CIEL Submission to Supervisory Body on A6.4-SBM013-AA-A12: *Information note*: Options to revise the recommendation on activities involving removals under the Article 6.4 mechanism, taking into account stakeholder inputs

Thank you for the opportunity to comment on the Article 6.4 Supervisory Body's new iteration of the "*Information note*: Options to revise the recommendation on activities involving removals under the Article 6.4 mechanism, taking into account stakeholder inputs." CIEL has previously submitted comments on prior iterations of the Supervisory Body's recommendations on removals: Call for Submission on removals prior to SB003 (October 2022); Response to call for submissions from Decision 7/CMA.4 (March 2023); Structured Public Consultation (June 2023); and Call for Submissions on SB007 annotated agenda and related annexes (September 2023). These documents have highlighted a variety of concerns about the recommendations on removals as well as reliance on removals for mitigation of climate change, more generally, including concerns raised by human rights experts. We will endeavor not to repeat comments and so have provided the links to our previous submissions for ease of reference.

Many of the reservations raised in our previous submissions remain and we believe that activities involving removals should not be part of the Article 6.4 mechanism given the numerous concerns with both land-based removals being used to offset ongoing emissions from fossil fuels, and engineering-based removals which are risky, speculative, and/or unproven. Reliance on removals runs the risk of not taking the necessary action–rapidly phasing out all fossil fuels–to avoid overshooting the 1.5°C temperature limit, which the Intergovernmental Panel on Climate Change (IPCC) has warned will result in irreversible harm. Moreover, these removal activities risk violating human rights and the rights of Indigenous Peoples. In this submission, we are writing to provide additional information to help the Supervisory Body as it considers whether and how to include potential removal activities. In particular, we focus on engineering-based removals activities that may involve or impact the oceans, which have been explicitly contemplated in previous drafts of the recommendations on removals.

Risks associated with Marine Geoengineering

Increasingly, our oceans are threatened not only by the impacts of overexploitation, increasing coastal and offshore oil and gas activity, and the climate crisis, but also from misguided attempts to manipulate earth systems otherwise referred to as marine geoengineering. Marine geoengineering techniques include both marine carbon dioxide removal, for example, ocean alkalinity enhancement and biomass cultivation for carbon removal) and solar radiation modification such as marine cloud brightening and surface albedo enhancement involving reflective particles and/or other materials. The oceans sustain life on earth and are one of our greatest allies in the fight against climate change. Marine geoengineering is not positive climate action, but rather a misuse of the oceans that presents incalculable uncertainty and risk, as the effects of marine geoengineering on oceans are unpredictable.

Marine geoengineering does nothing to tackle the root causes of climate change; and no one has been able to demonstrate that they can effectively sequester carbon or store it with any

permanence. It is highly likely that marine geoengineering would change the chemistry of oceans, cause changes in nutrient levels, and subsequent changes in abundance of species, thereby altering delicate equilibriums of interactions between species.[1]

Impacts on Indigenous Rights and other Human Rights

Marine geoengineering additionally poses new risks to the livelihoods of Indigenous Peoples, traditional communities, and fisherfolk who rely on marine and coastal ecosystems. The Human Rights Council report on the issue found that climate-altering technologies, including some marine geoengineering techniques, "could seriously interfere with the enjoyment of human rights for millions and perhaps billions of people" and that "the potential deployment of [geoengineering technologies] would have a massive and disproportionate impact on Indigenous Peoples whose traditional lands and territories are particularly exposed and at risk of experimental uses".[2]

ITLOS Advisory Opinion

We want to draw the 6.4 Supervisory Body's attention to a recent advisory opinion from an international tribunal. In May 2024, the International Tribunal for the Law of the Sea (ITLOS), which is the preeminent authority on ocean law, issued an Advisory Opinion clarifying the obligations of States party to the UN Convention on the Law of the Sea (UNCLOS), to protect oceans from the drivers and impacts of climate change.[3] The majority of States are party to both UNCLOS and the Paris Agreement and notably some of the provisions of UNCLOS form part of customary international law. While many aspects of this Advisory Opinion are of relevance to States' climate action, including actions that States and private actors may engage in through Article 6.4, we wanted to draw attention to how ITLOS addressed the use of technologies and marine geoengineering. It stated that under UNCLOS, States are required "in taking measures to prevent, reduce and control pollution of the marine environment, not to transfer, directly or indirectly, damage or hazards from one area to another or transform one type of pollution into another. In this context, some participants raised the issue of marine geoengineering. Marine geoengineering would be contrary to article 195 if it has the consequence of transforming one type of pollution into another. It may further be subject to article 196 of the Convention which requires States, inter alia, to take all measures necessary to prevent, reduce and control marine pollution resulting from the use of technologies under their jurisdiction or control."[4] In doing so, ITLOS cautions States about the use of marine geoengineering technologies and underscores the obligations States may have, and responsibilities they may face, if they use them. Additionally, the Tribunal noted the regulations

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[1] Lynn M. Russell et al, *Ecosystem impacts of geoengineering: a review for developing a science plan*, 41(4) Ambio. 350-69 (June 2012), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3393062/; David Santillo, *Marine geoengineering: A dangerous distraction from real climate action* (Apr. 20, 2024), https://www.oneearth.org/marine-geoengineering-a-dangerous-distraction-from-real-climate-action/.

[2] Report of the Human Rights Council Advisory Committee on the Impact of new technologies intended for climate protection on the enjoyment of human rights, U.N. Doc. A/HRC/54/47 (Sept. 2023).

[3] International Tribunal for the Law of the Sea, *Advisory Opinion of 21 May 2024, Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law* (May 21, 2024), https://www.itlos.org/fileadmin/itlos/documents/cases/31/Advisory_Opinion/C31_Adv_Op_21.05.2024_orig.pdf.

[4] ITLOS Advisory Opinion, para. 231.

of marine geoengineering and geoengineering broadly by the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters 1972 (London Convention) and its 1996 Protocol (London Protocol) and the Convention on Biological Diversity.[5]

International agreements restricting marine geoengineering

The 6.4 Supervisory Body should not sanction removal activities that other international environmental agreements have banned or expressed significant concern about, but rather must acknowledge the equal status of other UN fora and their agreements including the Convention on Biological Diversity and the London Convention / London Protocol, and recognize these as the authoritative reference in terms of risks and impacts of geoengineering. In doing so it must uphold the *de facto* moratorium on geoengineering under the CBD since 2010, the 2008 prohibition on ocean fertilization and acknowledge more recent moves to restrict potentially 4 additional categories of marine geoengineering under the London Convention/London Protocol, noting that a commercial factor, i.e. being for a commercial purpose rather than legitimate scientific research, is a key element in these restrictions on geoengineering and marine CDR. Last year, the parties to the London Convention / London Protocol stated in relation to four key categories of marine geoengineering, "there is considerable uncertainty regarding their effects on the marine environment, human health, and on other uses of the ocean", and expressed concern about "the potential for deleterious effects that are widespread, long-lasting or severe".

We draw to the attention of the Supervisory Body a recent statement endorsed by over 100 civil society groups from around the world calling on governments to prevent marine geoengineering experiments and uphold and enforce the CBD moratorium, and support the development of strong, precautionary regulatory controls at the London Convention/London Protocol.

Conclusion

Many of the risks associated with marine geoengineering cannot be adequately addressed by simply having more robust rules, but rather we counsel the Supervisory Body to take a precautionary approach and not allow for these activities to be sanctioned at all.

We appreciate your consideration and welcome ongoing interactions with the Supervisory Body. If you have any questions about information in this submission or if you would like more information, please contact Erika Lennon, elennon@ciel.org, or Mary Church, mchurch@ciel.org.

[5] ITLOS Advisory Opinion, para. 231 (stating "The Tribunal is aware that marine geoengineering has been the subject of discussions and regulations in various fora, including the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters 1972 and its 1996 Protocol, and the CBD.").