly the same information would be required, as is the case of normal request of authorization to individual coastal States? If that is so, it would be appropriate to use the standard form for the application of consent to conduct MSR in areas under national jurisdiction, annexed to the UN Guide (Annex I). However, it is very doubtful if in the cases contemplated by Article 247 all the information specified in this standard form can already be supplied at the moment the organ takes the decision. It may therefore be useful to go through the standard form to check which categories of information should be available at the moment the decision is taken by the organization.
- (b) This would then presumably also be the information submitted to the coastal States involved when the organization notifies the coastal States of the project in accordance with the last requirement mentioned in Article 247.
- (c) It seems advisable that the decision to approve the project should also contain explicit provisions on such matters as participation or representation of coastal States in the research and in particular on board research vessels, provision of reports and access to data and samples, and assistance in evaluating research results. Approval of such provisions then constitutes the agreement by the coastal State with them.

Professor Soons stated that the following issues also need clarification: (i) which procedure should be followed? (ii) compliance with Part XIII of UNCLOS, (iii) projects involving a coastal State which is not a member of IOC, (iv) projects involving a coastal State which is not a party to the UN Convention on the Law of the Sea, and (v) effectiveness of the procedures to be proposed.

During the ensuing discussions it was suggested that the 1989 UN Guide, which contains very useful information, should be completed for IOC purposes. Such a document, addressing the IOC's role in relation to Article 247, should make concrete proposals. He argued that the IOC Assembly, which could delegate the Executive Council to do so, should approve such a decision. Some delegates shared this view. Others suggested that the authorization should be taken at the national level and not by the IOC governing bodies. A proposal was made to base the suggestions on this matter on the existing practices developed by States or international organizations.

One delegate stated that with regard to the condition for a project to be developed under Article 247, the Assembly should first take the decision on a case-by-case basis, before requesting the consent of the coastal States involved.

One delegate suggested that the IOC Rules of Procedures should be amended to reflect the procedure to be followed under Article 247.

Attention was drawn to the need for a clear definition of the terms "under the auspices". In this regard, one delegate responded that "under the auspices" could mean that IOC should follow a procedure for obtaining from the Assembly the authorisation to act. Another delegate argued that "under the auspices" could mean that if a project is presented to the Assembly, this project should clearly mention that it is carried out as an implementation of Article 247. They invited the meeting to focus on ways and means to develop an adequate and appropriate use of Article 247.

The IOC Executive Secretary informed participants that the wording "under the auspices" has been used for certain IOC programmes such as the Global Ocean Ecosystems Dynamics (GLOBEC),

and the World Ocean Circulation Experiment (WOCE). However, these programmes did not expressly refer to Article 247.

Delegates concluded that with regard to Article 247, three fundamental questions should be clarified by IOC: (i) the terms “under the auspices”, (ii) the IOC level of competence which should approve the decision to carry out an MSR project, (iii) the development of guidelines as regard to the implementation of Article 247. They agreed that a recommendation should be proposed on Article 247, with a purpose of studying the establishment within IOC, in close cooperation with DOALOS, of an open-ended Sub-group to consider the effective use of Article 247, as contained in Annex II of this report.

## **REPORT OF THE GOOS PROJECT OFFICE ON THE ARGO PROJECT DEVELOPMENTS**

Mr. Mathieu Belbeoch, Argo Technical Co-ordinator, introduced this item. He informed the meeting that Argo is an IOC/WMO project consisting of a broad-scale global array of temperature/salinity profiling floats to be deployed in the upper 2,000 meters of the water column. This project presents an excellent opportunity to improve ocean, weather and climate forecasting, with associated important benefits for the protection of life and property and effective planning relating to the effects of seasonal to interannual climate variability. He informed the meeting that the access to Argo float data is free and unrestricted.

He also informed participants that Argo is an internationally coordinated project managed by the Argo Science Team (AST, <http://www.argo.ucsd.edu>). In compliance with IOC Resolution XX-6 of the IOC Assembly, Members States were informed of the initiation of the Argo floats deployment. In this context, a technical coordinator has been recruited and an Argo Information Centre (AIC) has been established. In addition, two data Centres have been set up in the United States and in France. He reiterated the invitation of the IOC GOOS Project Office, which requested Member States to designate their focal points for Argo.

Mr. Belbeoch informed the meeting that after their batteries ceased to function (four years), Argo floats would sink to the deep sea floor or drift at depth around 3,000 meters. They would no longer be actively collecting information. They would also be difficult either to find or to retrieve. In this regard, he noted that measures are being taken by the Argo Science Team in order to facilitate the identification of floats on the seabed.

Argo floats collect information that is transmitted via satellite to shore stations from where it is distributed to operational agencies for weather and climate forecasting. In this context Argo was the prototype of a new element of the permanent Global Ocean Observing System and no different from the drifting floats deployed by the Data Buoy Co-operation Panel (DBCP) or the Expendable Bathythermographs (XBTs) deployed by the Ships Of Opportunity (SOOP). In each of these three cases (floats, buoys and XBTs) the data were distributed in real time on the Global Telecommunications System (GTS) of the WMO for operational purposes. Equally, it was recognised that the data from all the systems were available for the purposes of scientific research. It was recognised that floats, buoys and XBTs might have been acquired from research funding in some countries and from operational funding in other countries. Nevertheless the overall goal was the broadest possible ocean coverage so as to meet operational needs. All were part of the GOOS Initial Observing System (GOOS-IOS) for all operational agencies. The fact that one of its user communities is the research community does not make the GOOS-IOS a research system; rather, it means that the operational system is useful, *inter alia*, to researchers.

One delegate stated that ABE-LOS should focus on the legal implication of the deployment of Argo floats as mentioned in Resolution XX-6 on “the Argo Project” which is a good starting point for discussion. Because of the lack of a specific legal instrument on this issue, he considered that the deployment of Argo floats should be governed by the MSR regime as stated by UNCLOS. However, he underlined that it should not be implemented under Article 247. He underlined that this project is

not only an operational one but should also be considered as marine scientific research. Therefore, the regime of consent as stated by UNCLOS should be applied to it. It is in this light that the IOC Assembly requested through Resolution XX-6 that ABE-LOS should be consulted on the legal implications of drifting floats and other installation deployed in the sea.

This delegate also recalled that IOC has devoted some significant effort to draft an international convention dealing with legal implications of the deployment of moored buoys, drifting buoys and other similar objects in the ocean, known as the Ocean Data Acquisition System (ODAS), as well as AUVs and related devices; however, this task never came to fruition.

One delegate argued that “the Argo Project” cannot be discussed under Part XIII of UNCLOS, because it is not part of MSR activity but is regarded as part of operational oceanography. He recalled the WMO Resolution 16 (Cg-VIII) on the United Nations Conference on the Law of the Sea as well as the letter sent by the WMO Secretary-General to Professor Yankov, Chairman of the Third Committee of the Third UN Conference on the Law of the Sea and the terms of his reply. In his capacity as Chairman of this Committee, under whose mandate falls the elaboration of draft articles on the legal regime for the conduct of MSR, he shared the view that the pertinent provisions of ICNT/Rev.2 on MSR would not create any difficulties and obstacles hindering adequate meteorological coverage from the oceans, including areas within the EEZ, carried out both in the framework of existing international programmes and by all vessels, since such activities had already been recognised as routine observation and data collecting, which was not covered by Part XIII of the ICNT, and they were in the common interest of all countries and had undoubted universal significance – not least for ensuring the safety of life at sea.

In reply to this statement, a delegate expressed that the referred declaration of Professor Yankov had been taken out of context for the purpose of these discussions, and that could not be considered as legally binding.

One delegate pointed out that “the Argo Project” is not a routine observation activity, but a data collection activity. He proposed that the paper prepared on Article 247 be presented before discussion on Argo.

Finally, the observers to the meeting were invited to present their communications.

## **5. CO-OPERATION BETWEEN IOC AND INSTITUTIONS ESTABLISHED BY UNCLOS**

Under this item two papers were presented by the International Seabed Authority (ISA) and by the International Tribunal for the Law of the Sea

### **5.1 COOPERATION BETWEEN IOC AND INSTITUTIONS ESTABLISHED BY UNCLOS WITH PARTICULAR EMPHASIS ON THE INTERNATIONAL SEABED AUTHORITY**

Dr. Nii Allotey Odunton, Deputy to the Secretary-General of the International Seabed Authority (ISA) introduced this item. He presented the background history of ISA. He also described the ISA governing bodies and their functions. ISA is an autonomous international organization established under the 1982 United Nations Convention on the Law of the Sea and the 1994 Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea.

He informed the meeting on the relevant provisions of the *Mining Code* as well as of the coming ISA workshop organized in order to standardize the environmental data and information that has been collected in accordance with the *Mining Code*. This workshop was scheduled from 25 to 29 June 2001 in Kingston. Information on the Authority can be found on its web page: [www. isa.org.jm](http://www.isa.org.jm)

5.2 CO-OPERATION BETWEEN IOC AND INSTITUTIONS ESTABLISHED BY UNCLOS WITH PARTICULAR EMPHASIS ON THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA (ITLOS)

Professor Anatoly Kolodkin, Judge at the International Tribunal for the Law of the Sea (ITLOS) introduced this item. Since yet the year of creation – 1996 – the UN has considered a number of cases, but none relate to MSR. He informed the Meeting that ITLOS has a right to take a decision upon the prompt release of vessels and crews (Article 292 of UNCLOS). There are some conditions for implementation of this right. It must be recognized that “the prompt release” could be implemented for all kinds of vessels, except warships. That is why the provisions of Article 292 might be applied to the scientific vessels. He stated that a lot of disputes might concern the interpretation of the MSR in the Area (Article 143). Professor Kolodkin suggested the need to get the advisory opinions of the Tribunal about the nature of “the Argo Project”: is it part of the MSR or only operational activity? It is clear that if the implementation of “the Argo Project” is an integral part of scientific research it should be implemented only by the consent of coastal States.

The collaboration between ITLOS and IOC will have a promising future and deserves the appropriate attention.

Delegates recognized that IOC should develop and strengthen its co-operation with institutions established by UNCLOS.

6. **OTHER MATTERS: THE IHO/IAG/IOC ADVISORY BOARD ON HYDROGRAPHIC, GEODETIC AND MARINE GEO-SCIENTIFIC ASPECTS OF THE LAW OF THE SEA (ABLOS)**

Dr. Chris Carleton, Chairman of ABLOS reported on the ABLOS purposes and activities. The purposes of ABLOS are the following: (i) to review State practice and jurisprudence on law of the sea matters, (ii) to provide advice and guidance of hydrographic, geodetic and marine geo-scientific aspects of the Law of the Sea, (iii) to study, promote and encourage the development of appropriate techniques in geodetic and hydrographic aspects of the law of the sea.

ABLOS developed many activities such as (i) maintaining close contact with the UN Division for Ocean Affairs and the Law of the Sea (DOALOS), (ii) reviewing and updating the IHO Special Publication No. 51: *A Manual on Technical Aspects of the United Nations Convention on the Law of the Sea* – 1982, (iii) convening business meetings once per year, (iv) convening technical conferences related to UNCLOS biannually, (v) publishing proceedings of meetings and technical conferences, (vi) maintain an ABLOS web site at: [www.gmat.unsw.edu.au/ablos](http://www.gmat.unsw.edu.au/ablos).

Each parent organization of ABLOS (IHO, IAG and IOC) appointed three members. One *ex-officio* member is also appointed from DOALOS.

With regard to the possible mechanisms of co-operation, Dr. Carleton stated that ABLOS and ABE-LOS should work through the three IOC members of ABLOS in the field of geo-sciences already highly regarded within the Advisory Board. They could join their effort to tackle the difficult issues concerning Article 76 of UNCLOS (Definition of the continental shelf). He pointed out that ABLOS would be delighted to offer technical advice, if requested, to members of ABE-LOS at any time via the IHO.

One delegate pointed out that the delimitation of the outer limit of the continental shelf could not be determined by foreign experts but only by the coastal State. The Commission on the Limits of the Continental Shelf is the unique authority which should consider the data and other material submitted by the coastal States concerning the outer limits of the continental shelf, and make recommendation on the outer limits. He stated that in accordance with Annex II, Article 3 paragraph 2,

the CLCS might co-operate, with IOC and IHO. In this context, he recalled that the Intersessional Working Group established in 1996 (Document IOC/INF-1035), recommended that *upon express request from the CLCS, IOC should assist the Commission through exchange of scientific and technical information*. He also recalled that at the Meeting of States Parties, discussions are developed on the issue of the delimitation of the continental shelf.

## **7. FUTURE WORK OF THE ABE-LOS**

With regard to the agenda for the next ABE-LOS meeting foreseen for April 2002, some delegations stated that they were not in a position to discuss this agenda, as they had not been instructed to do so. Some delegates stated that the agenda for the next ABE-LOS meeting should include the following items: UNCLOS Part XIV articles 246, 247 and 251.

## **8. RECOMMENDATIONS/MAIN DECISIONS**

The meeting decided:

- (i) to adopt the following three recommendations (See Annex II) on :
  - (1) the redrafting of the document IOC/INF-1054,
  - (2) a progress report on UNCLOS Article 247,
  - (3) the collection and analysis of the information on the practice of States in the field of MSR with regard to UNCLOS Article 251.
- (ii) to maintain Mr. Jarmache as the intersessional Chairperson of ABE-LOS.

On the basis of the draft proposals of recommendations made by the Secretariat and comments by experts in plenary, it was decided that the Secretariat should send the draft recommendations to the ABE-LOS Group by e-mail for adoption. It was also agreed that the Secretariat send the draft report of the meeting to the ABE-LOS Group for comments, adoption and presentation to the 21<sup>st</sup> Session of the IOC Assembly.

## **9. ADOPTION OF THE REPORT**

The meeting decided that the draft summary report of the ABE-LOS meeting should be circulated to the group for comments and adoption before it should be submitted for endorsement to the 21st Session of the IOC Assembly to be held from 3 to 13 July in Paris. It was agreed that it is not necessary to mention the name and countries of the intervening delegates. The delegates expressed their sincere thanks to the Chairman for the excellent leadership and guidance he provided through out the conduct of the meeting. They also expressed appreciation for the work done by the Secretariat.

## **10. CLOSURE**

The First Meeting of the IOC Advisory Body of Experts in the Law of the Sea was closed by the Chairman at 18:05, Wednesday, on 13 June 2001.

**ANNEX I**

**AGENDA**

- 1. OPENING**
- 2. ADMINISTRATIVE ARRANGEMENTS**
  - 2.1 DESIGNATION OF THE RAPPORTEUR
  - 2.2 ADOPTION OF THE AGENDA
  - 2.3 DOCUMENTATION
  - 2.4 CONDUCT OF THE SESSION
- 3. MATTER PERTAINING TO PART XIV OF UNCLOS**
  - UNCLOS and the Transfer of Marine Technology, Including Capacity Building, Related to Marine Scientific Research.
- 4. MATTER PERTAINING TO PART XIII OF UNCLOS**
  - 1) Criteria and guidelines for ascertaining the nature and implications of MSR
  - 2) Access to clearance for MSR in the EEZ and on the CS
  - 3) Situation of MSR in the Kingdom of Morocco
  - 4) Procedures to be followed within international organization to conduct MSR.

**Report by GPO on “the Argo Project” developments?**

- 5. CO-OPERATION BETWEEN IOC AND INSTITUTIONS ESTABLISHED BY UNCLOS**
  - 1) International Seabed Authority (ISA)
  - 2) The International Tribunal for the Law of the Sea (the ITLOS)
- 6. OTHER MATTERS**

**ABLOS Mission and Possible Mechanism of Co-operation with ABE-LOS**

- 7. FUTURE WORK OF THE ABE-LOS**
- 8. RECOMMENDATIONS**
- 9. ADOPTION OF THE REPORT**
- 10. CLOSURE**

## ANNEX II

### RECOMMENDATIONS

The IOC Advisory Body of Experts on the Law of the Sea (ABE-LOS) at its first meeting (ABELOS I), having considered various provisions of the United Nations Convention on the Law of the Sea (UNCLOS), in particular the ones dealing with the development and transfer of marine technology (Part XIV of UNCLOS) and marine scientific research (Part XIII of UNCLOS), recommended the following:

- 1) That further work is required for the development of guidelines, criteria and standards on the transfer of marine technology, including capacity building related to marine scientific research (MSR), in accordance with Article 271 of UNCLOS on guidelines, criteria and standards, and other related provisions of Part XIV of UNCLOS. To this end, an open-ended Sub-Group of ABE-LOS should be established to re-draft, by correspondence, the document IOC/INF-1054 on "*Draft IOC principles on transfer of marine technology*", taking into account the debate on this issue at the first meeting of ABE-LOS. This Sub-Group should operate in close co-operation with the Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, United Nations Secretariat (UN/DOALOS). The Chairman of this Sub-Group should be designated by the Chairman of ABE-LOS in consultation with Member States. This Sub-Group should report back to the plenary session of the second meeting of ABE-LOS (ABE-LOS II), which should meet by April 2002 in order to submit its report to the next ordinary session of the IOC Executive Council.
- 2) That IOC considers establishing appropriate internal procedures related to an effective and appropriate use of Article 247 of UNCLOS on marine scientific research projects undertaken by or under the auspices of international organizations. To this end, an open-ended Sub-Group of ABE-LOS should be established, which should operate by correspondence and in close co-operation with UN/DOALOS. The Chairman of this Sub-Group should be designated by the Chairman of ABE-LOS in consultation with Member States. This Sub-Group should submit a progress report to the plenary session of the second meeting of ABE-LOS (ABE-LOS II).
- 3) That with regard to Article 251 of UNCLOS concerning the establishment of general criteria and guidelines to assist States in ascertaining the nature and implications of MSR, the work initiated by the Secretariat through the collection and analysis of information from Member States on their practices, should be continued and completed in close co-operation with UN/DOALOS.



ANNEX III

LIST OF PARTICIPANTS

**I. EXPERTS PARTICIPANTS FROM  
MEMBER STATES/EXPERTS  
PARTICIPANTS DES ETATS MEMBRES**

**Angola**

Mrs. Miala Dlalma  
3<sup>e</sup> Secrétaire  
Délégation permanente de l'Angola  
auprès de l'UNESCO  
1, rue Miollis  
75 015 Paris  
Tel: (33 1) 45 68 29 61  
Fax: (33 1) 45 67 57 48

**Argentina/Argentine**

Mr. Ariel Walter Gonzalez  
Secretario de Embajada  
Delegación Permanente de la  
República de Argentina  
Casa de la UNESCO  
1, Rue Miollis  
75 015 Paris  
Tel: (33 1) 45 68 34 38  
Fax: (33 1) 43 06 60 35  
E-mail: aw.gonzalez@unesco.org

**Cameroon/Cameroun**

Dr. Charles Assamba Ongodo  
II<sup>nd</sup> Secretary  
Permanent Delegation of Cameroon to UNESCO  
1, rue Moillis  
75 015 Paris  
Tel: (33 1) 45 68 30 33  
Fax: (33 1) 45 68 30 34  
E-mail: c.assamba@unesco.org

**Canada**

Dr. Scott Parsons  
Chief Scientist,  
International Marine Science,  
Department of Fisheries and Oceans,  
Suite 640, 220 Laurier Avenue West,  
Ottawa, Ontario, K1A 0E6  
Tel: (1 613) 998 5158  
Fax: (1 613) 998 5200  
E-mail: parsonss@dfo-mpo.gc.ca

Mr. David Ehinger  
Deputy Director, Ocean Law  
Oceans, Economic and Environmental Law  
Division (JLO)  
Department of Foreign Affairs and International  
Trade ; Lester B. Pearson Building ; 125 Sussex  
Drive  
Ottawa, Ontario K1A 0G2  
Tel: (1 613) 992 13 60  
Fax: (1 613) 992 64 83  
E-mail:  
david.ehinger@dfait-maeci.gc.ca

Mr. Lennox O'Riley Hinds  
Oceans, Marine affairs and fisheries Advisor  
200 Promenade du Portage Hull (Québec)  
K1A 0G4  
Tel: (1 819) 997 0483  
Fax: (1 819) 953 3348  
E-mail:  
lennox\_hinds@acdi-cida.gc.ca

**Chile/Chili**

Mr. Alesandro Rogers  
Delegación Permanente de la  
República de Chile  
Casa de la UNESCO  
1, rue Miollis  
75015 Paris  
Tel: (33 1) 45 68 29 50  
Fax: (33 1) 47 34 16 51  
E-mail: dl.chili@unesco.org

Mrs. Pilar Soberado  
Abogado (attorney at Law)  
Errazuriz 232, Playa Ancha  
Valparaíso  
Tel: (56 32) 266 506  
Fax: (56 32) 266 542  
E-mail: auditor@shoa.cl

Dr. Rodrigo Nunez  
Head Department of Oceanography  
Errázuriz 232, Playa Ancha  
Valparaíso  
Tel: (56 32) 266 670  
Fax: (56 32) 266 542  
E-mail: rnunez@shoa.cl

**Colombia/Colombie**

Miss. Maria-Carolina Lorduy  
Primera Secretaria  
Delegación Permanente de la  
República de Colombia  
Casa de la UNESCO  
1, rue Miollis Bureau 4.30  
75 015 Paris  
Tel: (33 1) 45 68 28 57  
Fax: (33 1) 43 06 66 09  
E-mail: c.lorduy@unesco.org

**Congo**

Mrs. Jeannette Ifounde-Daho  
Délégation permanente du Congo  
auprès de l'UNESCO  
75 015 Paris  
Tel: (33 1) 45 68 32 56  
Fax: (33 1) 40 67 70 86

**Egypt/Egypte**

Dr. Mohamed Sameh Amr  
Deputy Permanent Delegate  
1, rue Miollis – Egyptian  
Delegation to UNESCO  
75 015 Paris  
Tel: (33 1) 45 68 33 07  
Fax: (33 1) 47 83 41 87  
E-mail: mohamedsamr@aol.com

**Finland/Finlande**

Prof. Kari Hakapää  
Professor of Public International Law  
University of Lapland  
P.O. Box 122 - FIN-96101 ROVANIEMI  
Tel: (358 16) 341 25 23  
(358 16) 379 48 05  
Fax: (358 16) 341 25 00  
E-mail: Kari.Hakapaa@urova.fi

**France**

M. Elie Jarmache (Président / Chairman of the  
ABE-LOS meeting)  
Directeur des Relations internationales  
Institut français de recherche  
pour l'exploitation de la mer (IFREMER)  
155, rue Jean-Jacques Rousseau  
F-92138 Issy-les-Moulineaux Cedex  
Tel: (33 1) 46 48 2181  
Fax: (33 1) 46 48 2188  
E-mail: elie.jarmache@ifremer.fr

**Germany/Allemagne**

Mr. Dieter Roth  
Head of the Central Division of the Federal  
Maritime and Hydrographic Agency ; Bundesamt  
für Seeschifffahrt und  
Hydrographie Postfach 30 12 20  
D- 20305 Hamburg  
Tel: (49 40) 3190 2000  
Fax: (49-40) 3190 5000  
E-mail: roth@bsh.d400.de

**Greece/Grèce**

Dr. Emmanuel Gounaris  
Minister Plenipotentiary  
Academics 3, Athens 10 671 Dr Direction  
Tel: (30 1) 36 82 235  
Fax: (30 1) 36 82 239

**Indonesia/Indonésie**

Dr. Etty R. Agoes  
Special Assistant to the Minister on Legal Matters  
Department of Marine Affairs and Fisheries  
M.T. Haryono KAV. 52-53,  
Jakarta 12 270  
Tel: (62 21) 791 80 303  
Fax: (62 21) 791 80 174  
E-mail: agoes@elga.net.id

**Ireland/Irlande**

M. Michael Gillooly  
Research Vessel Operations Marine Institute,  
Technical Support Base,  
Parkmore Office Park,  
Galway  
Tel.: (353 91) 77 39 00  
Fax : (353 91) 77 39 08  
E-mail:

**Japan/Japon**

Prof. Keisuke Taira  
Director, Ocean Research Institute  
University of Tokyo  
1-15-1 Minamidai, Nakano  
Tokyo 164-8639  
Tel: (81 3) 53 51 64 17  
Fax: (81 3) 53 51 64 18  
E-mail: taira@ori.u-tokyo.ac.jp

Dr. Kazuhiro Kitazawa  
Special Advisor to the Director  
Planning Department  
Japan Marine Science and  
Technology Center (JAMSTEC)  
1-15 Natsushima-cho  
Yokosuka 237-0061  
Tel: (81 468) 67 39 23  
Fax: (81 468) 66 30 61  
E-mail: kitazawa@jamstec.go.jp

#### **Malaysia/Malaisie**

Mr. Ismail Yacob  
Chief Hydrographer  
Hydrographic Department,  
Royal Malaysian Navy,  
Ministry of defence,  
Jalan Padang Trmbak  
50634 Kuala Lumpur  
Tel: (603) 231 31 57  
Fax: (603) 269 87 972  
E-mail: rmnode@tm.net.my

#### **Mauritius/Maurice**

Mr. Suresh Chundre Seeballuck  
Permanent Secretary Prime Minister's Office ;  
Prime Minister's Office  
4<sup>th</sup> Level New Government Centre  
Port Louis  
Tel: (230) 201 12 78  
Fax: (230) 212 74 21

#### **Mexico/Mexique**

Mr. Nestor Evencio Yee Amador  
Vice-amiral, Attaché naval du Mexique  
9, rue de Longchamp  
75116 Paris  
Tel: (33-1) 53 70 27 50  
Fax: (33-1) 45 53 16 18  
E-mail: ne.ya@wanadoo.fr

#### **Morocco/Maroc**

Prof. Mohammed Moncef  
Professeur Universitaire  
Laboratoire d'Hydrobiologie,  
Département de Biologie - Faculté des Sciences,  
Université Chouaïb Doukkali  
B.P. 20 - 24000 El Jadida  
Tel: (212 23) 34 32 78  
(212 61) 23 04 42  
Fax: (212 23) 34 21 87  
E-mail: moncefmd@ucd.ac.ma  
mdmoncef@yahoo.fr

#### **Netherlands/Pays-Bas**

Prof. Alfred.H.A. Soons  
Director, Netherlands Institute  
for the Law of the Sea  
Utrecht University  
Achter Sint Pieter 200  
3512 HT Utrecht  
Tel: (31 30) 253 7056  
Fax: (31 30) 253 7073  
E-mail: a.soons@law.uu.nl

#### **Oman**

Mr. Amed Al-Mazrooi  
Director of Marine Science Fisheries Centre  
P.O. Box: 374  
Postal code: 324 Mascate  
Tel: (968) 736 449  
Fax: (968) 740 159  
E-mail: mafcentr@omantel.net.om

#### **Pakistan**

Dr. Syed Mazhar HAQ  
Professor and Director  
Institute of Marine Biology (Retired)  
University of Karachi  
34, Bld de Grenelle  
75015 Paris  
Tel.: (33 1) 45 77 28 30  
Fax: (33 1) 45 75 27 74  
E-mail: smazhaq@hotmail.com

#### **Slovenia/Slovénie**

Dr. Marko Pavliha  
Professor of Law  
Head, Maritime and Transport Law Department  
University of Ljubljana, Faculty of Maritime  
Studies and Transportation,  
Pot Pomoršakov 4,  
6320 Portorož  
Sv. Peter 65 a  
6333 Sečovelje  
Tel: (386) (5) 676 72 14  
(386) (5) 676 71 00  
Fax: (386) (5) 676 71 30  
E-mail: marko.pavliha@guest.arnes.si  
Marko.pavliha@sava-re.si

**Spain/Espagne**

Mr. Antonio Dicenta  
Oceanographer – Biologist  
INSTITUTO ESPAÑOL DE  
OCEANOGRAPHÍA  
Avda. del Brazil – 31 28 020-Madrid  
Tel: (34) 91 59 74 443  
Fax: (34) 91 59 74 770  
E-mail: antonio.dicenta@md.ieo.es

Mr. Carlos Palomo  
Oceanographo – Geologo  
Instituto Español de Oceanografía,  
C/ corazon de Maria nº8  
28 002 Madrid  
Tel: (34) 91 34 73 619  
Fax: (34) 91 41 35 597  
E-mail: carlos.palomo@md.ieo.es

**Syrian Arab Republic/République Arabe  
Syrienne**

Mr. M. Abouhamda  
Ministère d'Etat  
Conseil des ministères – Damas  
Tel: (963 11) 245 02 50

Dr. Amin Esber  
Ambassadeur de Syrie  
Délégation permanente auprès de l'UNESCO  
Tel: (33 1) 45 68 34 97  
Fax: (33 1) 43 06 05 44

Dr. Mohamad Wasil  
Professeur, Faculté de droit  
Université de Damas  
Tel: (963 11) 213 40 77  
Fax: (963 11) 231 73 58

**Thailand/Thaïlande**

Dr. Kriangsak Kittichaisaree  
Director of Legal Affairs,  
Ministry of Foreign Affairs  
Sri Ayudhya Road  
Bangkok 10 400  
Tel: (66 2) 643 50 33  
Fax: (66 2) 643 50 32  
E-mail: kriangsakkitt@hotmail.com

**Turkey/Turquie**

Kemal Eruygur  
First Secretary ; Permanent delegation of Turkey  
to UNESCO  
Tel: (33 1) 45 68 27 15/16/18/19  
Fax: (33 1) 40 56 04 13

**United Kingdom of Great Britain & Northern  
Ireland/Royaume-Uni de Grande Bretagne et  
d'Irlande du Nord**

Dr. David T. Pugh  
Southampton Oceanography Centre  
Express Dock  
University of Southampton Waterfront  
Campus European Way  
Southampton S014 3ZH  
Tel: (44 23) 80 59 66 12  
Fax: (44 23) 80 59 63 95  
E-mail: d.pugh@soc.soton.ac.uk

Lt. Cdr. Rn. Roland Rogers  
SOZ(NAVY)SC  
DERA, Winfrith Technology Centre,  
Winfrith, Newburgh Dorchester, Dorset,  
DT2 8XJ  
Tel: (44 1305) 21 23 31  
Fax: (44 1305) 21 29 50  
E-mail: rjrogers1@dera.gov.uk

Mr. Nicholas Griffiths  
Head, Marine Section, FCO  
AMED, Foreign and Commonwealth office  
King Charles Street, London  
Tel: (44 207) 270 26 28  
Fax: (44 207) 270 31 89  
E-mail: nick.griffiths@fco.gov.uk

**United States of America/Etats-Unis  
d'Amérique**

Mr. Ashley J. Roach  
Attorney  
U.S. Dept. of State (L/OES)  
2201 C ST NW  
Washington, DC 20520 - 6417  
Tel: (1 202) 647 16 46  
Fax: (1 202) 736 71 15  
E-mail: roachja@ms.state.gov  
jaroach@attglobal.net

Mr. William Cocke  
Research Vessel Clearance Officer  
Office of Oceans Affairs  
US Dept. of State  
OES/OA Room 5805  
Washington, DC 20520  
Tel: (1 202) 647 49 35  
Fax: (1 202) 647 11 06  
E-mail: cockewt@state.gov

## II. OBSERVERS/OBSERVATEURS

### **Advisory Board on Hydrographic, Geodetic and Marine Geo-Scientific Aspects of the Law of the Sea (ABLOS)**

Mr. Christopher Carleton  
Chairman, ABLOS  
Head, Law of the Sea Division  
UK Hydrographic Office  
Taunton, Tai 2DN  
Tel: (44 1823) 33 79 00  
Fax: (44 1823) 35 30 75  
E-mail: chris.carleton@ukho.gov.uk

### **International Seabed Authority (ISA)**

Dr. Nii Allotey Odunton  
Deputy to the Secretary-General  
International Seabed Authority  
14-20 Port royal Street  
Kingston  
Jamaica  
Tel.: (1 876) 922 74 10  
Fax.: (1 876) 967 08 01  
E-mail: Nodunton@isa.org.jm

### **International Tribunal For The Law Of The Sea/ Tribunal International Du Droit De La Mer (ITLOS)**

Prof. Anatoly I. Kolodkin  
Deputy Director - Sojuzmorniiproject Institute  
Ministry of Transport  
3a. Bolshoi.Koptevsky Pr.  
125319 Moscow  
Tel: (7 095) 151 75 88  
Fax: (7 095) 152 09 16

### **United Nations Ocean Affairs/Law of the Sea Office (UN/DOALOS/OLA)**

Miss Alice Hicuburundi  
Law of the Sea/ Ocean Affairs Officer  
2 UN plaza; DC2-0424  
New York, NY 10017, USA  
Tel: (1 212) 963-59 15  
Fax: (1 212) 963-58 47  
E-mail: hicuburundi@un.org

### **United Nations Educational, Scientific and Cultural Organization (UNESCO)**

Ms. Marion Haunton  
CLT CH International Standards Section /  
Section des Normes internationales  
Tel: (33 1) 1 45 68 44 40  
Fax: (33 1) 1 45 68 55 96  
E.mail: m.haunton@unesco.org

## III. SECRETARIAT/SECRETARIAT

Tel: (+33 1) 45 68 10 00/45 68 39 83  
Fax: (+33 1) 45 68 58 12/10  
Tlx: 20446 PARIS  
Clb.: UNESCO PARIS/740057 IOCS UC  
E-mail: ....@unesco.org

*Executive Secretary*  
Dr. Patricio Bernal

*Technical Secretary*  
Mrs. Diénaba Beye

*Argo Technical Coordinator*  
*JCOMMOPS-GPO*  
M. Mathieu Belbeoch  
8-10 rue Hermes, Parc Technologique du Canal  
31 526 Ramonville cedex- France  
Tel: (33 5) 61 39 47 30  
Fax: (33 5) 61 75 10 14  
E-mail: belbeoch@jcommops.org

*Seconded Expert*  
M. Yves Treglos

*Assistant to the Technical Secretary*  
Mlle.Betty Queffelec

ANNEX IV

**LIST OF DOCUMENTS**

<b>Document Code</b>	<b>Title</b>	<b>Agenda Items</b>	<b>Lang.</b>
	<b>WORKING DOCUMENTS</b>		
IOC/ABE-LOSI/1 prov.	Provisional Agenda	1 – 13	E F
IOC/ABE-LOSI/1 Add.prov.	Provisional Timetable	2.2, 2.4	E F
IOC/ABE-LOSI/2 prov.	Provisional Annotated Agenda	1 – 13	E F
IOC/ABE-LOSI/3 prov.	Draft Summary Report	12	E F
IOC/ABE-LOSI/4 prov.	Provisional List of Documents	2.3	E.F
IOC/ABE-LOSI/5 prov.	Provisional List of Participants	-	-
IOC/ABE-LOSI/6	Background information on IOC activities and UNCLOS including the results of the survey on Questionnaire 1	2.4	E F
IOC/ABE-LOSI/7	Criteria and guidelines for ascertaining the nature and implications of MSR ( <i>David Pugh</i> )	3	E F
IOC/ABE-LOSI/7 Add 1	Criteria and guidelines for ascertaining the nature and implications of MSR ( <i>Elie Jarmache</i> )	3	E F
IOC/ABE-LOSI/8	Transfer of marine technology ( <i>Scott Parsons</i> )	4	E F
IOC/ABE-LOSI/9	Procedures to be followed within international organisation to conduct MSR ( <i>Alfred Soons</i> )	5	E F
IOC/ABE-LOSI/10	Report by GPO on “the <i>Argo Project</i> ” developments	5	E F
IOC/ABE-LOSI/11	Access to clearance for MSR in the EEZ and on the CS ( <i>Ashley Roach</i> )	6	E F
IOC/ABE-LOSI/12	Situation of MSR in the Kingdom of Morocco ( <i>Mohammed Moncef</i> )	7	E F
IOC/ABE-LOSI/13	Cooperation between IOC and institutions established by UNCLOS ( <i>Nii Oduntun</i> from ISA)	8	E F
IOC/ABE-LOSI/13 Add 1	Co-operation between IOC and institutions established by UNCLOS ( <i>Larry Awosika</i> , CLCS)	8	E F
IOC-ABE-LOSI/13 Add 2	Cooperation between IOC and institutions established by UNCLOS ( <i>Anatoly Kolodkin</i> , ITLOS)	8	E F
IOC-ABE-LOSI/14	ABLOS Mission and Possible Mechanism of Co-operation with ABE-LOS ( <i>Chris Carleton</i> , ABLOS)	8	E F

Document Code	Title	Agenda Items	Lang.
<b>INFORMATION AND OTHER REFERENCE DOCUMENTS</b>			
IOC/ABE-LOSI/Inf.1	Practical information	-	E F
IOC/ABE-LOSI/Inf.2	Resolution XIX-19 : IOC and UNCLOS	all	E F
IOC/ABE-LOSI/Inf.3	Resolution XX-6 : “The <i>Argo project</i> ”	5	E F
IOC/ABE-LOSI/Inf.4	CSD Decision 7/1	all	E only
IOC/ABE-LOSI/Inf.5	UNGA Resolution A/54/33	all	E F
IOC/ABE-LOSI/Inf.6	Report by the two Co-Chairpersons on the work of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea at its first meeting to the GA (A/55/274)	all	E F
IOC/ABE-LOSI/Inf.7	Resolution A/55/7 Agenda item 34 Oceans and the law of the sea	all	E F
IOC/ABE-LOSI/Inf.8	IOC Ocean Data Exchange Policy	4, 6, 7, 8, 9	E F
IOC/ABE-LOSI/Inf.9	MSR Guide to the implementation of the Relevant Provisions of UNCLOS	all	E F
IOC/ABE-LOSI/Inf.10	Summary Report of the discussions and recommendations from UNICPOLOS 2 Meeting on the Transfer of Marine Technology	4	E only
IOC/ABE-LOSI/Inf.11	Resolution EC-XXXIII.16 (UNICPOLOS)	all	E F
IOC/INF-1035	Summary Report of the First Session of the Open-ended Intersessional WG on IOC’s Possible Role in Relation to the United Nations Convention on the Law of the Sea (IOC-LOS)	all	E F
IOC/INF-1114	Summary Report of an Informal Advisory Consultation on Implementation of IOC Assembly Resolution XIX-19	all	E F
IOC/INF-1054	Draft IOC principles on Transfer of Marine Technology	4	E only
IOC/INF-1055	Draft IOC Guidelines for the Application of Article 247 of the UN Convention on the Law of the Sea	5	E only
	Table showing the current status of UNCLOS and of the Agreement relating to the implementation of Part XI of the Convention	-	E F

ANNEX V

**DRAFT IOC PRINCIPLES ON TRANSFER OF MARINE TECHNOLOGY**

Restricted distribution

IOC/INF-1054  
Paris, 29 May 1997



**INTERGOVERNMENTAL OCEANOGRAPHIC COMMISSION**  
(of UNESCO)

**DRAFT IOC PRINCIPLES ON TRANSFER OF MARINE TECHNOLOGY**

The present principles, drafted by the IOC Secretariat as a first response to the related discussions under the Agenda item on IOC and UNCLOS of the 29<sup>th</sup> session of the IOC Executive Council, is presented to the 19<sup>th</sup> session of the IOC Assembly for review, in order to stimulate discussion, inputs and advice from Member States with respect to this important issue. Consultations were held with the Intersessional Working Group on IOC's Possible Role in Relation to UNCLOS and TEMA Group of Experts for Capacity Building. The Assembly is invited to provide guidance on further actions to be taken in this regard.



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## **DRAFT IOC PRINCIPLES ON TRANSFER OF MARINE TECHNOLOGY**

### **BACKGROUND**

The IOC Executive Council at its Twenty-ninth session, Paris, 24 September – 2 October 1996, recognizing IOC's particular role within the framework of Part XIV of the United Nations Convention on the Law of the Sea (UNCLOS) on Development and Transfer of Marine Technology, decided that certain principles could be prepared with regard to the transfer of marine science and technology within the IOC fields of competence.

This note aims at laying out the basic principles, mechanisms and procedures whereby the transfer of marine technology will be fostered through the IOC.

### **A. GENERAL PROVISIONS**

#### **SCOPE OF APPLICATION**

For the sake of these principles, marine technology refers to knowledge of all forms that would be useful to improve the study and understanding of marine environment. It does not refer to the type of knowledge to be used for the actual exploration and exploitation of marine resources. Hence, the transfer of marine technology include, specifically and among others, the following :

- marine scientific information and data ;
- manuals, guidelines, criteria, standards, reference materials ;
- sampling equipment (e.g. for water, geological, biological, chemical samples) ;
- observation facilities and equipment (e.g. remote sensing equipment, buoys, tide gauges, and other means of ocean observation) ;
- equipment for in-situ and lab analysis ;
- computer and computer software, including models and modeling techniques ;
- expertise, skills and technical know-how related to marine research and observation.

### **PRINCIPLES**

The following principles should be taken into account:

- a. Favourable economic and legal conditions for the transfer of marine technology should be fostered for the benefit of all parties concerned on an equitable basis.
- b. When conducting the transfer of marine technology, due regard should be given to the protection of the legitimate interests including, inter alia, the rights and duties of holders, suppliers and recipients of marine technology.
- c. Special account should be given to the interests of developing countries, including the land-locked and geographically disadvantaged developing countries.

- d. The transfer of marine technology is part and parcel of the IOC overall efforts in capacity building, and shall be done within the IOC fields of competence.
- e. The transfer of marine technology should be associated with the on-going and new programmes/projects of the IOC, and fits into national and regional needs and priorities.

## **CONDITIONS**

The transfer of marine technology should be conducted on fair and reasonable terms and conditions. Wherever possible, such transfer should be done free of charge, or at a reduced rate in favour of the recipient country.

## **MECHANISMS**

The Governing Bodies of the IOC decide upon these principles and the overall policy in this context. The existing secretariat functions of the IOC, i.e. the IOC Secretariat and the IOC regional secretariats provide for the basic mechanisms for handling the transfer of marine technology on the global and regional basis. They serve as facilitator between donors and recipients countries.

The IOC scientific and technical subsidiary bodies should help in providing the scientific advice with regard to the transfer of marine technology.

The IOC regional subsidiary bodies have a special role to play since their programmes are based on national and regional needs and priority requirements. This helps define the required technology transfer.

## **MEASURES**

Certain measures could be taken to promote the transfer of marine technology. The transfer of marine technology could be fostered through:

- establishing programmes of technical co-operation for the effective transfer of all kinds of marine technology to States which may need and request technical assistance in this field, including the developing land-locked and geographically disadvantaged States, as well as other developing States which have not been able to establish or develop their own technological capacity in marine sciences or to develop the infrastructure of such technology ;
- promoting favourable conditions for the conclusion of agreements, contracts and other similar arrangements, under equitable and reasonable conditions ;
- holding conferences, seminars and symposia on scientific and technological subjects, in particular on policies and methods for the transfer of marine technology ;
- promoting exchanges of scientists and of technological and other experts ;
- undertaking projects and promote joint ventures and other forms of bilateral and multilateral co-operation ;
- encouraging States to contribute funds to the IOC Trust Fund or Voluntary Co-operation Fund for the purpose of promoting and facilitating the arrangement of marine technology transfer.

Establishment and/or strengthening of national centres and regional and sub-regional centres can be encouraged to stimulate and advance the conduct of marine scientific research by developing

countries and foster transfer of marine technology. Co-operation between IOC and other international organizations should also be encouraged to facilitate such transfer.

## **B. IMPLEMENTATION**

### **GUIDELINES**

Specific guidelines on qualification for receiving transfer of marine technology may be established as required.

### **CATALOGUE**

To facilitate transfer of marine technology, a catalogue or catalogues could be drafted and updated, using the most efficient means of communication, on the following:

- national and international donors, with information on the contact points, addresses, fields of competence, items to be transferred, and cost and conditions for transfer ;
- sources, availability and cost of marine scientific information and data for transfer in different disciplines of marine sciences ;
- directory of marine research institutes which offers laboratory facilities, equipment and opportunities for research and training ;
- offers of cruise studies at the global, regional, sub-regional levels ;
- availability of experts/specialists who can provide scientific and technical assistance ;
- universities offering study grants in marine science ;
- workshops, seminars and training courses at global, regional, and sub-regional levels offering financial support.

Member States are encouraged to contact the donors directly taking advantage of the above catalogues.

### **APPLICATION**

An application for assistance may be formulated and submitted to the IOC Secretariat or the IOC regional secretariats as the case may be. The application should be accompanied by a standard format as shown in the Annex (to be drafted).

### **PROCESSING**

The IOC Secretariat, or the IOC regional secretariats as the case may be, upon receipt of the application, should inform the chairpersons of TEMA and of the IOC scientific and technical subsidiary bodies for comments and advice. Specialists may be consulted. The decision to forward the application to potential donors shall be made after this consultation and in accordance with the established rules.

The application shall then be forwarded to a potential national or international donor, or other aid-giving agencies, directly in case of international donors and through the IOC national focal point in case of national donors.

## **EXPERT MISSION**

Expert missions may be arranged in order to implement a project of marine technology transfer. The cost of the expert mission should be shared between the donor and the recipient country, or totally or partially provided by the IOC.

## **TECHNICAL TRAINING**

As necessary, technical training shall be arranged as a follow-up to the transfer of marine technology. The cost thus incurred shall be borne by the donor and the recipient country, or totally or partially provided by the IOC.

## **ASSESSMENT**

An assessment shall be conducted with regard to result of the transfer of the marine technology, two years after a particular technology is transferred.

ANNEX VI

**LIST OF ACRONYMS**

ABE-LOS	Advisory Body of Experts on the Law of the Sea
ABLOS	IHO/IAG/IOC Advisory Board on Hydrographic, Geodetic and Marine Geo-Scientific Aspects on the Law of the Sea
DBCP	Data Buoy Co-operation Panel
DOALOS	UN Division for Ocean Affairs and the Law of the Sea
GLOBEC	Global Ocean Ecosystems Dynamics
GLODIR	Global Directory of Scientist and Technicians
GOOS	Global Ocean Observing System
GOOS-IOS	GOOS Initial Observing System
GTS	Global Telecommunications System
ICLARM	International Center for Living Aquatic Resources Management
IOC	Intergovernmental Oceanographic Commission
ISA	International Seabed Authority
ITLOS	International Tribunal for the Law of the Sea
NEAR-GOOS	North-East Asian Regional GOOS
RNODC	Responsible National Oceanographic Data Centre
SOOP	Ships Of Opportunity Programme
TEMA	Training, Education and Mutual Assistance Programme
UNCED	United Nations Conference on Environment and Development (Brazil 1992)
UNCLOS	United Nations Convention on the Law of the Sea
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNICPO	United Nations Consultative Process on Oceans
WESTPAC	IOC Sub-Commission for the Western Pacific
XBTs	Expendable Bathythermographs