



# Earth Negotiations Bulletin

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## SECOND SESSION OF THE PREPARATORY COMMITTEE ON MARINE BIODIVERSITY BEYOND AREAS OF NATIONAL JURISDICTION: 26 AUGUST – 9 SEPTEMBER 2016

The second session of the Preparatory Committee on the elements of a draft text of an international legally binding instrument (ILBI) 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 Friday, 26 August, at the UN Headquarters in New York and will continue until 9 September 2016. The session will consider: the scope of an ILBI 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, sponges and cold-water corals, while concerns grow about the increasing anthropogenic pressure posed by existing and emerging activities, such as fishing, mining, 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 TO THIRD MEETINGS OF THE WORKING GROUP:** The Working Group met three times between 2006 and 2010 (13-17 February 2006, 28 April-2 May 2008 and 1-5 February 2010, New York) to exchange 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), marine scientific research (MSR) on marine biodiversity, high seas marine protected areas (MPAs), and environmental impact assessments (EIAs).

**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) recommended 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,

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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 a decision on BBNJ by the General Assembly before the end of its sixty-ninth session.

**SEVENTH TO NINTH MEETINGS OF THE WORKING GROUP:** The Working Group met three times between 2014 and 2015 (1-4 April 2014, 16-19 June 2014 and 20-23 January 2015, New York) and engaged in interactive substantive debates on the scope, parameters and feasibility of an international instrument under UNCLOS. At the ninth meeting, the Working Group 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, and to start a negotiating process to that end. This meeting 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 ILBI under UNCLOS on the conservation and sustainable use of BBNJ. To that end, the Assembly established a Preparatory Committee (PrepCom), to make substantive recommendations to the General Assembly on the elements of a draft text of an ILBI under UNCLOS, taking into account the various reports of the Co-Chairs on the Working Group's work; and for the Assembly to decide at its seventy-second session whether to convene an intergovernmental conference to elaborate the text of the agreement. The resolution also indicated that negotiations will address topics identified in the 2011 "package."

**PREPCOM 1:** The first session of the PrepCom (28 March – 8 April 2016, New York), chaired by Eden Charles (Trinidad and Tobago), met in plenary and informal working group settings, with delegations outlining detailed positions on the various elements related to the 2011 "package." Delegates agreed to a procedural roadmap outlining the structure of PrepCom 2, and on having a Chair's summary of the meeting and an indicative list of issues circulated during the intersessional period.

### INTERSESSIONAL HIGHLIGHTS

**CBD SBSTTA 20 and SBI 1:** The 20th meeting of the CBD Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA) and the first meeting of the CBD Subsidiary Body on Implementation (SBI) were held back to back (25 April – 6 May 2016, Montreal, Canada). SBSTTA adopted recommendations to the Conference of the Parties (COP) on: biodiversity mainstreaming across sectors, including fisheries; a specific workplan on biodiversity and acidification in cold-water areas; marine debris and anthropogenic underwater noise, including voluntary practical guidance on marine debris; marine spatial planning (MSP); and ecologically or biologically significant marine areas (EBSAs). SBSTTA also adopted a recommendation on synthetic biology, which includes bracketed text on, *inter alia*, inviting the COP serving as the Meeting of the Parties (COP/MOP) of the Nagoya Protocol to clarify if and how the use of digital sequence information on genetic

resources relates to access and benefit-sharing. The SBI adopted a recommendation on biodiversity mainstreaming, including sector-specific recommendations for the fisheries sector.

**UNFSA Resumed Review Conference:** The Resumed Review Conference on the Agreement for the Implementation of UNCLOS Provisions relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UNFSA) convened from 23-27 May 2016 in New York and adopted an outcome document recommending further action on the application of the precautionary and ecosystem approaches, MPAs and reserves, data collection and information sharing, among others. The Conference also agreed on, *inter alia*: undertaking regular and independent performance reviews of Regional Fisheries Management Organizations (RFMOs) and developing best practice guidelines for conducting performance reviews and implementing their results; enhancing the participation of developing states in RFMOs; promoting wider participation in UNFSA; and avoiding the transfer of a disproportionate burden of conservation action onto developing states, including through urgently developing a common understanding of the concept of "disproportionate burden" and better defining the concept, quantitatively and qualitatively.

**UNEA Second Meeting:** The UN Environment Assembly of the United Nations Environment Programme (UNEA) convened from 23-27 May 2016 in Nairobi, Kenya, and adopted a resolution on oceans and seas: encouraging Member States to designate and actively manage MPAs and take other effective area-based conservation measures (OECMs), consistent with national and international law and based on the best available scientific information to achieve related global targets; encouraging parties to existing regional seas conventions to consider the possibility of increasing the regional coverage of those instruments in accordance with international law; and requesting the United Nations Environment Programme (UNEP) to step up its work, including through its Regional Seas Programme, on assisting countries and regions in the application of the ecosystem approach to managing the marine and coastal environment, including through enabling inter-sectoral cooperation in integrated coastal zone management and MSP. UNEA also adopted resolutions on marine plastic litter and microplastics, and on sustainable coral reef management.

**ICP-17:** The seventeenth meeting of the UN Open-ended Informal Consultative Process on Oceans and the Law of the Sea (ICP) convened from 13-17 June 2016 in New York to examine marine debris, plastics and microplastics. The meeting adopted a Co-Chairs' summary of discussions, including on the ICP's future role and issues that would benefit from future consideration.

**ISA 22nd Annual Session:** During its 22nd annual session (11-22 July 2016, Kingston, Jamaica), the International Seabed Authority (ISA) considered the interim report of the review committee established to oversee the periodic review of the international regime of the Area, and draft regulations for the exploitation of minerals in the Area.

**Bottom Fishing Workshop:** The workshop (1-2 August 2016, New York) discussed implementation of paragraphs 113, 117 and 119 to 124 of General Assembly Resolution 64/72 and paragraphs 121, 126, 129, 130 and 132 to 134 of Resolution 66/68 on sustainable fisheries, addressing the impacts of bottom fishing on vulnerable marine ecosystems (VMEs) and the long-term sustainability of deep-sea fish stocks. The workshop outcome will inform the review of actions taken by states and RFMOs, to be held in the context of the informal consultations on the draft General Assembly resolution on sustainable fisheries.