



## FIRST SESSION OF THE PREPARATORY COMMITTEE ON MARINE BIODIVERSITY BEYOND AREAS OF NATIONAL JURISDICTION: 28 MARCH – 8 APRIL 2016

The first session of the Preparatory Committee on the elements of a draft text of an international legally binding instrument under the UN Convention on the Law of the Sea (UNCLOS) on the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction (BBNJ) begins today at the UN Headquarters in New York and will continue until 8 April 2016. The session will consider: the scope of an international legally binding instrument and its relationship with other instruments; guiding approaches and principles; marine genetic resources, including questions on benefit-sharing; measures such as area-based management tools, including marine protected areas; environmental impact assessments; and capacity building and marine technology transfer.

### A BRIEF HISTORY OF MARINE BIODIVERSITY BEYOND AREAS OF NATIONAL JURISDICTION

The conservation and sustainable use of BBNJ is increasingly attracting international attention, as scientific information, albeit insufficient, reveals the richness and vulnerability of such biodiversity, particularly in seamounts, hydrothermal vents and cold-water coral reefs, while concerns grow about the increasing anthropogenic pressure posed by existing and emerging activities, such as fishing and bioprospecting, in the deep sea.

UNCLOS, which entered into force on 16 November 1994, sets forth the rights and obligations of states regarding the use of the oceans, their resources, and the protection of the marine and coastal environment. Although UNCLOS does not refer expressly to marine biodiversity, it is commonly regarded as establishing the legal framework for all activities in the oceans. The Convention on Biological Diversity (CBD), which entered into force on 29 December 1993, defines biodiversity and aims to promote its conservation, the sustainable use of its components, and the fair and equitable sharing of the benefits arising from the use of genetic resources. In areas beyond national jurisdiction (ABNJ), the Convention applies to processes and activities carried out under the jurisdiction or control of its parties. The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization, which entered into force on 12 October 2014, applies to genetic resources within the scope of CBD Article 15 (Access to Genetic Resources) and to traditional knowledge associated with genetic resources within the scope of the Convention.

**59TH SESSION OF THE GENERAL ASSEMBLY:** In resolution 59/24, the General Assembly established an *ad hoc* open-ended informal working group to study issues relating to the conservation and sustainable use of BBNJ (hereinafter, the Working Group), and called upon states and international organizations to take action urgently to address, in accordance with international law, destructive practices that have adverse impacts on marine biodiversity and ecosystems.

**FIRST MEETING OF THE WORKING GROUP:** The first meeting of the Working Group (13-17 February 2006, New York) exchanged views on institutional coordination, the need for short-term measures to address illegal, unregulated and unreported (IUU) fishing and destructive fishing practices, marine genetic resources (MGRs), avoiding the adverse impacts of marine scientific research (MSR) on marine biodiversity, and facilitating the establishment of high seas marine protected areas (MPAs). A Co-Chairs' summary of trends and a report of the discussions on issues, questions and ideas related to the conservation and sustainable use of BBNJ was transmitted to the General Assembly as an addendum to the report of the Secretary-General on oceans and the law of the sea.

**SECOND MEETING OF THE WORKING GROUP:** The second meeting of the Working Group (28 April—2 May 2008, New York) produced a Co-Chairs' Draft Joint Statement identifying issues for the General Assembly to consider referring back to the Working Group, including: more effective implementation and enforcement of existing agreements; strengthening of cooperation and coordination; development of an effective environmental impact assessment (EIA) tool for oceans management; development of area-based management tools; practical measures to address the conservation and sustainable use of MGRs; and continued and enhanced MSR.

**THIRD MEETING OF THE WORKING GROUP:** The third meeting of the Working Group (1-5 February 2010, New York) agreed, by consensus, to recommendations to the General Assembly on, *inter alia*: including in the Secretary-General's report on oceans and the law of the sea information on EIAs undertaken for planned activities in ABNJ; recognizing the importance of further developing scientific and technical guidance on the implementation of EIAs on planned activities in ABNJ, including consideration of assessments of cumulative impacts; calling upon states to work through competent international organizations towards the development of a common methodology for the identification and selection of marine areas that may benefit from protection based on existing criteria; calling upon states, in the context of the Working



Group's mandate, to make progress in the discussions on MGRs of ABNJ; and reconvening the Working Group in 2011, to provide further recommendations to the General Assembly.

**FOURTH MEETING OF THE WORKING GROUP:** The fourth meeting of the Working Group (31 May-3 June 2011, New York) adopted, by consensus, a set of recommendations to initiate a process on the legal framework for the conservation and sustainable use of BBNJ, by identifying gaps and ways forward, including through the implementation of existing instruments and the possible development of a multilateral agreement under UNCLOS. The recommendations also include a "package" of issues to be addressed as a whole in this process, namely: MGRs, including questions on benefit-sharing; measures such as EIAs and area-based management tools, including MPAs; and capacity building and marine technology transfer.

**FIFTH MEETING OF THE WORKING GROUP:** The fifth meeting of the Working Group (7-11 May 2012, New York) engaged in substantive debates on the gaps and ways forward in plenary and intense negotiations, mostly in a government-only informal setting, on whether to recommend the launch of formal negotiations on a new implementing agreement under UNCLOS. The Working Group eventually recommended by consensus that the General Assembly task it to continue to consider all issues under its mandate as a package with a view to making progress on ways forward to fulfill its mandate. The Working Group also adopted terms of reference for two intersessional workshops to improve understanding of the issues and thus lead to a more informed and productive debate at its next meeting.

**UN CONFERENCE ON SUSTAINABLE DEVELOPMENT (RIO+20):** The UN Conference on Sustainable Development (20-22 June 2012, Rio de Janeiro, Brazil) expressed the commitment of states to address, on an urgent basis, building on the work of the Working Group and before the end of the sixty-ninth session of the General Assembly, the issue of the conservation and sustainable use of BBNJ, including by taking a decision on the development of an international instrument under UNCLOS.

**SIXTH MEETING OF THE WORKING GROUP:** The sixth meeting of the Working Group (19-23 August 2013, New York) resulted in a consensus recommendation on establishing a preparatory process within the Working Group to fulfill the Rio+20 commitment by focusing on the scope, parameters and feasibility of an international instrument under UNCLOS, calling upon the Working Group to be convened twice in 2014 and at least once in 2015, with a view to preparing for a decision on BBNJ by the General Assembly before the end of its sixty-ninth session.

**SEVENTH MEETING OF THE WORKING GROUP:** The seventh meeting of the Working Group (1-4 April 2014, New York) engaged in an interactive substantive debate on the scope, parameters and feasibility of an international instrument under UNCLOS, focusing on: the overall objective and starting point; the legal framework for an international instrument; the relationship to other instruments; guiding approaches; guiding principles; each of the elements of the "package;" and enabling elements and means of implementation.

**EIGHTH MEETING OF THE WORKING GROUP:** The eighth meeting of the Working Group (16-19 June 2014, New York) engaged in a more detailed substantive discussion on the scope, parameters and feasibility of an international instrument under UNCLOS, and called upon the Co-Chairs to prepare draft elements of a recommendation to the General Assembly, based on the "package," also outlining the main elements of convergence that emerged in the Working Group, for consideration at the next meeting.

**NINTH MEETING OF THE WORKING GROUP:** At the ninth meeting of the Working Group (20-23 January 2015, New York), following intense informal negotiations, delegates reached consensus on recommendations for a decision to be taken at the sixty-ninth session of the UN General Assembly to develop a new legally binding instrument on BBNJ under UNCLOS.

Delegates also reached consensus on a negotiating process, by establishing a preparatory meeting to make recommendations on elements of a draft text of a legally binding instrument to the General Assembly in 2017 and for the Assembly to decide at its seventy-second session whether to convene an intergovernmental conference to elaborate the text of the agreement. This decision effectively concluded the mandate of the Working Group.

**69TH SESSION OF THE GENERAL ASSEMBLY:** In its resolution 69/292, the General Assembly decided to develop an international legally binding instrument under UNCLOS on the conservation and sustainable use of BBNJ. To that end, the Assembly established a Preparatory Committee, to make substantive recommendations to the General Assembly on the elements of a draft text of an international legally binding instrument under UNCLOS, taking into account the various reports of the Co-Chairs on the Working Group's work. The resolution also indicated that negotiations will address topics identified in the 2011 "package."

#### INTERSESSIONAL HIGHLIGHTS

**UN SUSTAINABLE DEVELOPMENT SUMMIT:** The Summit (25-27 September 2015, New York) adopted the 2030 Agenda for Sustainable Development. Under Sustainable Development Goal (SDG) 14 (conserve and sustainably use the oceans, seas and marine resources for sustainable development), states committed to, *inter alia*: sustainably manage and protect marine and coastal ecosystems to avoid significant adverse impacts, including by strengthening their resilience, and take action for their restoration in order to achieve healthy and productive oceans by 2020; and effectively regulate harvesting and end overfishing, IUU fishing and destructive fishing practices, as well as implement science-based management plans, in order to restore fish stocks in the shortest time feasible, at least to levels that can produce maximum sustainable yield as determined by their biological characteristics by 2020. SDG 14 also includes commitment to: conserve at least 10% of coastal and marine areas, consistent with national and international law and based on the best available scientific information by 2020; increase scientific knowledge, develop research capacity and transfer marine technology; and enhance the conservation and sustainable use of oceans and their resources by implementing international law as reflected in UNCLOS.

**CBD SBSTTA 19:** The nineteenth meeting of the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA) to the Convention on Biological Diversity (CBD) (2-5 November 2015, Montreal, Canada) adopted a recommendation encouraging governments, organizations and funding agencies to promote and support further research on the significance of marine biodiversity for health, including for food security, and the consequences of multiple stressors on marine ecosystems (including pathogens, chemicals, climate change and habitat degradation).

**70TH SESSION OF THE GENERAL ASSEMBLY:** In its resolution 70/226, the General Assembly decided to convene the High-level UN Conference to Support the Implementation of SDG 14 in Fiji from 5-9 June 2017, coinciding with World Oceans Day.