

FOURTH SESSION OF THE PREPARATORY COMMITTEE ON MARINE BIODIVERSITY BEYOND AREAS OF NATIONAL JURISDICTION: 10-21 JULY 2017

The fourth 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 on Monday, 10 July, at UN Headquarters in New York and will continue until Friday, 21 July.

This is the last session scheduled by the UN General Assembly and is expected, according to Resolution 69/292, to finalize substantive recommendations on the elements of a draft text of an ILBI, so that the Assembly can decide, before the end of its seventy-second session, whether to convene an intergovernmental conference to elaborate the text of the agreement. The session will continue consideration of: 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, with growing concerns over 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 expressly refer to marine biodiversity, it is commonly regarded as establishing the legal framework for all activities in the ocean. 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 urgently take action 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, 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 (ABMTs), 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, Brazil) expressed the commitment of states to address, on an urgent basis, the issue of the conservation and sustainable use of BBNJ, building on the work of the Working Group and before the end of the sixty-ninth session of the General Assembly, 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. The Working Group recommended being reconvened 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 during the sixty-ninth session of the UN General Assembly to develop a new ILBI under UNCLOS on BBNJ, 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 this end, the Assembly established a Preparatory Committee (PrepCom), to make substantive recommendations to the Assembly on the elements of a draft text of an ILBI, taking into account the various reports of the Co-Chairs on the Working Group's work; and for the Assembly to decide, before the end of 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.

PREPCOM 2: During the second session of the PrepCom (26 August – 9 September 2016, New York), chaired by Eden Charles, delegations offered detailed proposals on the possible elements of an ILBI, and engaged in a preliminary identification of possible areas of convergence of views and of issues requiring further discussion. Delegations requested the preparation of a Chair's non-paper drawing from the statements made at PrepCom 2 and from electronic submissions made until early December 2016, in order to guide intersessional preparations for PrepCom 3.

PREPCOM 3: During the third session of the PrepCom (27 March – 7 April 2017, New York), chaired by Carlos Sobral Duarte (Brazil), delegates met in plenary and informal working

group settings on the basis of a Chair's non-paper on elements of a draft text of an ILBI. Delegations supported the structure of the non-paper and engaged in an exchange of increasingly detailed proposals on the possible elements of the ILBI. At the end of PrepCom 3, delegates requested the preparation of an updated Chair's non-paper streamlining submissions, as well as draft substantive recommendations for consideration by PrepCom 4.

INTERSESSIONAL HIGHLIGHTS

ICP 18: The 18th meeting of the UN Open-ended Informal Consultative Process on Oceans and the Law of the Sea (ICP 18) convened from 15-19 May 2017 at UN Headquarters in New York to address "the effects of climate change on oceans," including: environmental, social and economic implications; current action and opportunities for further enhancement of cooperation and coordination in addressing the effects of climate change on oceans; and inter-agency cooperation and coordination.

FIRST MEETING OF THE PARTIES TO THE PORT STATE MEASURES AGREEMENT: The first Meeting of the Parties to the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, which entered into force on 5 June 2016, was held from 29-31 May 2017 in Oslo, Norway. The meeting focused on implementation, including how to assure real-time information exchange and publication on ships in violation of the treaty, capacity building to support compliance, as well as the responsibilities of states, regional fisheries management organizations (RFMOs) and other international bodies, such as the Food and Agriculture Organization of the UN (FAO).

UN OCEAN CONFERENCE: The high-level UN Conference to Support the Implementation of Sustainable Development Goal 14 (SDG 14 – Conserve and sustainably use the oceans, seas and marine resources for sustainable development) was held from 5-9 June 2017, at UN Headquarters in New York, co-hosted by the Governments of Fiji and Sweden. The Conference contributed to the follow-up and review process of the 2030 Agenda for Sustainable Development (2030 Agenda), providing an input to the High-Level Political Forum on Sustainable Development (HLPF). The Conference was largely considered a success in building momentum for the implementation of SDG 14, as a central component of the 2030 Agenda.

In the intergovernmentally-agreed Call for Action, the Conference called upon all stakeholders to, *inter alia*: strengthen cooperation, policy coherence and coordination among institutions at all levels, and promote effective and transparent multi-stakeholder partnerships, including public-private ones; dedicate greater resources to MSR, as well as the collection and sharing of data and knowledge, including traditional knowledge; implement long-term and robust strategies to reduce the use of plastics and microplastics, particularly plastic bags and single-use plastics; support the use of effective and appropriate ABMTs, including MPAs and other approaches, such as marine spatial planning and integrated coastal zone management; develop and implement effective adaptation and mitigation measures that contribute to increasing and supporting resilience to ocean and coastal acidification, sea-level rise, and increase in ocean temperatures, and to addressing the other harmful impacts of climate change on the ocean; and actively engage in PrepCom discussions, so that the General Assembly can, before the end of its seventy-second session, decide on convening, and on a start date for, an IGC.